COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JOHN TOOMEY, *Petitioner,*	:	
v.	:	Docket No. CR-22-0114
STATE BOARD OF RETIREMENT, *Respondent.*	:	

Appearance for the Petitioner:

Romeo R. Adams, *Esq*.

Appearance for the Respondent:

Yande Lombe, *Esq*.

Administrative Magistrate:

Natalie S. Monroe

SUMMARY OF DECISION

The petitioner, a physician, sought to be reclassified into Group 2 pursuant to G.L. c. 32, § 3(2)(g), on the grounds that he provided direct care to individuals with developmental disabilities during his last year of employment. The year before he retired from the state, the petitioner spent more than 50% of his time consulting on medically complex cases for other health care providers and for departments within the Department of Developmental Services (DDS). While the petitioner evaluated DDS clients and recommended care for others to carry out, he did not provide direct care. The petitioner therefore does not qualify for Group 2 reclassification.

DECISION

The petitioner, John Toomey, timely appealed a decision by the State Board of Retirement (board) denying his application for reclassification from Group 1 to Group 2. On May 17, 2024, I conducted an in-person hearing at the Division of Administrative Law Appeals (DALA). Dr.

Toomey testified on his own behalf. He also proffered three witnesses: Andrew Bourke, a former supervisor at DDS; Betsy Johnson, a former colleague at DDS; and Gregory Shuler, a former colleague at Westborough State Hospital. All three witnesses testified remotely via DALA's WebEx platform. The board did not present any witnesses. I admitted twelve stipulated facts (Stipulations 1-3, 5, 9-16) and fourteen exhibits (Exhibits 1-14) into evidence. I also marked the parties' joint pre-hearing memorandum as Exhibit "A" for identification.

The parties submitted closing briefs, the last of which was filed on September 4, 2024, at which point I closed the administrative record.

FINDINGS OF FACT

Based upon the stipulated facts, testimony and other evidence in the record, the reasonable inferences drawn therefrom, and my assessment of the witnesses' credibility, I make the following findings of fact:

1. Dr. Toomey worked for the Commonwealth of Massachusetts from March 2001 until his retirement on November 1, 2021. (Stipulation Nos. 1, 5; Toomey Testimony.)[1]

2. During his tenure with the Commonwealth, Dr. Toomey was classified as a Physician III. (Stipulation No. 2.)

3. The Commonwealth's job description for the "Physician series" lists duties that are common to all physicians (levels I-III). These include diagnosing physical diseases by performing medical examinations and tests, evaluating patients' conditions and exchanging information to provide appropriate medical care and treatment. (Ex. 2 at p. 12.)[2]

[1] In his application for reclassification and at the evidentiary hearing, Dr. Toomey provided his best estimate of his dates of employment. (Toomey Testimony.) With the exception of his retirement date, I only give weight to the months and years – but not the specific dates – that he provided. The exact dates that Dr. Toomey worked at each of his positions are not relevant to this decision.

[2] There is insufficient evidence in the record to determine how much time Dr. Toomey spent in each role.

4. The Commonwealth's job description for the "Physician series" also lists duties that are specific to Physician IIIs. These include organizing and directing "medical, investigative or other programs;" directing programs "of specialized medical treatment procedures for patients by resolving conflicts among staff members;" and planning, directing, and implementing training programs for doctors and other medical professionals. (Ex. 2 at p. 14.)

5. Dr. Toomey served in three different roles within the Commonwealth. Dr. Toomey had a profound impact on the individuals he supported and advocated for throughout his career. (Ex. 2 at pp. 3-5; Exs. 10, 11, 12; Toomey Testimony; Bourke Testimony; Johnson Testimony; Shuler Testimony.)

A. Westborough State Hospital

6. From March 2001 until March 2007, Dr. Toomey worked as an attending physician at Westborough State Hospital, a Department of Mental Health psychiatric hospital that cared for patients with acute and chronic mental health issues. He treated patients living in the locked wards and in the group homes on campus. (Ex. 2 at p. 3; Ex. 10; Toomey Testimony.)

7. At Westborough State Hospital, Dr. Toomey treated patients every day, taking care of their medical needs and responding to emergencies. He performed minor surgical procedures, wound care, on-site evaluations, suturing and IV therapy. He also helped other staff to manage clients during psychiatric emergencies. (Ex. 2 at p. 3; Ex. 10; Toomey Testimony.)

8. Dr. Toomey was also on the code blue team, which responded when patients were in cardiac arrest. He developed a code blue protocol and trained the medical staff on the protocol. (Ex. 2 at p. 3; Toomey Testimony.)

9. Dr. Toomey also served as the program coordinator for medicine for the psychiatry program at the UMass Memorial Medical Center. He also supervised two physician assistants and a nurse practitioner, but he did not spend the majority of his time supervising staff or teaching. He spent the majority of his time treating patients. (Ex. 2 at p. 3; Ex. 10; Toomey Testimony.)

B. Glavin Regional Center

10. From March 2007 to September 2014, Dr. Toomey served as the Medical Director for Glavin Regional Center. (Ex. 2 at p. 4; Toomey Testimony.)

11. Glavin Reginal Center was part of the Department of Developmental Disabilities (DDS) and provided services to individuals with intellectual disabilities. (Toomey Testimony.)

12. Dr. Toomey provided hands-on care to the residents every day. He took part in minor medical procedures, such as suturing, inserting IVs and central lines, fracture and wound care, emergency management and resuscitation. At times, he accompanied the residents to ancillary services such as radiology. (Ex. 2 at p. 4; Toomey Testimony.)

13. Dr. Toomey developed services, structures and systems for caring for the center's residents. He had other administrative duties and supervised two other medical staff. (Toomey Testimony.)

14. Glavin Regional Center closed in or around 2014. (Toomey Testimony.)

C. DDS Central Residential Services

15. From September 2014 to November 1, 2021, Dr. Toomey served as the Medical Director for DDS's Central Residential Services. (Stipulation No. 1; Ex. 2 at p. 5; Ex. 12; Toomey Testimony; Bourke Testimony.)

16. Dr. Toomey worked at a DDS office in Worcester. He did not supervise any staff. (Ex. 2 at p. 5; Bourke Testimony; Toomey Testimony.)

17. At some point later in his tenure, DDS also gave Dr. Toomey the title of medical consultant. His duties did not change, however. (Ex. 2 at p. 5; Toomey Testimony.)

18. When Dr. Toomey joined DDS's Central Residential Services (CRS), he acted as DDS's regional medical consultant, responsible for consultations across CRS's Central-West Region. For the first three or four years of his tenure, he also helped transition former residents of Glavin Regional Center into their communities or other facilities. Several years after he began at CRS, he was asked to become DDS's statewide medical consultant. Each of these roles is discussed below. (Ex. 2 at p. 5; Ex. 12; Toomey Testimony.)

1. Medical Director for the Central-West Region

19. As Medical Director for the Central-West Region, Dr. Toomey consulted on complex medical care for individuals receiving DDS services. (Toomey Testimony; Bourke Testimony; Johnston Testimony.)

20. The consultation requests came from within DDS – including its risk management, ethics, legal, nursing and psychiatry departments – as well as from providers and health care professionals outside of DDS. (Ex. 2 at pp. 5, 10; Toomey Testimony; Bourke Testimony.)

21. The purpose of the consultations was to provide recommendations on the most appropriate medical care for individuals who were receiving DDS services and who had complex medical conditions. (Toomey Testimony; Bourke Testimony.)

22. For example, one patient required emergency intubation, and the patient's doctor was concerned about performing the procedure. The patient's doctor consulted Dr. Toomey, who advocated in favor of intubation, thus extending the patient's life. (Toomey Testimony.)

23. In some cases, Dr. Toomey was asked to consult on very specific medical questions. In other cases, he was asked to broadly review an individual's medical care or medical conditions. (Toomey Testimony.)

24. To perform the consultations, Dr. Toomey reviewed medical records and conferred with the treating physician, other medical professionals and DDS staff. (Ex. 2 at pp. 9-10; Toomey Testimony.)

25. In many instances, Dr. Toomey evaluated the DDS client – including in the hospital or in their home – as part of the consult. However, Dr. Toomey did not always evaluate the DDS client as part of his consultation. (Ex. 2 at p. 5; Toomey Testimony; Bourke Testimony.)

26. In some consultations, Dr. Toomey recommended a care plan that the treating physician could, but did not have to, implement. (Ex. 13 at p. 3; Toomey Testimony; Bourke Testimony.)

27. Dr. Toomey did not supervise any doctors, nurses or other medical professionals. Dr. Toomey could recommend and advocate for care, but the treating physicians did not have to follow his recommendations. (Toomey Testimony.)

28. Dr. Toomey also provided training to DDS staff, including staff working in area offices and in residential programs. (Toomey Testimony.)

29. Dr. Toomey was a member of committees, such as the clinical consultation team – which evaluated DDS clients and recommended care plans for the clients' care providers – and the mortality committee – which reviewed the medical records of patients who died while in state custody. (Ex. 2 at pp. 5, 9, 10; Toomey Testimony; Bourke Testimony.)

30. The clinical consultation team and mortality committee accounted for less than 10% of Dr. Toomey's time each month. (Toomey Testimony.)

31. At times during his tenure as Medical Director, Dr. Toomey provided temporary care for DDS clients while arrangements were being made with a community-based physician. Providing temporary care comprised a small fraction of his overall duties – significantly less than 50%. (Ex. 2 at pp. 5, 8-11; Ex. 13; Toomey Testimony; Bourke Testimony.)

2. Transitioning Former Residents of Glavin Regional Center

32. When Dr. Toomey first joined CRS, Dr. Toomey helped Glavin Regional Center's former residents transition into the community or other facilities. This was in addition to his regional consulting responsibilities. (Ex. 2 at p. 5; Toomey Testimony.)

33. In this capacity, Dr. Toomey was part of a specialized multidisciplinary home-medical team. He and the team visited the former residents with their families, in their homes and at the hospital. (Ex. 2 at p. 5; Toomey Testimony.)

34. Dr. Toomey's role primarily involved working with the team, evaluating the former residents, assessing care plans and making recommendations for care. He also sometimes accompanied individuals to procedures to assist with their care. (Ex. 2 at p. 5; Toomey Testimony.)

35. Dr. Toomey helped transition Glavin Regional Center's former residents from approximately 2014 to 2018. He did not perform this work during his last year of employment with the Commonwealth. (Ex. 2 at p. 5; Ex. 13; Toomey Testimony.)

3. Statewide Medical Consultant

36. Sometime after 2018, DDS asked Dr. Toomey to become the agency's statewide medical consultant. (Toomey Testimony.)

37. Dr. Toomey's job functions did not change, except that he consulted on cases across the state rather than solely in the Central-West Region. (Toomey Testimony.)

38. Because of the COVID-19 pandemic, Dr. Toomey was mandated to work remotely from March 2020 until his retirement in November 2021. (Ex. 2 at p. 5; Ex. 13; Toomey Testimony; Johnson Testimony.)

39. Throughout Dr. Toomey's last year of work before retirement, he continued in his role as statewide consultant, providing advice and recommendations for individuals with medically complex conditions. He performed all work remotely, including evaluating DDS clients via telemedicine. (Ex. 2 at p. 5; Ex. 13; Toomey Testimony; Johnson Testimony.)

40. In this last year, many consultations related to COVID-19, such as issues of management, isolation, quarantine, need for hospitalization and transition post-hospitalization. The consultations, including those related to COVID-19, required him to make recommendations for the care of specific individuals. (Ex. 2 at p. 5; Ex. 13; Toomey Testimony; Johnson Testimony.)

41. During his last year at DDS, Dr. Toomey was on call virtually twenty-four hours a day to consult on situations concerning COVID-19. (Ex. 13; Toomey Testimony; Johnson Testimony.)

42. Early in his last year at DDS, Dr. Toomey developed a CDC-based protocol for safely transitioning individuals who had had COVID-19 from an acute care setting back to their families or a group-home setting. He also trained DDS staff and providers about the protocols. (Ex. 2 at p. 5; Toomey Testimony.)

43. In his last year at DDS, Dr. Toomey continued to serve on the clinical consultation committee and the mortality committee. (Toomey Testimony.)

44. Dr. Toomey's performance review for state fiscal year 2018 or 2019 lists his primary job duties as follows:

    i Serves "as the Region's health care expert, providing technical assistance to the area office staff, provider agencies and health care professionals."

    ii Acts as the regional liaison with primary care practitioners "to promote increased competency of the ID/DDD/ABI/TBI populations and associated specialized medical needs."

    iii Develops "region-wide standards and protocols to ensure and enhance communication with the community based care system."

    (Ex. 2 at p. 8.)

45. In his comments to Dr. Toomey's fiscal year 2019 performance review, his supervisor wrote:

> Dr. Toomey and I continue to meet on a periodic basis to discuss the overall referral process as well as discuss specific cases as appropriate. There has been a gradually increasing flow of referrals for consultation to Dr. Toomey from the various area offices. Dr. Toomey, consistent with his overall approach, is flexible, responsive and timely with these consultations. Importantly, he actively engages with outside providers as appropriate. He also initiates follow-up with the area offices to the extent that he remains available to consult as clinical situations evolve and change over time. As noted in previous assessments, Dr. Toomey makes himself readily available to DDS personnel to consult on various, and at times, highly complex medical situations. His willingness to contact and work with outside providers remains a significant strength, adding to the efficacy and effectiveness of his consultations.
>
> Dr. Toomey continues to offer medical training to DDS personnel as well as remains [*sic*] active in statewide initiatives, including the Mortality Committee

> and the Clinical Consultation Team. Noted previously but bearing repetition, I not only appreciate the opportunity to work with Dr. Toomey but also highly value his collaborative, educative [*sic*] approach.

(Ex. 2 at p. 10.)

46. The performance review reflects Dr. Toomey's major duties as DDS's statewide medical consultant. (Toomey Testimony.)

47. In his role as the statewide consultant, Dr. Toomey's evaluation of DDS clients represented just one component of a consultation. Further, he did not perform an evaluation for every consultation. (Toomey Testimony.)

48. As the statewide consultant, including in his last year, Dr. Toomey spent less than 50% of his time evaluating individuals receiving DDS services. (Toomey Testimony.)[3]

D. Reclassification Request

49. On November 22, 2021, Dr. Toomey applied to the board for Group 2 classification. (Ex. 2 at p. 1; Stipulation No. 2.)

50. The board voted to deny Dr. Toomey's application for Group 2 classification on February 24, 2022. (Ex. 3 at p. 9; Ex. 4.)

51. On March 1, 2022, the board sent Dr. Toomey a letter notifying him of its decision. (Stipulation No. 11; Ex. 4.)

52. Dr. Toomey appealed the board's decision on March 12, 2022. (Stipulation No. 12; Ex. 5.)

[3] I draw this inference from the testimony and documentary evidence, including evidence that (a) an evaluation was just one aspect of the consultation process; (b) Dr. Toomey did not perform an evaluation for every consultation; and (c) Dr. Toomey had additional job responsibilities. I also draw the inference from (a) Ms. Johnson's descriptions of her consultations with Dr. Toomey; and (b) my observations of – and credibility determinations regarding – the witnesses' testimony about Dr. Toomey's direct contact with DDS clients.

ANALYSIS

The board properly denied Dr. Toomey's request for Group 2 classification.

In Massachusetts, a state employee's retirement benefits are partially based on their classification into one of four groups, as outlined in G.L. c. 32, § 3(2)(g). Group 2 includes employees whose "regular and major duties require them to have the care, custody, instruction or other supervision of … persons who are mentally ill or mentally defective." G.L. c. 32, § 3(2)(g). As used in the statute, the antiquated and offensive term "mentally defective" includes individuals with developmental disabilities. *See, e.g., Cassidy v. State Bd. of Ret.*, No. CR-21-0400, 2024 WL 1739372, at n.2 (Div. Admin. Law App. Apr. 12, 2024) (citation omitted).

An employee's "regular and major" duties are those that comprise "more than half" of the employee's working hours. *Desautel v. State Bd. of Ret.*, No. CR-18-0080, 2023 WL 11806157, at *2 (Contributory Ret. App. Bd. Aug. 2, 2023); *Forbes v. State Bd. of Ret.*, No. CR-13-0146, 2020 WL 14009545, at *5 (Contributory Ret. App. Bd. Jan. 8, 2020). The terms "care, custody, instruction or other supervision" do not include supervisory or administrative duties. *See, e.g.*, *Sheehan v. State Bd. of Ret.*, No. CR-00-1014, at *2 (Contributory Ret. App. Bd. Feb. 4, 2002); *Cassidy*, 2024 WL 1739372, at *3-4; *Desautel*, 2023 WL 11806157, at *2.

An individual seeking to be classified in Group 2 must prove by a preponderance of the evidence "each element necessary to establish entitlement to a benefit under Chapter 32." *Herst Hill v. State Bd. of Ret.*, No. CR-07-0605, 2009 WL 5908128, at *7 (Div. Admin. Law App. June 18, 2009), *citing Blanchette v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 479, 483 (1985). *See also Peck v. State Bd. of Ret.*, No. CR-15-0282, 2021 WL 12298080, at *2 (Contributory Ret. App. Bd. Feb. 8, 2021) (burden of proof is on the individual seeking reclassification).

On appeal to the Division of Administrative Law Appeals (DALA), Dr. Toomey seeks Group 2 classification based on his last year of work.[4] Therefore, Dr. Toomey had to prove that in his last year of employment, he spent more than 50% of his time providing care, custody, instruction or other supervision to one of the populations set out in G.L. c. 32, § 3(2)(g). Dr. Toomey has not met his burden.

Dr. Toomey contends that in his last year at DDS, he spent the majority of his time providing direct care to individuals with developmental disabilities. There is no question that Dr. Toomey worked with individuals with developmental disabilities in his last year at DDS. The issue at hand is whether the majority of Dr. Toomey's job duties in his last year of employment constituted direct care. They did not.

To determine a person's regular and major job duties, the "individual's actual job responsibilities in addition to official job descriptions outlined in documents such as the Position Description (Form 30) [*i.e.*, the employee's official job description] and EPRS [*i.e.,* an employee's performance review]" are relevant. *Desautel*, 2023 WL 11806157, at *2 (a petitioner's job description is not dispositive, but it is helpful evidence of their actual duties).

Dr. Toomey's performance review listed his primary duties as serving as a medical expert to provide technical assistance to health care professionals, acting as a liaison with primary care

[4] State employees hired before April 2, 2012, who retire after that date, may choose to prorate their retirement allowance based on the number of years they worked in different classification groups. *See* G.L. c. 32, § 5(2)(a). Such a retiree, therefore, may seek Group 2 classification under two potential theories: one based on proration over the course of their entire career, and another based solely on their final year of employment. Here, Dr. Toomey proceeded solely under the latter theory. Dr. Toomey did not raise proration in the parties' joint pre-hearing memorandum, at the hearing or in his closing brief. At the hearing, moreover, the board's counsel twice stated her understanding that the case was focused solely on Dr. Toomey's last year of employment. Dr. Toomey's counsel did not object.

practitioners and developing region-wide standards and protocols. The comments in his review focused on Dr. Toomey's consulting role. They state, for example:

> There has been a gradually increasing flow of referrals for consultation to Dr. Toomey from the various area offices. Dr. Toomey, consistent with his overall approach, is flexible, responsive and timely with these consultations. Importantly, he actively engages with outside providers as appropriate. He also initiates follow-up with the area offices to the extent that he remains available to consult as clinical situations evolve and change over time. As noted in previous assessments, Dr. Toomey makes himself readily available to DDS personnel to consult on various, and at times, highly complex medical situations.

(Ex. 2 at p. 10.) [5]

Consistent with the information in his performance review, throughout his last year of work, Dr. Toomey's regular and major job duty was to consult on medically complex cases involving individuals receiving DDS services. He performed the consultations in response to requests from various departments within DDS – including the legal, ethics and nursing departments – as well as from treating physicians. He also consulted specifically on COVID-19 issues – such as management, isolation, quarantine and hospitalization – for individual DDS clients. To perform his consultations, Dr. Toomey reviewed medical records and conferred with the treating physician, other medical professionals and DDS staff. On some occasions he also evaluated the DDS client; he performed these evaluations remotely, via telemedicine.[6] He then

[5] The job description (*i.e.*, Form 30) attached to Mr. Shuler's affidavit (Ex. 10) is not probative, and I do not give it weight. It was not Dr. Toomey's job description when he worked for DDS. Rather, it applies to physicians currently working for the Department of Mental Health (DMH). Further, although he knew about Dr. Toomey's dedicated advocacy for a friend's son, Mr. Shuler did not have firsthand knowledge of Dr. Toomey's regular and major job duties at DDS.

Additionally, the Commonwealth's "Physician Series" (Ex. 2 at pp. 12-20) provides no insight into Dr. Toomey's regular and major duties, as neither Dr. Toomey nor the board explained its relevance to his last year of his employment.

[6] As discussed *infra* at p. 13, had Dr. Toomey evaluated DDS clients in person, he still would not qualify for Group 2 classification. I therefore do not need to decide, and I do not decide,

made recommendations to DDS, providers or treating medical professionals regarding the most appropriate course of action. He sometimes recommended a care plan that the treating physicians could, but did not have to, implement. He did not supervise physicians, nurses or other medical professionals, and they were not subject to his direction.

Dr. Toomey's expertise and skill set were recognized across the Commonwealth; DDS professionals, vendors and medical providers regularly sought his advice. Nevertheless, acting as a consultant and making recommendations about what care an individual should receive does not constitute direct care. *See Whitman v. State Bd. of Ret.*, No. CR-12-0169, at *9-10 (Div. Admin. Law App. Dec. 14, 2012) (holding that Group 2 applies to "the actual providing" of "direct care services," rather than "facilitating" or recommending services for others to provide); *Gasser v. State Bd. of Ret*., No. CR-15-0254, at *8-9 (Div. of Admin. Law. App. Mar. 3, 2017) (finding DMH social worker properly classified in Group 1 because his job was "to evaluate and give a recommendation of necessary treatment by those physicians and nurses who actually provide direct care, and then to make sure that the clients are cared for appropriately.").

DALA and the Contributory Retirement Appeals Board have consistently held that services that "primarily involve the planning, placement, and oversight of the supports provided … do not qualify as direct care for purposes of Group 2 classification." *Hayter v. State Bd. of Ret*., No. CR-21-0052, 2024 WL 3101690, at *7 (Div. Admin. Law App. June 14, 2024) (internal quotation marks omitted), *quoting Albano v. State Bd. of Ret.*, No. CR-15-0327, 2018 WL 11682022, at *1 (Contributory Ret. App. Bd. July 23, 2018).

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whether providing direct care via telemedicine during the COVID-19 pandemic qualifies as Group 2 care.

Even hands-on and in-person evaluations of clients do not qualify as direct care for Group 2 classification when the purpose is to plan or recommend care for others to carry out. *See, e.g., Gasser*, slip op. at *7-9; *Clement v. State Bd. of Ret.*, No. CR-15-0299, 2022 WL 22863690, at *2-3 (Contributory Ret. App. Bd. Mar. 22, 2022) (upholding Group 1 classification; petitioner's duties included developing and monitoring – but not implementing – support plans for DDS clients; while petitioner had direct contact with clients, "she did not provide any direct patient care, custody, instruction or other supervision."); *Hayter*, 2024 WL 3101690, at *7-8.

The petitioner in *Hayter* served as an on-site nursing supervisor for DDS. *Id.* at *1. Although Ms. Hayter had "substantial contact with DDS clients," the interactions were for "assessing the needs of the client and monitoring the care provided by others rather than providing direct patient care." *Id.* at *8. The magistrate in that case explained:

> Although direct care typically involves a face-to-face or "hands on" component, not all direct contact with a patient constitutes direct patient care…. Rather, numerous prior decisions by DALA have distinguished direct contact with patients done primarily … to determine appropriate services and supports to be provided by other care providers from the direct patient care that qualifies for Group 2 classification.

Id. (citation omitted). Like Dr. Toomey, Ms. Hayter evaluated individuals to determine services that others would provide, which is not "direct care" for purposes of Group classification. *Id.; Gasser*, slip. op at *7-9. *Compare Ryan v. State Bd. of Ret.*, No. CR-22-0038, 2024 WL 4491675, *4-5 (Div. Admin. Law App. Aug.16, 2024) (the petitioner qualified for Group 2 because she had "ongoing supervision and care of … juveniles throughout her working hours" and the "evaluations she conducted [to assess] her charges' short-term and long-term needs were inextricable from her care-focused, custodial, and supervisory obligations.").[7]

[7] The cases that Dr. Toomey relies upon do not support his position. *See Cassidy v. State Bd. of Ret.,* CR-21-0400, 2024 WL 1739372 (Div. Admin. Law App. Apr. 12, 2024) (ruling that

At the evidentiary hearing and in his application to the board, Dr. Toomey was frank about the fact that he consulted for DDS departments and medical professionals and made recommendations for others to carry out. He explained that he considered his work direct care because his evaluations and recommendations improved the treatment that individuals received and often saved lives. He also believed that he provided direct care because he felt legally and ethically responsible for the advice and recommendations he made. As discussed above, however, these elements do not qualify an individual for Group 2 classification.[8]

Dr. Toomey is a highly respected and accomplished physician who dedicated much of his career to public service. He cared deeply about helping the individuals he consulted about and evaluated. Nevertheless, the "conditions that the retirement law imposes on eligibility for various benefits are inflexible." *Burke v. State Bd. of Ret.*, No. CR-19-0394, 2023 WL 5528742, at *2 (Div. Admin. Law App. Aug. 18, 2023), *citing Clothier v. Teachers' Ret. Bd.,* 78 Mass. App. Ct. 143, 146 (2010).

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petitioner, who ran a residential home for DDS clients, was entitled to Group 2 because she provided direct, hands-on care to the nine residents the majority of every day); *Larose v. State Bd. of Ret.*, No. CR-20-0357, 2023 WL 4548411 (Div. Admin. Law App. Jan. 27, 2023 (holding that physician's assistant who treated patients for five-to-six hours a day was entitled to Group 2; magistrate raised – but did not decide – whether administrative tasks necessary to the petitioner's hands-on care also could fall within Group 2), *aff'd*, 2024 WL 4201310 (Contributory Ret. App. Bd. Sept. 4, 2024). Finally, I note that Dr. Toomey was not a treating physician who also referred his patients for services by other medical professionals.

[8] Similarly, at the evidentiary hearing and in their supporting affidavits, Dr. Toomey's witnesses gave their sincere opinions that Dr. Toomey provided direct care. These conclusory statements, however, contrasted with their testimony about his specific job responsibilities as DDS's medical consultant.

CONCLUSION AND ORDER

The board's decision denying Dr. Toomey's request for reclassification is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Natalie S. Monroe
Natalie S. Monroe
Chief Administrative Magistrate

Dated: April 18, 2025