

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Robin Pergola,
Petitioner

v.

Docket No. CR-22-0286

State Board of Retirement,
Respondent

Appearance for Petitioner:

Robin Pergola

Appearance for Respondent:

John C. Durgin, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

A nursing supervisor did not spend more than 50% of her time caring for or supervising mentally ill patients and is not entitled to Group 2 classification.

DECISION

The petitioner, Robin Pergola, appeals the denial by the State Board of Retirement (SBR) of her application for Group 2 classification.

I held a hearing on July 17, 2024 and July 30, 2025 by Webex, which I recorded. (I explain below the widely-spaced hearing dates.)

Mrs. Pergola represented herself, testified, and called no other witness. I admitted Exhibits 1 through 4, and 7 through 9.

SBR submitted its post-hearing brief on September 3, 2025. Mrs. Pergola submitted her brief on August 28, 2025. In it, she alleged facts that are not in the record; I do not consider those factual allegations.

Findings of Fact

1. From July 21, 1991 to August 31, 2022, Mrs. Pergola filled the following positions at the Chelsea Soldiers Home, now called the Veterans Home at Chelsea: Licensed Practical Nurse (LPN) II; Registered Nurse (RN) II; and RN III – Nursing Supervisor. (Testimony; SBR letter to Pergola, Jan. 23, 2025; Ex. 8; Pergola’s To whom it may concern letter, Dec. 12, 2024) The relevant position for this appeal is the last one, RN III – Nursing Supervisor.

2. The Position Description/Form 30 for RN III – Nursing Supervisor includes the following in the General Statement of Duties and Responsibilities: collects data about the patient population, establishes a plan of care in coordination with other health care providers, coordinates meetings, admits and discharges patients, and manages the pain for terminally ill and dying patients. (Ex. 7)

3. The Position Description for RN III – Nursing Supervisor gives these examples of duties, among others: “Coordinates and provides nursing care...,” handles patient complaints, communicates with nursing and other departments, evaluates employees, and directs staff. (Ex. 7)

4. Mrs. Pergola cannot remember the details of her last year of employment at the Chelsea Soldiers Home; it was a blur to her. (Testimony)

5. In her last year of service in the Chelsea Soldiers Home, approximately 75% of the patients in the units where Mrs. Pergola worked had dementia. (Testimony)

6. In her last year of service, Mrs. Pergola generally worked ten-hour days three times a week, and eight-hour days two times a week. (Testimony)

7. In her last year of service, Mrs. Pergola generally spent six to seven hours per day supervising nurses and not interacting with patients. (Testimony)

8. In her last year of service, Mrs. Pergola typically spent one hour per day on paperwork. (Testimony)

9. In her last year of service, Mrs. Pergola supervised up to 32 staff people, including nurses. She also stepped in to provide hands-on nursing care to patients. (Testimony)

10. In her last year of service, Mrs. Pergola typically spent one to two hours daily taking care of patients. (Testimony)

11. Mrs. Pergola did not have custody of patients. She did not instruct them. (Testimony)

12. In her last year of service, for approximately an hour, approximately twice a week, Mrs. Pergola sat with patients, kept an eye on them, and tried to keep them calm, which she considered supervising them. (Testimony)

13. On June 8, 2022, Mrs. Pergola applied for Group 2 classification for her service between July 21, 1991 and August 31, 2022 at the Chelsea Soldiers Home. She listed her "Job Title for Group Classification" as her position at the time, Staff Nurse/Supervisor. (Ex. 4)

14. Mrs. Pergola was eligible for prorating, but, not understanding what it meant, did not seek it on her application of June 8, 2022. (Pergola's oral statement, July 17, 2024)

15. On July 1, 2022, SBR denied Mrs. Pergola's application for Group 2 classification. (Ex. 1) SBR did so on the basis of Mrs. Pergola's Staff Nurse/Supervisor position, denying Group 2

classification for her entire career, not only for her stint as a Staff Nurse/Supervisor. (Durgin's oral statement, July 17, 2024)

16. On July 13, 2022, Mrs. Pergola timely appealed. (Ex.2)

17. At the first hearing in this case on July 17, 2024, I realized that Mrs. Pergola could have applied for Group 2 classification prorating for her different positions. SBR agreed to determine whether Mrs. Pergola could resubmit an application for each of her three positions. I suspended the hearing without taking testimony.

18. On July 26, 2024, SRB informed Mrs. Pergola and me by letter that it would do or had done the following: (1) Allow Mrs. Pergola to apply for Group 2 classification for her positions as an LPN II from July 21, 1991 to August 31, 1996; and as an RN II from September 1, 1996 to September 20, 2006. (2) Stand by its denial of Mrs. Pergola's application for Group 2 classification for her position as an RN III from 2008 to 2022, but encourage her to submit further information about that application. (SBR letter to DALA, July 26, 2024)

19. On January 23, 2025, SBR approved Group 2 classification for Mrs. Pergola's positions as an LPN II from July 21, 1991 to August 31, 1996; and as an RN II from September 1, 1996 to September 20, 2006. (SBR letter to Pergola, Jan. 23, 2025)

20. When the hearing resumed on July 30, 2025, what was on appeal was Mrs. Pergola's application for Group 2 classification as an RN III – Nursing Supervisor from September 20, 2006 to August 31, 2022.

21. Within a few minutes of the start of the hearing, Mrs. Pergola tried to narrow her remaining appeal, stating that in 2018, she took a staff development position, which was a desk

job. (She could not provide a precise date in 2018.) I did not allow her to orally amend her application for Group 2 classification, especially because the hearing had started a year before.

Discussion

Members of retirement systems fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Other groups, including Group 2, use a more desirable calculation for retirement benefits than does Group 1. Group 2 is for various employees, including those “whose regular and major duties require them to have the care, custody, instruction or other supervision” of people who are mentally ill. G.L. c. 32, § 3(2)(g).

Mrs. Pergola posits that she cared for and supervised patients, not that she had custody of them or instructed them.

“A key factor in assessing a member’s ‘regular and major’ duties is the member’s job title and description.” *Peter Forbes v. State Board of Retirement*, CR-13-146 (CRAB 2020). See *Maddocks v. Contributory Retirement Appeal Board*, 369 Mass. 488, 495 (1976) (title and description of duties can be used to determine group classification). The description of Mrs. Pergola’s duties does not indicate that she regularly cared for and supervised patients.

A petitioner’s “regular and major job duties” are those that they spend more than half of their working time performing. *E.g.*, *Myriam Adrien-Carius v. State Board of Retirement*, CR-22-0063 (Div. Admin. L. App. Oct. 17, 2025). Of an eight-hour or ten-hour day, Mrs. Pergola spent at most one to two hours per day taking care of patients. That is well short of 50% of her time.

A factor in awarding Group 2 classification is *not* that an applicant encountered danger or the possibility of danger on the job. *William Saffie v. State Board of Retirement*, CR-21-0020

(Contrib. Ret. App. Bd. April 15, 2026).

Mrs. Pergola generally supervised staff in her last year of service. She was not taking care of mentally ill patients or supervising them for the majority of her time. She is not entitled to Group 2 classification.

Conclusion and Order

The State Board of Retirement's denial of the petitioner's application for Group 2 classification is affirmed.

Dated: May 1, 2026

/s/ Kenneth Bresler

Kenneth Bresler
Administrative Magistrate
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