

Medical Panel Physician's Guide

Evaluation of Members for Disability Retirement



Commonwealth of Massachusetts
Public Employee Retirement Administration Commission

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Revised March 2011

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Table of Contents

▶ Evaluation of Members for Disability Retirement	1
▶ Composition of a Regional Medical Panel	1
▶ Regional Medical Panel	1
▶ What is Involved?	1
▶ Evidentiary Value of Certificates and Narrative Reports	1
▶ Ordinary Disability Retirement	2
▶ Accidental Disability Retirement	2
▶ Accidental Death Benefit	2
▶ Permanency Standard	2
▶ Aggravation of a Pre-existing Condition Standard	2
▶ Risk of Re-injury	2
▶ Member in Service	3
▶ Statutory Presumptions	3
▶ The Heart Law Presumption	3
▶ The Lung Law Presumption	3
▶ The Cancer Law Presumption	3
▶ Who May Attend a Regional Medical Panel Examination?	4
▶ Photo Identification	4
▶ Fees	4
▶ Requests for Testing	4
▶ Scheduling Medical Panel Appointments	5
▶ Notification	5
▶ Physician Screening	5
▶ Cancellations	5
▶ Member's Failure to Appear for a Scheduled Examination	6
▶ Forms and Medical Records	6
▶ Completion of Certificate(s)	7
▶ Timely Submission and Payment	7
▶ PERAC Format for Narrative Report	7
▶ Report Introduction	7
▶ Report Main Text	7
▶ History of the Member's Illness or Condition	7
▶ Current Symptoms	7
▶ Member's Past Medical History	8
▶ Medical Record Review	8
▶ Physical Examination	8
▶ Relevant Personal and Family History	8
▶ Diagnoses	8
▶ Conclusion	8
▶ Confidentiality of Medical Reports and Test Results	8
▶ Clarification Requests	8
▶ Quality Assurance	9

Evaluation of Members for Disability Retirement

Pursuant to sections 6 and 7 of Chapter 32 of the Massachusetts General Laws, the Public Employee Retirement Administration Commission (PERAC) is responsible for appointing regional medical panels to evaluate the physical and/or mental conditions of members seeking disability retirement allowances.

Composition of a Regional Medical Panel

A regional medical panel is made up of three licensed physicians. Two of the panel physicians must be board certified (or board eligible) and skilled in the particular branch of medicine or surgery involved in the case.

Regional Medical Panel

A member may elect either a:

Joint Medical Panel:

Three physicians convene to examine the member on the same day in the same location. Although only one physician conducts the physical examination, all three physicians must be present. The panel submits one narrative report and one *Regional Medical Panel Certificate*, signed by all three physicians. If there is a dissenting decision, the dissenting physician must write a narrative report and complete a *Minority Report Certificate*.

Or

Separate Single Examinations:

Each of the three physicians conducts a separate examination in a different location on a different date. Each physician must sign and file a *Regional Medical Panel Certificate* and write a narrative report.

What is Involved?

In addition to conducting a thorough physical examination, the members of a regional medical panel must review medical information provided by the member's retirement board, complete the appropriate certificates, and write a narrative report in support of their certificate findings that conforms to PERAC's prescribed format.

Evidentiary Value of Certificates and Narrative Reports

The *Regional Medical Panel Certificate* and narrative report are considered as evidence by the member's retirement board when they render a decision to approve or deny a disability retirement allowance. Every effort has been made to design a narrative format that fosters consideration of all the medical issues and brings the reader to final conclusions. The report must be clear, concise, and fully support the physicians' responses to the certificate questions.

Ordinary Disability Retirement

If a member is applying for Ordinary Disability Retirement (a disability not alleged to be the result of a job-related incident or injury), medical panel physicians are responsible for answering two questions:

- (1) Is the member mentally or physically incapable of performing the essential duties of his or her job as described in the current job description?
- (2) Is the member's medical condition likely to be permanent?

Accidental Disability Retirement

If a member is applying for Accidental Disability Retirement (a disability alleged by the member to be the result of a job-related incident or injury), medical panel physicians must respond to the following three questions:

- (1) Is the member mentally or physically incapable of performing the essential duties of his or her job as described in the current job description?
- (2) Is the member's medical condition likely to be permanent?
- (3) Did the member sustain the injury, or undergo the hazard while in the performance of his or her job duties?

Accidental Death Benefit

If a member's surviving family members are applying for Accidental Death Benefits, the single physician assigned to the case must determine whether the member's death was caused by the same condition for which he/she retired.

Permanency Standard

A disability is permanent if it will continue for an indefinite period of time that is unlikely to ever end, even though recovery at some remote, unknown time is possible. If a medical panel is unable to determine when an applicant will no longer be disabled, the physicians must consider the disability to be permanent. However, if recovery is reasonably certain after a fairly definite time, the disability cannot be classified as permanent. The medical panel physicians must base their determination on their examination of the applicant, medical test results, and medical records. It is not the medical panel's responsibility to speculate about employment possibilities that might later become available to the member.

Aggravation of a Pre-existing Condition Standard

Causation (one essential element in the establishment of an accidental disability) is established when the acceleration of a pre-existing condition or injury is the result of an accident or hazard undergone while in the performance of duty. However, causation is not established if the disability is due to the natural progression of a pre-existing condition or was not aggravated by such an on-the-job injury or hazard.

Risk of Re-injury

Please note that the Contributory Retirement Appeal Board (CRAB) has found, "even if a member is physically capable of performing all of the essential duties of his or her position, he or she may be disqualified if a return to work would pose an unreasonable risk to serious harm to the member or third parties." This risk of re-injury has to reasonably be expected to involve a substantial harm.

Member in Service

Please note that the CRAB has found, an "employee who has left government service without established disability may not, after termination of government service, claim accidental disability retirement status on basis of subsequently matured disability" You are asked to address whether the member was disabled at the time he or she was last employed by a governmental unit.

Statutory Presumptions

Massachusetts General Laws sections 94, 94A, and 94B establish presumptions that certain conditions are caused by a member's employment.

The Heart Law Presumption

Added to the retirement law in 1950, M.G.L. c. 32, § 94 establishes a rebuttable presumption that, in the case of certain eligible public employees, any condition or impairment of health that is caused by heart disease or hypertension is service-connected, unless the contrary is shown by competent medical evidence.

This presumption applies to police officers, firefighters, and some other public safety employees who successfully pass a physical examination on or after the date of hire that fails to reveal any evidence of a heart condition or hypertension. If a member is eligible for the Heart Presumption, a guide about the presumption will be included in the Certificate Packet.

The Lung Law Presumption

Added to the retirement law in 1962, M.G.L. c. 32, § 94A establishes a rebuttable presumption that, in the case of certain eligible public employees, any condition or impairment of health that is caused by any disease of the lungs or respiratory tract is service-connected, unless the contrary is shown by competent medical evidence.

This presumption applies to firefighters who successfully pass a physical examination on or after the date of hire that fails to reveal any evidence of the condition. If a member is eligible for the Lung Presumption, a guide about the presumption will be included in the Certificate Packet.

The Cancer Law Presumption

Added to the retirement law in 1990, M.G.L. c. 32, § 94B establishes a rebuttable presumption that, in the case of certain eligible public employees (generally these employees are firefighters), any condition or impairment of health caused by can-

cer affecting the skin, central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, prostate systems, and respiratory tract that results in total disability or death is service-connected, unless the contrary is shown by a preponderance of the evidence.

This presumption applies to firefighters who have been actively employed in specific positions on or after July 5, 1990, have regularly responded to calls of fire during some portion of their service, and have served for not fewer than five years at the time his/her condition is first discovered or should have been discovered. If a member is eligible for the Cancer Presumption, a guide to the presumption will be included in the Certificate Packet.

Who May Attend a Regional Medical Panel Examination?

The principal purpose of the examination is to discuss and evaluate the physical condition or mental health of the member. Attendance at the examination shall be limited to the member, the medical panel physician(s), the member's physician and attorney, and the employer's physician and attorney. The member may permit the presence of other individuals, provided their presence will not disrupt the examination.

It is the member's responsibility to notify his/her physician and attorney of the date(s), time(s), and location(s) of the examination.

In the event that a member's treating physician attends the examination, please contact the Disability Unit for direction regarding their participation and report.

The member's physician and the employer's physician may answer questions from the panel, but they will have no vote in the panel's final determination.

The member's and employer's physician may file written statements with the Commission within a 10-day period following the examination. If either of these physicians disagrees with the findings of the panel, they may so indicate by signing the *Regional Medical Panel Certificate* in the space provided.

Photo Identification

Before conducting a disability examination, physicians should obtain a copy of the member's photo identification (driver's license) for the record.

Fees

Please refer to the enclosed copy of the PERAC *Fee Schedule for Medical Services*.

Requests for Testing

- ▶ In no event will PERAC approve any invasive medical tests.

- ▶ Testing fees that do not exceed \$100.00 in total per case do not require PERAC's prior approval.

- ▶ Unless a physician obtains prior approval from PERAC, PERAC will not assume responsibility for payment of any test costs in excess of \$100.00.
- ▶ A separate payment invoice for any additional tests performed must be submitted to PERAC with the *Regional Medical Panel Certificate* and narrative report for payment.
- ▶ All payments will be rendered in accordance with the PERAC fee schedule, unless otherwise negotiated. Questions about the PERAC *Fee Schedule for Medical Services* should be directed to PERAC Case Managers.

Scheduling Medical Panel Appointments

PERAC Case Managers make all of the arrangements for all disability retirement appointments, either by handling the scheduling personally or using the services of a disability review organization.

Notification

After confirming the appointment with the physician(s), a PERAC Case Manager will provide written notification at least 14 days in advance of the appointment. The member is notified of the names of panel physician(s), the date(s), time(s), location(s) of the examination(s) and directions via certified mail. PERAC also notifies the member's employer as well as his/her retirement board, and directs the retirement board to forward the member's medical records to the physician(s).

Physician Screening

Before conducting a disability retirement examination, medical panel physicians must screen the referral to ensure that they have not previously treated or examined the member. With the exception of service on the member's prior disability medical panel, such service is not permitted.

Cancellations

All cancellations and requests for rescheduling must be directed to PERAC. Members and their representatives are directed by PERAC not to act independently to cancel or reschedule appointments. If a member or any other party does contact an appointed physician's office to cancel or reschedule a medical panel appointment, he or she should be advised to contact PERAC.

If a PERAC Case Manager must cancel an appointment within 48 hours of the scheduled date, PERAC will pay a \$150.00 cancellation fee to the physician.

If a physician must cancel or reschedule an appointment, the physician, at his/her earliest opportunity, should telephone (617) 591-8956 and speak with a PERAC Case Manager. PERAC does not pay a cancellation fee when a physician cancels a medical panel appointment.

In the event of severe weather, the PERAC Case Managers will contact physicians and members to cancel those appointments to which travel is hazardous. If a physician's office remains open and the member is unable to attend the appointment, PERAC will pay a \$150.00 "no show" fee. However, if a physician's office closes because of the weather, PERAC will not pay a "no show" fee.

Member's Failure to Appear for a Scheduled Examination

If a member fails to keep a medical panel appointment, the PERAC Case Manager should be notified immediately. PERAC will pay a \$150.00 "no show" fee to the physician(s) who had been scheduled to carry out the examination. Depending on circumstances, PERAC may reschedule the examination.

Forms and Medical Records

PERAC will provide medical panel physician(s) with the *Regional Medical Panel Certificate* and *Certification of Medical Panel Finding, Accidental Disability Certificate or Accidental Disability Presumption Certificate* (if appropriate), *Minority Report Certificate*, and a payment voucher.

The member's retirement board is advised to forward all of the member's medical records to the medical panel physician(s).

PERAC advises members that it is their responsibility to provide the medical panel with x-rays, EKG tracings and such other medical records that cannot be photocopied readily. The member is also responsible for making the necessary arrangements for the return of these materials to the appropriate facilities or treating physicians.

Medical panel physicians who determine that they need additional medical information to complete an evaluation should contact a PERAC Case Manager.

Prior to the scheduled examination, the member's retirement board should provide medical panel physician(s) with the following information:

- ▶ *Treating Physician's Statement Pertaining to a Member's Application for Disability Retirement*
- ▶ *Statement of Applicant's Duties* (filed by the member)
- ▶ *Statement About [Your] Background, Qualifications and Physical Activities* (filed by member)
- ▶ *Employer's Statement Pertaining to a Member's Application for Disability Retirement*
- ▶ *Reason for Accidental Disability* (filed by the member about the circumstances of any personal injury or hazard undergone on the job)
- ▶ Copies of any injury reports filed with the retirement board or the member's employer
- ▶ All of the member's medical records in their possession
- ▶ A copy of the member's job description, including his/her essential duties

If any of the records and documents listed above have not been received by the physician's office at least 72 hours prior to a scheduled examination, the PERAC Case Manager should be contacted at (617) 591-8956 for assistance.

Completion of Certificate(s)

The physician who conducts a medical panel examination must respond to all questions on the *Regional Medical Panel Certificate*, complete the *Certification of Medical Panel Finding*, as well as the *Accidental Disability Certificate* or *Accidental Disability Presumption Certificate* (if appropriate), and a *Minority Report Certificate* (if the physician is offering a dissenting opinion) and indicate if any additional information has been supplied to the medical panel. All three members of a joint medical panel must sign the certificate(s). Please note that a physician who offers a dissenting opinion must also submit his/her own narrative report that conforms to the format prescribed by PERAC.

Timely Submission and Payment

The completed certificates, narrative report, signed payment voucher and a copy of the member's photo identification must be submitted to PERAC within 60 days of the examination so that payment can be rendered promptly.

PERAC Format for Narrative Report

When writing the narrative report, medical panel physicians must consider the physical and/or mental condition upon which the member's disability retirement application is based.

Report Introduction

At the beginning of the narrative report, it is important to include:

- ▶ The name of the member and his/her PERAC number
- ▶ The date upon which the examination is conducted
- ▶ The time the examination begins and ends
- ▶ Names of all individuals who attend the examination

Report Main Text

The examination of the member should cover all body systems, and the report should reflect a discussion of each of the following categories in the order indicated:

History of the Member's Illness or Condition

Please provide a health history for the member. When a member has applied for accidental disability, it is also important to include a description of the personal injury the member sustained or the hazard he or she underwent while on the job.

Current Symptoms

Describe the member's current symptoms.

Member's Past Medical History

Reference operative procedures, hospitalization, medications, allergies, etc.

Medical Record Review

When conducting the examination and reporting the findings, all of the following should be considered:

- ▶ Physician reports, office notes, consultations
- ▶ Hospital records/laboratory reports
- ▶ Imaging studies /stress tests

Physical Examination

- ▶ Weight, height, blood pressure, pulse, etc.
- ▶ Review body systems related to injury or hazard undergone.

Relevant Personal and Family History

Diagnoses

In addition to his/her diagnosis, the physician may comment upon diagnoses included in the member's medical records.

Prognosis

Conclusion

The findings should be supported by objective evidence such as laboratory results, x-rays, etc. The more complete a discussion, the more beneficial the narrative report will be. The discussion must support the responses to certificate questions:

- ▶ Ability to perform the essential duties of the job
- ▶ Permanence (consider the Permanency Standard)
- ▶ Causality (consider Aggravation Standard)

In the response, it is important to incorporate wording from the certificate questions. For example, "Said incapacity [is or is not] such as might be the natural and proximate result of the personal injury sustained by or hazard undergone on account of which retirement is claimed."

Confidentiality of Medical Reports and Test Results

A member's medical information is confidential. All correspondence related to the member, as well as certificates, narrative reports, medical records, etc. should be submitted *only* to PERAC. There are no circumstances under which a medical panel physician should share completed certificates, narrative reports, or test results with any party other than PERAC. PERAC will in turn share these documents with the member's retirement board.

Clarification Requests

Retirement boards are encouraged to seek clarification from medical panels when a board has questions regarding a narrative report or certificate findings. Retirement

boards may seek such clarification by contacting the physicians directly or by requesting assistance from PERAC. Physicians who receive clarification requests from retirement boards or any other source should submit copies of those requests to PERAC.

Upon receipt of a clarification request, PERAC will provide the physician(s) with a payment voucher for the clarification service.

Quality Assurance

PERAC's Disability Unit systematically monitors and evaluates the medical panel process. Disability Unit staff members review each certificate and narrative report to ensure that every question has been answered, the written conclusions reflect the proper legal language, and the provider has fully complied with PERAC's procedures and requirements in a timely fashion. If the certificates and/or narrative reports are incomplete or do not conform to PERAC's prescribed format, PERAC will return the materials to the physician(s) for completion.

If the completed certificate and narrative report have not been received by PERAC within 60 days of the examination, PERAC is not required to render payment.

PERAC Disability Unit staff members communicate with providers on a regular basis to make them aware of the latest statutory changes and procedural modifications.

PERAC Disability Unit staff members visit provider locations to ensure that the directions to the provider locations are correct and easy to follow, the offices are wheelchair accessible, and the personnel are helpful, professional, and accommodating.

Notes

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