

AGENDA

THE MEETING OF THE

DISABILITY PROCEDURES AND SERVICES COMMITTEE

and

BOARD OF RETIREMENT*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

**300 NORTH LAKE AVENUE, SUITE 810
PASADENA, CA 91101**

9:00 A.M., WEDNESDAY, AUGUST 5, 2015 **

COMMITTEE MEMBERS:

Vivian H. Gray, Chair
William de la Garza, Vice Chair
William R. Pryor
Les Robbins
Yves Chery, Alternate

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of July 1, 2015

II. PUBLIC COMMENT

III. ACTION ITEMS

A. Consider Application of Peter Gleiberman, M.D., as LACERA Panel Physician

IV. FOR INFORMATION

A. Presentation by Francis J. Boyd, Senior Staff Counsel – Earlier Effective Date Government Code Section 31724

B. Presentation by James Pu, Chief Information Officer – Disability Technology Integration: Project Update

V. GOOD OF THE ORDER

(For information purposes only)

VI. ADJOURNMENT

***The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

****Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling the Disability Retirement Services Division at 626-564-2419 from 7:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence.

MINUTES OF THE MEETING OF THE
DISABILITY PROCEDURES AND SERVICES COMMITTEE
and
Board of Retirement**

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

Wednesday, July 1, 2015, 11:08 A.M. – 12:30 P.M.

COMMITTEE MEMBERS

PRESENT: Vivian H. Gray, Chair
William de la Garza, Vice Chair
William R. Pryor
Les Robbins
Yves Chery, Alternate

ABSENT: NONE

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

Shawn R. Kehoe
David L. Muir
Ronald A. Okum
Anthony Bravo
Vito M. Campese, M.D.

STAFF, ADVISORS, PARTICIPANTS

Gregg Rademacher
JJ Popowich
Steven Rice
Mike Herrera
Vincent Lim
Eugenia Der
Allison E. Barrett
Steve Tallant
Frank Boyd
Roxana Castillo
Penny Huerta

Tamra Caldwell
Vickie Neely
Kerri Wilson
Debbie Semnanian
Sandra Cortez
Angie Guererro
Maisha Coulter
Anna Kwan
Debra Martin
Maria Muro
Russell Lurina

Darren Huey
Shamila Freeman
Hernan Barrientos
Ricardo Salinas
Karla Sarni
Barbara Tuncay
Mario Garrido
Thomas J. Wicke
Michael Treger

ATTORNEYS
Thomas J. Wicke

GUEST SPEAKER
None

The meeting was called to order by Chair Gray at 11:08 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of April 1, 2015

Mr. de la Garza made a motion, Mr. Muir seconded, to approve the minutes of the regular meeting of April 1, 2015. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. Panel Physician Board Certification Requirement – Lapse of Board Certification – Edward Green, III, M.D.

Staff informed the Committee that Dr. Green's board certification had lapsed as of January 1, 2014. After some discussion, the Committee agreed with staff's decision to stop using the physician. The Committee agreed that staff should follow the existing Board's policy and only use doctors with board certification. Several committee members provided staff with suggestions for updated policies and procedures.

B. Exacerbation, Aggravation, and Acceleration – Are these terms interchangeable?

Mr. Boyd, Sr. Staff Counsel provided a presentation on the meaning of exacerbation, aggravation, and acceleration and its relationship to causation and permanent incapacity. Mr. Kehoe and Ms. Gray suggested that Mr. Boyd prepare a nutshell to address exacerbation, aggravation, and acceleration.

C. Disability Retirement Services – Fiscal Year 2014-2015 Progress Report

Ms. Caldwell provided a brief end of year progress report on application processing for the Fiscal Year of 2014-2015.

V. GOOD OF THE ORDER

The committee thanked Mr. Boyd and Ms. Caldwell for their presentations.

VI. ADJOURNMENT


With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 12:30 p.m.

**The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.

July 24, 2015

TO: Disability Procedures & Services Committee
Vivian H. Gray, Chair
William de la Garza, Vice Chair
William R. Pryor
Les Robbins
Yves Chery, Alternate

FROM: Ricki Contreras, Division Manager
Disability Retirement Services



FOR: August 5, 2015, Disability Procedures and Services Committee Meeting

SUBJECT: **CONSIDER APPLICATION OF PETER GLEIBERMAN, M.D., AS LACERA
PANEL PHYSICIAN**

On June 22, 2015, Debbie Semnanian interviewed Peter Gleiberman, M.D., a physician seeking appointment to the LACERA Panel of Examining Physicians.

Attached for your review and consideration are:

- Staff's Interview Summary and Recommendation
- Panel Physician Application
- Curriculum Vitae
- Sample Report(s).

IT IS THEREFORE RECOMMENDED THAT THE COMMITTEE accept the staff recommendation to submit the application of Peter Gleiberman, M.D., to the Board of Retirement for approval to the LACERA Panel of Examining Physicians.

Attachments

JJ:RC/sc

NOTED AND REVIEWED:


For JJ Popowich, Assistant Executive Officer

Date: 7/28/2015



July 14, 2015

TO: **Ricki Contreras, Division Manager** 
Disability Retirement Services

FROM: **Debbie Semnanian, WCCP** 
Supervising Disability Retirement Specialist

**SUBJECT: INTERVIEW OF ORTHOPEDIC SURGEON APPLYING FOR
LACERA PHYSICIAN'S PANEL**

On June 22, 2015, I interviewed **Peter Gleiberman, M.D.** at his office at 3475 Torrance Boulevard, Suite F, Torrance, CA 90503. The office space is in a well-maintained 3-story building with free parking spaces located around the building.

Dr. Gleiberman is board certified in orthopedic surgery, and has been in private practice for over twenty-five years. Dr. Gleiberman shares office space with Dr. Robert Fenton, who is a LACERA panel orthopedist. The office has 5 complete examination rooms. Dr. Gleiberman estimates that 65 percent of his practice is devoted to patient treatment, while the other 35 percent of his time is devoted to IME and AME evaluations within the workers' compensation and retirement systems.

As referenced in his Curriculum Vitae, Dr. Gleiberman graduated from the College of Medicine and Dentistry in New Jersey with his medical degree in 1978. He completed a surgical internship at New York Medical College in 1979, and residency at Lincoln Hospital in New York in 1983. He completed Fellowships at U.S.C., Rancho Los Amigos Hospital in Arthritis & Adult reconstruction in 1984, and the American Academy of Orthopedic Surgeons in 1990.

Dr. Gleiberman's office was clean with adequate seating. The office and restrooms are handicap accessible. Dr. Gleiberman has a staff of six employees.

Staff reviewed the LACERA Disability Retirement procedures and expectations in its evaluation of County Employees applying for both service-connected and nonservice-connected disability retirements. The importance of preparing impartial and non-discriminatory reports that are clear and concise and address issues of causation and incapacity were discussed with the doctor. He understood that he would adhere strictly to the HIPAA laws that would also apply for LACERA reports. Staff reviewed with Dr. Gleiberman the Panel Physician Guidelines for evaluating LACERA applicants and defined the relationship between workers' compensation and disability retirement. Staff discussed the

need to rely on his own objective and subjective findings rather than the opinions of previous physician reports and/or comments.

Dr. Gleiberman agreed to adhere to LACERA's standard of having his evaluation reports sent to us within 30 days of examination. Staff confirmed that Dr. Gleiberman is agreeable with accepting payment per the Official Medical Fee Schedule (OMFS). Dr. Gleiberman was informed that if he is approved by the Board to be on our panel of physicians, he is required to contact the specialist assigned to the case for approval of any special tests or extraordinary charges. He was also informed that a Quality Control Questionnaire is sent to each applicant regarding their visit.

RECOMMENDATION

LACERA has a pressing need to add orthopedic physicians and Dr. Gleiberman expressed not only a willingness to be on our panel, but also an enthusiasm for building a relationship with LACERA.

Based on our interview and the need for his specialty, staff recommends Dr. Gleiberman's application be presented to the Board for approval as a LACERA Panel Physician.



300 N. Lake Ave., Pasadena, CA 91101 ■ Mail to : PO Box 7060, Pasadena, CA 91109-706 626/564-2419 • 800/786-6464

GENERAL INFORMATION		Date
Group Name:		6/11/15
Physician Name: <u>Peter Gleiberman MD</u>		
I. Primary Address: <u>3475 Torrance Blvd. Suite F, Torrance, CA 90503</u>		
Contact Person: <u>Chris Crawford</u>	Title: <u>OFFICE MANAGER</u>	
Telephone: <u>310-543-0395</u>	Fax: <u>310-543-2617</u>	
II. Secondary Address		
Contact Person	Title	
Telephone	Fax	
PHYSICIAN BACKGROUND		
Field of Specialty: <u>ORTHOPEDIC SURGERY</u>	Subspecialty	
Board Certification: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	License #: <u>649444</u>	Expiration Date: <u>8/31/16</u>
EXPERIENCE		
Indicate the number of years experience that you have in each category.		
Evaluation Type		
I. Workers' Compensation Evaluations		
<input checked="" type="checkbox"/> Defense How Long? <u>25 yrs</u>	<input checked="" type="checkbox"/> IME How Long? <u>25 yrs</u>	
<input checked="" type="checkbox"/> Applicant How Long? <u>25 yrs</u>	<input checked="" type="checkbox"/> QME How Long? <u>20 yr</u>	
<input checked="" type="checkbox"/> AME How Long? <u>25 yr</u>		
II. <input checked="" type="checkbox"/> Disability Evaluations How Long? <u>10 yrs</u>		
For What Public or Private Organizations? <u>CALPERS + POE</u>		
Currently Treating? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Time Devoted to:	Treatment <u>65 %</u>	Evaluations <u>35 %</u>
Estimated Time from Appointment to Examination		Able to Submit a Final Report in 30 days?
<input type="checkbox"/> 2 weeks <input checked="" type="checkbox"/> 3-4 Weeks <input type="checkbox"/> Over a month		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
LACERA's Fee Schedule		
Examination and Initial Report by Physician	\$1,500.00 flat fee	
Review of Records by Physician	\$350.00/hour	
Review of Records by Registered Nurse	\$75.00/hour	
Supplemental Report	\$350.00/hour	

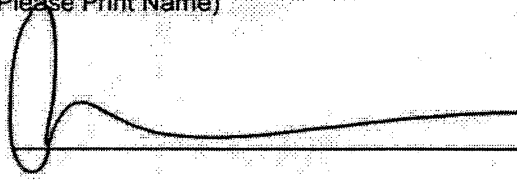
Other Fees	
Physician's testimony at Administrative Hearing (includes travel & wait time)	\$350.00/hour
Deposition Fee at Physician's office	\$350.00/hour
Preparation for Expert Testimony at administrative Hearing	\$350.00/hour
Expert Witness Fees in Superior or Appellate Court	\$3,500.00 half day \$7,000 full day
Physician agrees with LACERA's fee schedule? Yes No	
Comments	

Name of person completing this form:

Chris Crawford
(Please Print Name)

Title: OFFICE manager

Physician Signature:



Date: 6/11/15

FOR OFFICE USE ONLY	
Physician Interview and Sight Inspection Schedule	
Interview Date: <u>6/22/15</u>	Interview Time: <u>10:30 AM</u>
Interviewer: <u>Abbie Lawrence</u>	

PG
PETER GLEIBERMAN, M.D.

DIPLOMATE AMERICAN BOARD OF ORTHOPAEDIC SURGERY
FELLOW, AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS
A PROFESSIONAL CORPORATION

3475 TORRANCE BLVD.
SUITE F
TORRANCE, CA 90503
TEL. (310) 543-0395
FAX (310) 543-2617

SPORTS MEDICINE
ARTHRITIS AND ADULT
RECONSTRUCTION
TOTAL JOINT REPLACEMENT

CURRICULUM VITAE

Birthdate: 8/8/51	Birthplace: Brazil/USA Citizenship
Height/Weight: 5'10-1/2"	Health: Excellent
Marital Status: Married	Languages: Portuguese, Spanish

EDUCATIONAL BACKGROUND

1978	College of Medicine & Dentistry of New Jersey Newark, NJ M.D. Degree
1973	Rutgers University New Brunswick, NJ B.S. Degree

POST GRADUATE WORK - EDUCATIONAL BACKGROUND

1978-1979	New York Medical College Metropolitan Hospital New York City, NY Surgical Internship
1979-1983	New York Medical College Department of Orthopaedics Metropolitan Hospital New York City, NY Lincoln Hospital, Bronx, New York Westchester County, Valhalla, New York Orthopaedic Residency

HONORS

1982-1983 Administrative Chief Resident

Chief - Department of Orthopaedics
Torrance Memorial Hospital Medical Center

MEDICAL LICENSE

1983 California License No: G49444

BOARD CERTIFICATION

July, 1989 Certified by American Board of Orthopaedic Surgery-Diplomate
February, 1999 Re-certification by the American Board of Orthopaedic
Surgery
December, 2009 Re-certification by the American Board of Orthopaedic
Surgery

FELLOWSHIP

1983-1984 U.S.C.
Rancho Los Amigos Hospital
Arthritis & Adult Reconstruction

MEMBERSHIP IN MEDICAL SOCIETIES

1990 Fellow, American Academy of Orthopaedic Surgeons
1990 Member, California Orthopaedic Association
1979 Diplomate, National Board of Medical Examiners

HOSPITAL AFFILIATIONS

1984 South Bay Hospital
514 N. Prospect Avenue
Redondo Beach, CA 90277 (now closed)

1985 Torrance Memorial Hospital Medical Center
3330 Lomita Boulevard
Torrance, CA 90505

- 1985 Little Company of Mary Hospital
4101 Torrance Boulevard
Torrance, CA 90503
- 1995 Bay Harbor Hospital
1437 W. Lomita Boulevard
Harbor City, CA 90710 (now closed)
- 1996 Long Beach Memorial Medical Center
2801 Atlantic Avenue
Long Beach, CA 90806
(resigned)
- 2005-present Torrance Outpatient Surgical Center
22525 Maple Avenue, #101
Torrance, CA 90505
- 2008-present Pacific Coast Surgical Center
3720 Lomita Blvd., Suite 100
Torrance, CA 90505

PRIVATE PRACTICE

- Present 3475 Torrance Boulevard, Suite F
Torrance, CA 90503
- 1987-1993 23441 Madison Street, Suite 230
Torrance, CA 90505
- 1984-1987 Redondo Beach Medical Group
502 Torrance Boulevard
Redondo Beach, CA 90277

APPOINTMENTS

State of California qualified Medical Examiner

Agreed Medical Examiner

PG

PETER GLEIBERMAN, M.D.

DIPLOMATE, AMERICAN BOARD OF ORTHOPAEDIC SURGERY
FELLOW, AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS
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SECRET MEMBER
OFFICIAL REGISTERED
RECEIVED FROM
TOTAL JOINT REPLACEMENT

July 15, 2014

Sample 1

[REDACTED]
[REDACTED]
Los Angeles, CA 90012-4203

Attention: [REDACTED]

RE: [REDACTED]
Date of Birth: [REDACTED]
SS#: [REDACTED]
Employer: [REDACTED]
Last Job Title: Police Officer II
Date of Examination: July 15, 2014

ORTHOPEDIC DISABILITY EVALUATION

IDENTIFYING INFORMATION:

[REDACTED] is a thirty-seven year old [REDACTED] officer II. She was hired by the department in 2008. She is identified with her California driver's license. I was asked to evaluate her lumbar spine, her left hip and her left knee.

TIME SPENT WITH THE PATIENT:

One hour was spent with the patient.

RE: ██████████

Page 2

RECORD REVIEW:

The submitted medical records were reviewed in detail, including operative reports as well as tests and studies.

HISTORY OF PRESENT ILLNESS:

The patient is a pleasant female officer who gives a history of being in her usual good health until she was injured during the performance of her work activities on August 10, 2010.

She was a passenger sitting in a police car and had to get out during a traffic stop. She reports that in the process of her trying to get out, she abducted her hip and put her entire weight on it causing a sudden sharp pain about the left hip. She tried to get out of the car and almost fell, and had to catch herself. She states that she reported this to the other patrol officer as well as the duty sergeant.

Initially she thought she had a pulled muscle and self treated, however, she started having her legs buckle under her and eventually sought medical treatment which included an MRI of the left hip. This was performed in October 2010. There was some suggestion of labral pathology, and she was taken to the operating room by Dr. Glenn Huber on January 11, 2011, for extensive arthroscopic surgery, including chondroplasty.

The patient indicates that at the initial time of surgery, she did not have any back pain but that "it came later." Subsequent to the surgery she underwent physical therapy and eventually went back to light duty. She reports that as a result of the physical therapy for her hip, she developed increasing pain in her left knee, which ultimately required arthroscopic surgery. This was also performed by Dr. Huber in June 2011.

Because of the combination of hip and knee problems, she had significant pain and was in a wheelchair for a period of time. She also reports that due to altered gait that she developed low back pain with radiation of pain into her legs.

RE: [REDACTED]

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Because of ongoing hip issues, she got a 2nd opinion from Dr. Gerhardt in February 2012. He is associated with the Santa Monica Orthopedic Institute. He advised the patient that she needed a psoas lengthening procedure and another arthroscopy. He also discussed the possible need for total hip arthroplasty.

She then had a 2nd arthroscopic procedure performed by Dr. Huber in June 2012. This consisted of cleaning out the joint and loose bodies of the iliopsoas.

Because of her hip she had ongoing back pain and Dr. Huber referred her for an MRI of the back and advised her that it was "fine." She then came under the care of Dr. Montell for her back, and he told her she had "compressed disks." Dr. Huber continued treating her for her hip issues and Dr. Montell was treating her back.

She then had a 3rd hip procedure performed by Dr. Gerhardt in Santa Monica in June 2013. At that point, she had been on crutches and had severe pain in the hip. With the 3rd procedure, she now states that the hip is better and that she can walk about 10 minutes. She no longer needs crutches.

She has been paying out of pocket for acupuncture, which she feels has helped her a great deal and has brought the pain in the hip and back from a level 10 to a tolerable level 6. She now complains of feeling tightness and pressure about the hip more than severe pain. She is still getting acupuncture treatment, which she continues to pay for out of pocket. She has acupuncture treatment once a week.

She indicates that her last discussion with Dr. Gerhardt was regarding possibly trying to increase her activities to include some running and jumping, however; he is talking about doing a total hip arthroplasty in about 10 years' time.

Currently, she cannot have x-rays because she is 19 weeks pregnant.

Dr. Montell has recommended some type of injection for the hip, but everything is now on hold due to her pregnancy.

RE: ██████████

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PRESENT COMPLAINTS:

Her main complaint is that of back pain. She states she has pain after prolonged sitting or attempted walking for more than 10 minutes.

Her knee only troubles her when she tries to walk up an incline or walk up stairs. She states that walking on level ground is tolerable.

She has significant pain in her back and hip if she tries to bend, push, pull, and lift more than a few pounds.

Her left hip pain is present constantly and made worse with pushing, pulling, or lifting. She also has a constant pressure type discomfort about the left hip; but it has been tolerable since she has been getting acupuncture. She can walk without discomfort; however, she has fairly significant pain, which limits activity such as climbing stairs, kneeling, or squatting-type activities.

PHYSICAL EXAMINATION:

GENERAL: The patient ambulates with a left-sided antalgia and limp. The patient appears to be forthright in her clinical history and examination.

VITAL SIGNS: The patient's weight is 228 pounds. Her height is 71.75 inches. Blood pressure is 110/62.

There are notable identifying tattoos throughout the upper and lower extremities and thorax.

The shoulder is leveled. The pelvis appears to be level.

She does not have pain on skin palpation. She has pain on palpation by the L5-S1 region and somewhat by the SI joints bilaterally.

RE: ██████████

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She is able to bend at the waist and bring her outstretched fingertips to within 14 inches of touching the ground complaining more of low back and some mild left hip pain as opposed to radicular complaints.

Lumbar extension is 10% of normal. Lateral lean is 50% of normal.

She has significant low back complaints at the extremes of motion.

She does not have any Waddell signs.

She does not have a withdrawal on palpation.

She has some difficulty getting off the examination table, walking about the office, and reclining onto and off the exam table from a combination of back and hip pain.

Her hip range of motion is limited.

Her flexion is about 110 degrees and abduction is at best 30 degrees. Internal rotation of the hip at 9 degrees and at best 12 degrees. External rotation is at best 15-18 degrees and 90 degrees of hip flexion. She has pain on abduction. She has some pain in the lateral trochanteric region.

Noted examination shows she does have pain on resisted hip flexion, mainly on the left side.

Girth measurements show that at 10 cm proximal to superior pole of patella is 50 cm right and 50 left. At 20 cm distal, 40 right and 40 left.

Examination of her knee shows she has significant crepitus with flexion and extension, the right knee greater than the left knee.

The left knee has slight warmth to palpation; otherwise, no significant joint line tenderness. Ligamentous exam is unremarkable and no definite patellar facet tenderness.

Straight leg raise induces back pain at 60 degrees bilaterally.

RE: [REDACTED]

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She did have decreased sensation in the lateral femoral cutaneous nerve of the left hip. Reflexes were symmetrically diminished bilaterally. Motor power appeared to be 5/5 bilaterally.

DIAGNOSTIC STUDIES:

X-rays are deferred at this time since the patient is pregnant.

IMPRESSION:

1. Status post multiple arthroscopic procedures to the left hip with removal of loose bodies and chondroplasty of the femoral head as well as labral debridement.
2. She is status post arthroscopic surgery of the left knee.
3. Probable lumbar disk disease.

INCIDENT CAUSING IMPAIRMENT:

The patient gave me the same history that she gave her treating physicians, that the hip injury occurred in August 2010 when she exited her police vehicle. The history is somewhat confusing as the documented injury seems out of proportion with the mechanism of injury. Noteworthy is that the patient has a history of being involved in high impact sports activities. This would be more consistent with the resultant hip injury which required such extensive treatment.

I believe that she now has arthritis with possible osteoarthritis of the left hip.

Her back complaints are probably due to difficulty ambulating following multiple hip surgeries.

IMPAIRMENT:

In regards to her left hip the patient can weight bear as tolerated. She should not run, jump, push, or pull beyond forty pounds

In regards to her back she should avoid repetitive kneeling, squatting, or lifting beyond forty pounds.

There is no impairment for her left knee.

The above restrictions are prophylactic in nature.

REHABILITATION:

I do not believe rehabilitation will decrease her impairment at this time.

FUTURE MEDICAL CARE:

In terms of her back she should consider pain management and she will require a repeat MRI of the lumbar spine.


In regards to her hip, she will require an early joint replacement since the initial indexed procedure was not only labral. Labral pathology can be a significant cause in the development of secondary osteoarthritis, in addition she had a chondroplasty of the femoral head, which might give short-term relief but often ends up giving early degenerative changes as well. She also was known to have loose bodies, which will contribute to posttraumatic arthrosis; so that with the failure to improve I suspect that she is looking at a total hip arthroplasty in the not too distant future.

It was suggested that she should put this off for 10 years; and I believe that this is a good academic recommendation, but the patient is relatively young and to be in severe pain for 10 years seems unrealistic. If she does indeed have severe arthritis, I would recommend that she has an early total hip arthroplasty.

RE: ██████████
Page 8

Thank you for the opportunity to evaluate ██████████. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,


Peter Gleiberman, M.D.
Diplomate American Board of Orthopedic Surgeons
PG/mcm/kce

PG

PETER GLEIBERMAN, M.D.

DIPLOMATE AMERICAN BOARD OF ORTHOPAEDIC SURGERY
FELLOW, AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS
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3475 TORRANCE BLVD.
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SPORTS MEDICINE
ARTHRITIS AND ADULT
RECONSTRUCTION
TOTAL JOINT REPLACEMENT

August 14, 2013

Sample 2

[REDACTED]
Benefits Services Division
[REDACTED]
[REDACTED] 95812-2796

Attention: [REDACTED]

RE: [REDACTED]
DOB: 9/26/60
SS#: [REDACTED]
EMPLOYER: N/A
DATE OF INJURY: 8/5/2009
CalPERS ID#: [REDACTED]
WCAB #: Unassigned
DATE OF EVALUATION: August 14, 2013

Dear [REDACTED],

ORTHOPAEDIC IME CONSULTATION WITH REPORT:

[REDACTED] presents today for Orthopaedic Independent Medical Examination.

The evaluation was performed at my office at 3475 Torrance Boulevard, Suite F, Torrance, California 90503 on August 14, 2013. The patient is identified with California photo ID driver's license with expiration date 9/21/2017.

Please be advised that the entire history taking, the actual complete examination along with review of any medical records and preparation and formulation of special orthopaedic report, is

Re: ~~XXXXXXXXXX~~
August 14, 2013
Page 2

entirely the work of this examining surgeon. Back office assistance and x-rays were obtained with the assistance of Mr. James Owens, licensed radiology technician (State license #: RHP 87237).

Note that the history obtained by the surgeon is dictated in his presence and the patient is given the opportunity to make any corrections which he feels are necessary to accurately reflect his responses.

My findings and conclusions are as follows;

CHIEF COMPLAINT:

The patient is a 52-year-old right hand dominant Police Officer/Lifeguard who was employed by the State of California for over 24 years. He presents with the chief complaint of back and right sided leg pain.

HISTORY OF INJURY:

The patient gives a history of being injured in the course of his work activities on 8/5/2009.

He states that he is employed by the State of California as a Police Officer/Lifeguard out of Malibu, California.

At the time of injury he had to unload the back of a truck pulling out some first aid equipment which weighed in the neighborhood of 20 pounds.

He bent to take it out of the truck and he started to walk away and apparently a strap got caught causing him to twist his body around and he developed some discomfort in his back although it was not severe pain at that time.

He then went home and he was scheduled to have 10 days' vacation and the next morning he woke up and felt that his back seized up and he really couldn't get around.

He did take some Ibuprofen and he lay down and took some pain medication and after about 3-4 days he felt the pain had decreased to a more manageable level.

Re: [REDACTED]
August 14, 2013
Page 4

CURRENT COMPLAINTS:

The patient states the problem is more low back pain than leg pain.

He states that when the pain gets bad in his back he will rate it as a level 8. He does not have pain every day but he does have stiffness which is present most of the time. He does not equate that with pain and this is more than the leg complaint.

The patient states that the pain is made worse with extension movements of the lumbar spine and pushing, pulling, or lifting more than 25 pounds. Some days he is able to lift 25 pounds and some days he is not able to lift 25 pounds because of increased pain.

The patient states that for the most part he can walk without a real problem.

If he sits too long he gets quite uncomfortable.

He also has difficulty with prolonged standing in one position having to move and stretch and move around.

The patient denies any specific weakness or any bowel or bladder dysfunction.

The patient also indicates that he has increased pain with lying on his stomach, bowel movements, stooping, vacuuming, sex, swimming, surfing, and running.

PAST MEDICAL HISTORY:

The patient denies any history of tuberculosis, hypertension, heart disease, diabetes, phlebitis, ulcers, renal disease, or gout.

He did have a history of malaria in the past.

He has had prior back injuries at work.

Re: [REDACTED]
August 14, 2013
Page 5

Surgeries:

- 1) Facial reconstruction.
- 2) Vasectomy.

Allergies: Denied.

Medications: Denied.

SOCIAL HISTORY:

The patient is married.

He has a Bachelor's degree.

He drinks one cup of coffee per day.

He drinks three beers per day.

Denies ever smoking.

He denies recreational drug use.

FAMILY HISTORY:

Both parents are alive at age 82 and 83 and in good health.

JOB ACTIVITIES:

The patient states that his title is a Police Officer/Lifeguard. He is a first responder.

He is involved in public safety as well as rescuing swimmers, climbing rocks, lifting over 100 pounds, and he does have to wear a gun in the course of his activities. He has to push, pull, lift, carry, and enter dangerous environments.

Re: [REDACTED]
August 14, 2013
Page 6

PRIOR NON-INDUSTRIAL INJURIES TO THE INVOLVED PARTS:

Prior non-industrial injuries such as car accidents are denied.

PHYSICAL EXAMINATION:

THORACOLUMBAR & LOWER EXTREMITY EXAMINATION:

Height: 73 inches

Weight: 176 pounds

B/P: 112/64

The patient does appear to be uncomfortable during the interview.

He has some mild distress getting off the examination chair and walking about the office.

He also has difficulty getting onto and off the exam table and upon getting off the exam table, he does tend to log-roll.

Standing examination in gown shows that he appears to have trunk shift to the left.

He has no complaint of pain on palpation in the upper thoracic and upper mid thoracic or upper lumbar region.

He has discomfort through the L4-5 and L5-S1 region.

He has some mild palpable spasm.

Thoracolumbar range of motion:

	<u>RIGHT/LEFT</u>	<u>AVERAGE NORMAL</u>
Forward Flexion:	8"	(Fingertips to ankles)
Extension:	30%/30%	(30 degrees)
Lateral trunk flexion:	75%/25%	(Fingertips to knees)
Rotation:	40/40	(40 degrees)

Re: [REDACTED]
August 14, 2013
Page 7

The patient is able to flex at the waist and bring his outstretched fingertips to within approximately 8 inches of touching the ground.

Extension is about 30% of normal.

Lateral lean is 75% on the left and 25% on the right.

Reflexes:

	<u>Right</u>	<u>Left</u>
Knee jerk:	1+	1+
Ankle jerk:	1+	1+

Motor Examination:

	<u>Right</u>	<u>Left</u>
Hip flexors/extensors	5/5	5/5
Hip abductors/adductors	5/5	5/5
Knee flexors/extensors	5/5	5/5
Ankle invertors/evertors	5/5	5/5
Ankle plantar and dorsiflexors	5/5	5/5
Long toe flexors/extensors	5/5	5/5

He has no atrophy of the lower extremities.

It was noted during the examination he will have some back spasms and we have to allow him to go chin to chest to relax the back spasm before we can proceed with a straight leg raise.

Supine straight leg raise is unremarkable after allowing the lumbar spasm to subside.

Sensory examination:

Sensory examination shows decreased sensation on the lateral aspect of the right foot, about 90% of normal.

Re: ██████████

August 14, 2013

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Hip range of motion:

	<u>RIGHT/LEFT</u>	<u>AVERAGE NORMAL</u>
Flexion:	110/110	(110 degrees)
Extension:	180/180	(180 degrees)
IR in Flexion:	45/45	(45 degrees)
ER in Flexion:	60/60	(60 degrees)
Abduction in Flexion:	45/45	(45 degrees)

His hip range of motion appears to be fairly well preserved, normal range of motion without pain.

REVIEW OF MEDICAL RECORDS:

No medical records are available for review.

RADIOGRAPHIC EVALUATION:

Five views of the lumbar spine obtained today.

Lateral view shows straightening of the lateral spine indicating underlying spasm.

He has significant disc space narrowing at L5-S1 as well as significant changes at L1-2.

He has wide-spread osteophytes throughout the lumbar spine also bridging osteophytes are noted on the AP view in the thoracic spine.

DIAGNOSIS:

- 1) History of lumbar discogenic disease.
- 2) History of lumbar radiculopathy.

Re: ██████████
August 14, 2013
Page 9

DISCUSSION:

The patient is a pleasant 52-year-old right hand dominant Peace Officer/Lifeguard who presents for special orthopaedic Independent Medical Examination for injuries sustained in 2009.

Please note I am having this discussion without having the opportunity to review the prior Agreed Medical Examination as well as the reports from the MRI and what sounds to be positive electrodiagnostic studies.

The patient is seen with a cover letter dated 8/13/2013 asking that I address several specific questions.

My responses are as follows:

- 1) I don't believe that the patient is able to perform police activity or actually function as a true Lifeguard in the sense that he is unable to response to emergency situations.

I don't believe he can realistically be expected to pull someone out of the water.

I don't believe he can do any heavy lifting or forceful pushing or pulling.

He probably should not carry a gun.

He should not be responsible for public safety because if his back seizes, then the public will be at risk.

- 2) Question #2 is with regard to whether I believe the patient is substantially incapacitated from performance of his duties and it indicates that I should refer to the "Medical Qualifications for Disability Retirement." Unfortunately I do not have a formal job description.

However, having stated that, in reviewing the requirement for disability retirement, my responses would be as follows.

I feel the patient could do administrative type work; however, he should not be put in a position where he has to run, jump, or try to take someone out of the water. I don't believe he

should be involved in public safety in the sense that he might have to subdue a suspect.

I don't think he should be put in any particularly dangerous situation because, again, if his back and leg seizes up, he would be at risk as would the public.

I do feel that he is able to do work in a job position which does not involve repetitive pushing, pulling, lifting over 25 pounds, running, swimming, climbing ladders, or involving any physical altercation. These restrictions are actual restrictions and not prophylactic restriction.

- 3) I believe that the incapacity is permanent.
- 4) It is the opinion of this examiner that the patient was fully cooperative with the examination. I felt that the history was forthright and I did not see any elements of non-physiologic findings or embellishment on his physical examination.
- 5) I do not see any sign of non-industrial or pre-existing condition.
- 6) I believe his current condition is directly caused by his employment.

I do not believe he would have these complaints had he not been employed and injured as described.

- 7) It is the opinion of this examiner the patient is mentally able to handle his own financial affairs and enter into legally binding contracts.
- 8) It is the opinion of this examiner the patient is competent to endorse checks and understands the consequences of this act.

If you have any further questions please feel free to contact me.

Re: ~~XXXXXXXXXX~~
August 14, 2013
Page 11

**EXPLANATION OF EXTRAORDINARY CIRCUMSTANCES AND JUSTIFICATIONS FOR
USE OF PROCEDURE CODES:**

- 1) Face to face time with patient
(History and physical examination) 1-1/4 Hour(s)
- 2) Record review time
(Sorting, Reading, Summarizing,
and final proof reading) 0 Hour(s)
- 3) Report Preparation time
(Dictation and proof reading) 1 Hour(s)

Executed on August 30, 2013 at Los Angeles, California, County
of Los Angeles.

Sincerely,




Peter Gleiberman, M.D.
A Professional Corporation
Diplomate, American Board of
Orthopaedic Surgery
Fellow, American Academy
of Orthopaedic Surgeons
Qualified Medical Examiner
Agreed Medical Examiner

PG:ca/37011



July 23, 2015

TO: Disability Procedures & Services Committee
Vivian H. Gray, Chair
William de la Garza, Vice Chair
William R. Pryor
Les Robbins
Yves Chery, Alternate

FROM: Francis J. Boyd, 
Senior Staff Counsel

FOR: August 5, 2015, Disability Procedures and Services Committee Meeting

SUBJECT: **EARLIER EFFECTIVE DATE
GOVERNMENT CODE SECTION 31724**

Your Committee has requested advice regarding the application of provisions of Government Code section 31724,¹ which governs the date upon which a disability retirement becomes effective.

I. Introduction

It is important to understand that when your Board is asked to address the earlier effective date issue under Section 31724, members have already met their burdens under Section 31720 to prove permanent incapacity and Section 31722 to prove that their application was timely filed.

Generally, the earliest date a disability retirement becomes effective is the date the application is filed. Exceptions to this general rule are set forth in the last paragraph of Section 31724, which states:

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

The above paragraph provides two exceptions under which the Board may grant an effective date that is earlier than the date the application was filed: 1) when the application was delayed due to an administrative oversight; or 2) when the delay was due to the member's inability to ascertain the permanency of incapacity until after the

¹ All references hereafter to section will be to the Government Code unless otherwise indicated.

date following the day the member last received regular compensation. If the member establishes either one of these two exceptions, the application is "deemed filed" on the day after the date the member last received regular compensation.

This memo will discuss the three main issues that arise in the second paragraph of Section 31724 in the following order: 1) the Board's discretion under Section 31724; 2) the inability to ascertain the permanency of incapacity exception; and 3) the administrative oversight exception.

II. Background

An explanation of the earlier effective date provisions under Section 31724 was presented to the Board of Retirement by the County of Los Angeles Office of County Counsel in 1991. In regard to the inability to ascertain the permanency of incapacity exception, the Board was advised that Section 31724 requires that a member prove an inability to ascertain the permanency of incapacity on the day after the date following the last day of regular compensation to be entitled to an earlier effective date. LACERA followed this interpretation until approximately two years ago when a different approach began to be taken in interpreting the statute. After conducting an in-depth and updated analysis of this issue, I am in agreement with the 1991 County Counsel interpretation of the statute.

III. Analysis

A. The Board has the discretion to weigh the evidence and decide the earlier effective date issue.

Under section 31724, administrative oversight or the inability to ascertain the permanency of incapacity must be "demonstrated to the satisfaction of the board." The California Legislature has therefore given the Board the discretion to weigh the evidence and decide whether or not to grant an earlier effective date under the two exceptions.

B. Inability to Ascertain the Permanency of Incapacity Exception:

The plain meaning of Section 31724 requires that to be eligible for an earlier effective date, a member must prove an inability to ascertain the permanency of incapacity after the date following the last day of regular compensation. Nothing in the language imposes any additional time mandates for the filing of the application once this initial requirement is met.

In reviewing a statute, the courts "begin with its language because if the language is clear there is no need to look further."² As stated by the court *Wolski v. Fremont Investment & Loan*,³ quoting *Whaley v. Sony Computer Entertainment America, Inc.*⁴

² *Cordova v. 21st Century Ins. Co.* (2005) 129 Cal.App.4th 89, 96.

'The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.' [Citation.] If the statutory language is unambiguous, 'we presume the Legislature meant what it said, and the plain meaning of the statute governs.' [Citation].

Further, the courts tell us that any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner.⁵

There are no published decisions interpreting the earlier effective date language of Section 31724. There is, however, a 2005 unpublished decision involving the Orange County Employees Retirement System⁶ where, in an opinion by Justice William Rylaarsdam, the Fourth District Court of Appeal concluded that the language in the second paragraph of Section 31724 is "plain." The court reasoned as follows:⁷

Contrary to defendant's [i.e., OCERS's] position, nothing in the language [of Section 31724] imposes any additional time mandates for the filing once the initial requirement is met. Nor does defendant suggest how long after learning of the permanency an application would have to be filed. A day, a week, a month? Would six months suffice, but not nine, as here? The statute does not state, and we will not interpret it to add such a proviso. In applying section 31724, our responsibility is to determine its meaning from the words set out, not to insert additional language.

Though an unpublished decision cannot be cited or relied upon by a court, Justice Rylaarsdam's opinion is a reasonable interpretation of the statute.

1. Plain reading of the inability to ascertain permanent incapacity exception of Section under 31724

Setting aside the board discretion and administrative oversight language contained in the statute, the second paragraph of Section 31724 reads as follows:

. . . the filing of the member's application was delayed . . . by inability to ascertain the permanency of the member's incapacity **until after the date following the day** for which the member last received regular compensation, such **date** will be deemed to be the date the application was filed. (Emphasis added.)

³ *Wolski v. Fremont Investment & Loan* (2005) 127 Cal.App.4th 347, 351.

⁴ *Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 485.

⁵ *Ventura County Deputy Sheriffs Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 490.

⁶ *Porter v. Board of Retirement of the Orange County Employees' Retirement System* (2005) Cal. App. Unpub. LEXIS 11827.

⁷ 2005 Cal. App. Unpub. LEXIS 11826, *5-6.

The above language is clear and unambiguous. It states that if an application for disability retirement is delayed by an inability to ascertain the permanency of the employee's incapacity until after the date following the last day of regular compensation, the application will be deemed filed on the date after the last day of regular compensation. Nothing in the language imposes any additional time mandates for filing once this initial requirement is met. The statute does not provide a deadline in which an application must be filed once a member is able to ascertain the permanency of incapacity. And a court cannot add such a provision. In applying Section 31724, a court's responsibility is to determine the statute's meaning from the words set out by the legislature, not to insert additional language.⁸

Therefore, under the plain meaning of Section 31724, the member only has to establish an inability to ascertain the permanency of his incapacity on the day after the date following his last day of regular compensation. If the member meets that burden to the satisfaction of the Board, the member is entitled to the benefit of the earlier effective date, regardless of when the application is filed. However, if the facts demonstrate that a member was able to ascertain the permanency of incapacity before the date following the last day of regular compensation, the disability retirement will be effective on the day the application was filed.

2. Regular Compensation

In order for the Board to make a determination on the issue of an earlier effective date, the member's last date of regular compensation must be determined. Generally, the phrase "regular compensation" means the member's normal salary. Full salary under Labor Code section 4850 is regular compensation—so is sick and vacation pay when taken by a member as time off.⁹ However, workers' compensation temporary total disability payments do not constitute regular compensation.¹⁰

3. The member carries the burden of proving an inability to ascertain the permanency of incapacity.

The burden is on the member to prove by a preponderance of the evidence that the filing of his disability retirement application was delayed by an inability to *ascertain* the permanency of his incapacity until after the date following the day he last received regular compensation.¹¹ The permanency of a member's incapacity is usually determined by information contained in the member's medical records, but other factors may be relevant. The issue of whether there was an inability to ascertain permanency will also fairly be determined by reviewing medical records, as well as the member's

⁸ Code Civ. Proc. section 1858; *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 123.

⁹ *Katosh v Sonoma County Employees' Retirement System* (2008) 163 Cal.App.4th 56, 78.

¹⁰ *Porter v. Board of Retirement of Orange County Employees Retirement System* (2013) 222 Cal.App.4th 335, 342-343.

¹¹ *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1337; Government Code section 31724.

testimony and other information and evidence that may be presented by the applicant and by LACERA.

4. Government Code section 31722 and the doctrine of laches protect the retirement association from being prejudiced by late-filed applications.

Section 31722 and the doctrine of laches serve as a gatekeeper for late-filed applications and protect the association from unjust liability. Section 31722 requires that an application for disability retirement be filed while the member is in service or within four months after service is discontinued. The statute, however, allows for an application to be filed at any time beyond the four-month period if there is evidence of continuous incapacity from the date service ended up through the date the application is filed.

Even if a member presents evidence sufficient to accept an application for processing under Section 31722, the application or an earlier effective date under Section 31724 may nonetheless be barred by laches if the delay in filing was unreasonable and prejudices the retirement association's ability to investigate the case. Generally, the existence of laches is a question of fact to be determined at an administrative hearing in light of all the applicable circumstances. It is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party so that granting relief to the other party would be inequitable.¹²

So Section 31722 and the doctrine of laches serve as the association's defense against unjust liability.

5. The purpose of the County Employees Retirement Law of 1937 is to provide for retirement of members "without inflicting a hardship" upon them.

Section 31451 states the purpose of the County Employees Retirement Law of 1937 (CERL) in the following manner:

The purpose of this chapter is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service **without prejudice and without inflicting a hardship upon the employees removed.** (Emphasis added.)

¹² *Piscioneri v. City of Ontario, et al.* (2002) 95 Cal.App.4th 1037, 1046.

The statutory scheme is intended to provide for retirement of members "without inflicting a hardship" upon them. A plain reading of Section 31724 supports the purpose of CERL by providing members—who have met their burdens of proof under Sections 31720, 31722, and 31724—an uninterrupted stream of income following the day they last received regular compensation.

C. Administrative Oversight Exception

The Board may also grant an effective date that is earlier than the date the application was filed when it has been shown that the delay was due to "administrative oversight." Under this exception, the member may attempt to prove that he was misinformed by the retirement association and that this misinformation resulted in a delay in filing, or that there was some other administrative error or oversight that delayed the filing of the application.

Section 31724 does not specify that the oversight be committed by the retirement association. Some members have argued, under Section 31721 (a), that an employer has an obligation to file an application on behalf of a member believed to be disabled, and that the employer's failure to file an application under this obligation represents an "administrative oversight" under Section 31724.

Section 31721 (a) states the following:

A member may be retired for disability upon the application of the member, the head of the office or the department in which he is or was last employed, the board or its agents, or any person on his behalf, **except that an employer may not separate because of disability** a member otherwise eligible to retire for disability but **shall** apply for disability retirement of any member believed to be disabled . . .
(Emphasis added.)

However, the Court of Appeal has determined that the term "separate," in the context of section 31721 (a), refers to the employer's act of terminating employment and that the employer's obligation to file an application only arises when the member has been terminated due to a disability.¹³ This interpretation limits a member's ability to use Section 31721 (a) as an "administrative oversight" under Section 31724 to situations where the member has been terminated because of a disability.

IV. Conclusion

As demonstrated above, the Board of Retirement has the discretion to weigh the evidence and decide whether or not an applicant has met the burden of establishing that the application for disability retirement was delayed due to an administrative

¹³ *Mooney v. County of Orange* (2013) 212 Cal. App. 4th 865, 880-881.

Re: Earlier Effective Date, Section 31724

July 23, 2015

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oversight or an inability to ascertain the permanency of incapacity until the date after the last day of regular compensation. The plain meaning of Section 31724 only requires that a member prove an inability to ascertain the permanency of incapacity on the day after the date following the last day of regular compensation. Nothing in the language imposes any additional time limits. This plain reading of the statute comports with the purpose of CERL to provide for retirement of members without inflicting a hardship upon them. Thus, if a member established an inability to ascertain permanency on the day after the last day of regular compensation, the member will be entitled to an earlier effective date under Section 31724.

Reviewed and approved.

A handwritten signature in blue ink that reads "Steven P. Rice". The signature is written in a cursive, flowing style.

Steven P. Rice, Chief Counsel

FJB: se

The Effective Date Of A Disability Retirement

Government Code Section 31724
and Earlier Effective Date Issues

by: Frank Boyd,
Disability Senior Staff Counsel

§31724. Action Of Board On Proof Of Incapacity; Time Allowances Become Effective

If the proof received, including any medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his duties in the service, it shall retire him effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member's consent to retirement prior to the expiration of such leave of absence with compensation. **His disability retirement allowance shall be effective as of the date such application is filed with the board, but not earlier than the day following the last day for which he received regular compensation.** Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement to an earlier date.

When it has been **demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation,** such date will be deemed to be the date the application was filed.



§31724. Action Of Board On Proof Of Incapacity; Time Allowances Become Effective

If the member's application, shows that the member is permanently and totally unable to perform his or her regular work effectively and that the member is competent to perform his or her regular work, the provisions of the Labor Code shall be effective as of the date of the member's application, unless the member consents to his retirement to an earlier date.

His disability retirement allowance shall be effective as of the date such application is filed with the board,

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.



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When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

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Burdens Already Met

When the Board is asked to grant an effective date earlier than the application date, members have already met their burdens to prove:

- Application was filed timely under Section 31722
- Permanent incapacity under Section 31720



Application Date

Generally, the application date of a disability retirement, is the date a disability retirement becomes effective.

From the first paragraph of Section 31724:

" . . . His disability retirement allowance **shall be effective as of the date such application is filed with the board**, but not earlier than the day following the last day for which he received regular compensation."



Exceptions

Exceptions to the general rule are set forth in the last paragraph of Section 31724, which states:

When it has been **demonstrated to the satisfaction of the board** that the filing of the member's application **was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.**



Roadmap

Three issues presented in the second paragraph of Section 31724:

- The Board's discretion to decide the issue of an earlier effective date.

Two exceptions — application was delayed due to:

- Inability to ascertain the permanency of incapacity
- Administrative oversight



Board Discretion

The Board has the discretion to weigh the evidence and decide the earlier effective date issue. Section 31724:

"When it has been **demonstrated to the satisfaction of the board . . .**"

The California Legislature has given the Board the discretion to weigh the evidence and decide whether or not to grant an earlier effective date under the two exceptions.



Courts Look To The Plain Meaning Of A Statute First

In reviewing a statute, the courts "begin with its language because if the language is clear there is no need to look further."

(Cordova v. 21st Century Ins. Co. (2005) 129 Cal.App.4th 89, 96. Whaley v. Sony Computer Entertainment America, Inc. (2004) 121 Cal.App.4th 479, 485)

Ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner.

(Ventura County Deputy Sheriffs Assn. v. Board of Retirement (1997) 16 Cal.4th 483, 490.)



Inability To Ascertain Permanency Of Incapacity

Setting aside the Board's discretion and administrative oversight language in the statute, the second paragraph of Section 31724 reads as follows:

" . . . the filing of the member's application was delayed . . . by inability to ascertain the permanency of the member's incapacity **until after the date following the day** for which the member last received regular compensation, such **date** will be deemed to be the date the application was filed."
(Emphasis added)



Plain Meaning Of The Inability To Ascertain Permanent Incapacity Exception Of Section Under 31724

The plain meaning of Section 31724 requires that, to be eligible for an earlier effective date, a member must prove an inability to ascertain the permanency of incapacity after the date following the last day of regular compensation. **Nothing in the language imposes any additional time mandates for the filing of the application once this initial requirement is met.**



Unpublished Decision: Porter v. Board Of Retirement Of The Orange County Employees' Retirement System (2005) Cal. App. Unpub. LEXIS 11827.

Justice William Rylaarsdam:

Contrary to defendant's [i.e., OCERS's] position, nothing in the language [of Section 31724] imposes any additional time mandates for the filing once the initial requirement is met. Nor does defendant suggest how long after learning of the permanency an application would have to be filed. A day, a week, a month? Would six months suffice, but not nine, as here? The statute does not state, and we will not interpret it to add such a provision. In applying section 31724, our responsibility is to determine its meaning from the words set out, not to insert additional language.



Regular Compensation

Generally, the phrase "regular compensation" means the member's normal salary.

- Full salary under Labor Code Section 4850 is regular compensation.
- Sick and vacation pay, when taken by a member as time off, is regular compensation.
(Katosh v Sonoma County Employees' Retirement System (2008) 163 Cal.App.4th 56, 78.)
- Workers' compensation temporary total disability payments do not constitute regular compensation.
(Porter v. Board of Retirement of Orange County Employees' Retirement System (2013) 222 Cal.App.4th 335, 342-343.)



Burden Of Proof

Member carries the burden of proving an inability to ascertain the permanency of incapacity.

(*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1337; Government Code section 31724.)

Permanency of a member's incapacity may be determined by:

- Reviewing medical records
- Member's testimony
- Other information and evidence



Section 31722 And Laches

Government Code Section 31722 and the doctrine of laches protect the retirement association from being prejudiced by late-filed applications.

Section 31722 requires that an application for disability retirement be filed while the member is in service or within four months after service is discontinued. The statute, however, allows for an application to be filed at any time beyond the four-month period if there is evidence of continuous incapacity from the date service ended up through the date the application is filed.

An application or an earlier effective date under Section 31724 may nonetheless be barred by **laches if the delay in filing was unreasonable and prejudices the retirement association's ability to investigate the case.**



Laches

Laches is a question of fact to be determined at an administrative hearing in light of all the applicable circumstances. It is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party so that granting relief to the other party would be inequitable.

(Piscioneri v. City of Ontario, et al. (2002) 95 Cal.App.4th 1037, 1046.)



Purpose Of The County Employees Retirement Law Of 1937

Section 31451 states the purpose of the County Employees Retirement Law of 1937 (CERL) in the following manner:

The purpose of this chapter is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service **without prejudice and without inflicting a hardship upon the employees removed.** (Emphasis added)



Purpose:

The statutory scheme is intended to provide for retirement of members "without inflicting a hardship" upon them. A plain reading of Section 31724 supports the purpose of CERL by providing members — who have met their burdens of proof under Sections 31720, 31722, and 31724 — an uninterrupted stream of income following the day they last received regular compensation.



Administrative Oversight Exception

Member may attempt to prove that he was misinformed by the retirement association and that this misinformation resulted in a delay in filing, or that there was some other administrative error or oversight that delayed the filing of the application.



Administrative Oversight And Section 31721 (a)

Section 31724 does not specify that the oversight be committed by the retirement association.

Some members may argue:

1. Under Section 31721 (a), that an employer has an obligation to file an application on behalf of a member believed to be disabled.
2. The employer's failure to file an application under this obligation represents an "administrative oversight" under Section 31724.



Employer's Obligation To Apply On Behalf Of The Employee Is Very Limited Under Section 31721 (a)

Section 31721 (a) states the following:

A member may be retired for disability upon the application of the member, the head of the office or the department in which he is or was last employed, the board or its agents, or any person on his behalf, **except that an employer may not separate because of disability** a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled . . . (Emphasis added)

Court of Appeal: The term “separate,” in the context of Section 31721 (a), refers to the employer's act of terminating employment, and the employer's obligation to file an application only arises when the member has been terminated due to a disability. (*Mooney v. County of Orange* (2013) 212 Cal. App. 4th 865, 880-881.)



Conclusion

Some members may argue:

1. The Board of Retirement has the discretion to decide whether a member is entitled to an earlier effective date under the administrative oversight or the inability to ascertain the permanency of incapacity exception.
2. The plain meaning of Section 31724 only requires that a member prove an inability to ascertain the permanency of incapacity on the day after the date following the last day of regular compensation.
3. This plain reading of the statute comports with the purpose of CERL to provide for retirement of members without inflicting a hardship upon them.



Questions





FOR INFORMATION ONLY

July 28, 2015

TO: Disability Procedures & Services Committee
Vivian H. Gray, Chair
William de la Garza, Vice Chair
Will Pryor
Les Robbins
Yves Chery, Alternate

FROM: James Pu
Chief Information Officer

SUBJECT: DISABILITY TECHNOLOGY INTEGRATION: PROJECT UPDATE

We have achieved substantial progress toward the Disability Technology Integration Project. During this presentation, staff will provide your Committee with status on the Disability Tracker integration into Workspace, Process Management, Document Management, and the Fully-Digital Disability Board Packages.

Workspace is LACERA's unified member operations and services application. Integrating Disability Tracker's data and functions into *Workspace* provides efficiency and improved accuracy. *Disability Document Management* will be constructed upon our Enterprise Content Management infrastructure, where it will provide the ability to accept and manage electronic documents, including those from physicians, TPAs, etc. At our presentation, staff will unveil to your Committee a first-look at these two initiatives.

Noted and Approved:

Robert R. Hill
Assistant Executive Officer

07-28-15

Date



Project Update: Disability Technology Integration



Technology Integration Plan

- Phase 1: Data Integration
- Phase 2: Process Management, workflow, and scanning of disability packages
- Phase 3: Document Management Integration
- Phase 4: Fully-digital Disability Board Packages

Phase 1: Data Integration The Goal

To integrate key data from the Disability Tracker into the LACERA enterprise member application, Workspace.

Phase 1: Data Integration The Milestones

- Document the current process to understand how the Disability Tracker is used
Completed on 12/31/2014
- Identify Disability Tracker features to integrate into Workspace
Completed on 12/31/2014
- Map the key features to new pages, functions, and letters to add to Workspace
Completed on 12/31/2014
- Implement the new pages, functions, and letters
First phase completed on 6/15/2015

Phase 2: Process Management The Goal

Implement process management and workflow to gain insight, improve visibility, and improve efficiency

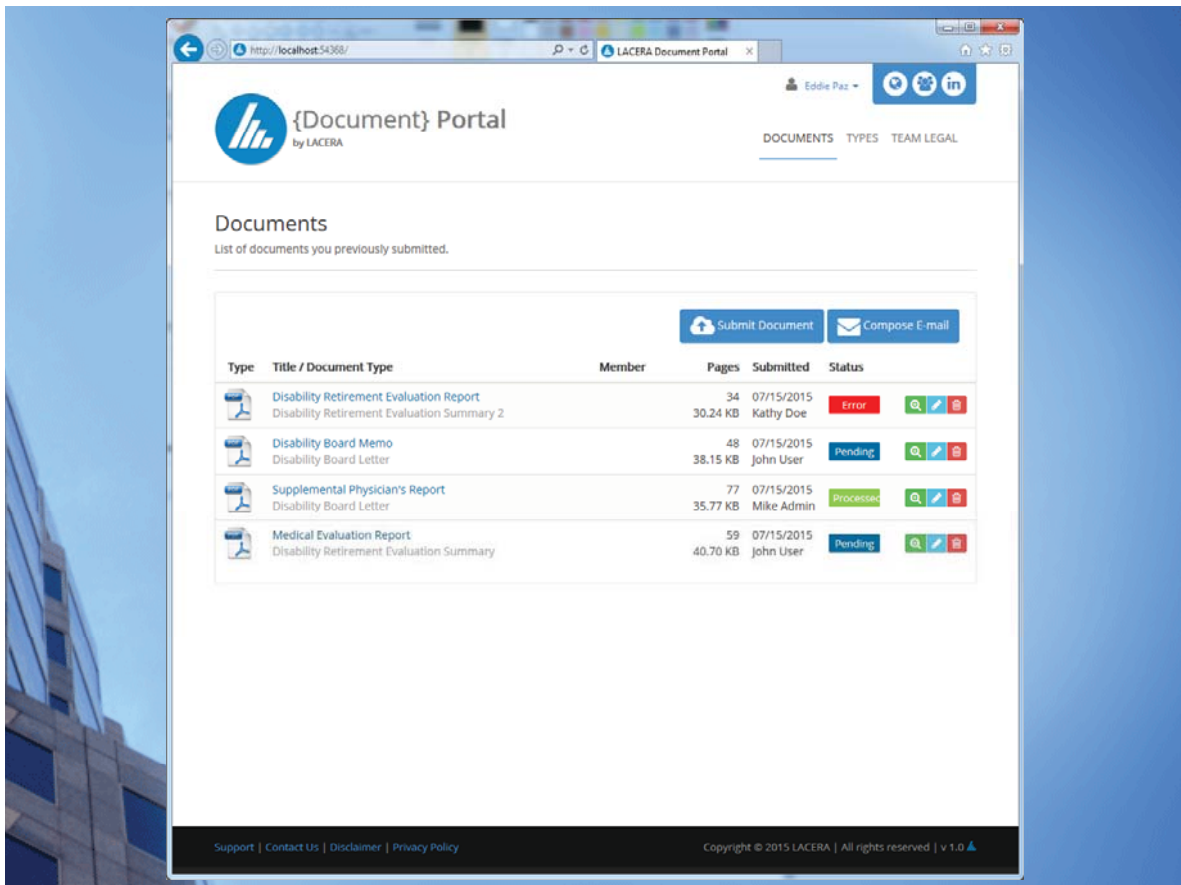
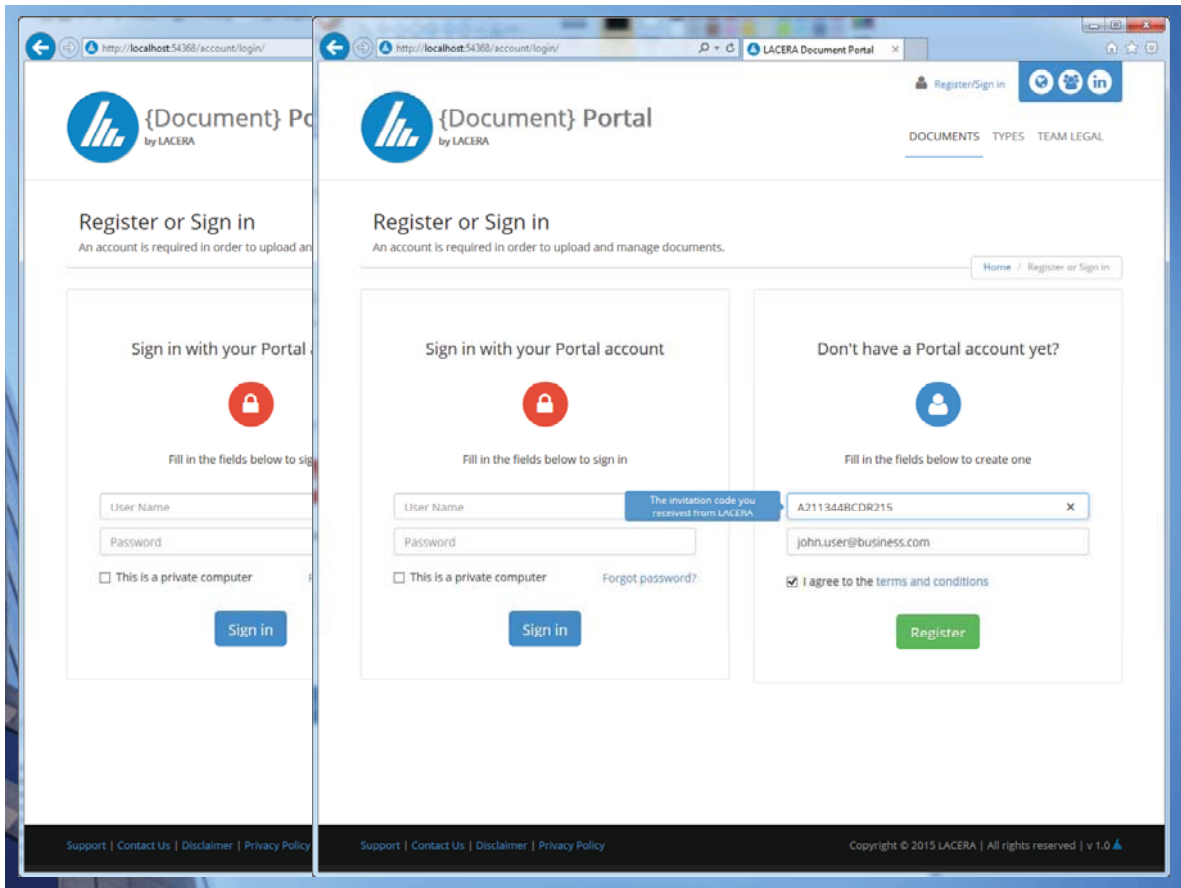
Phase 2: Process Management The Milestones

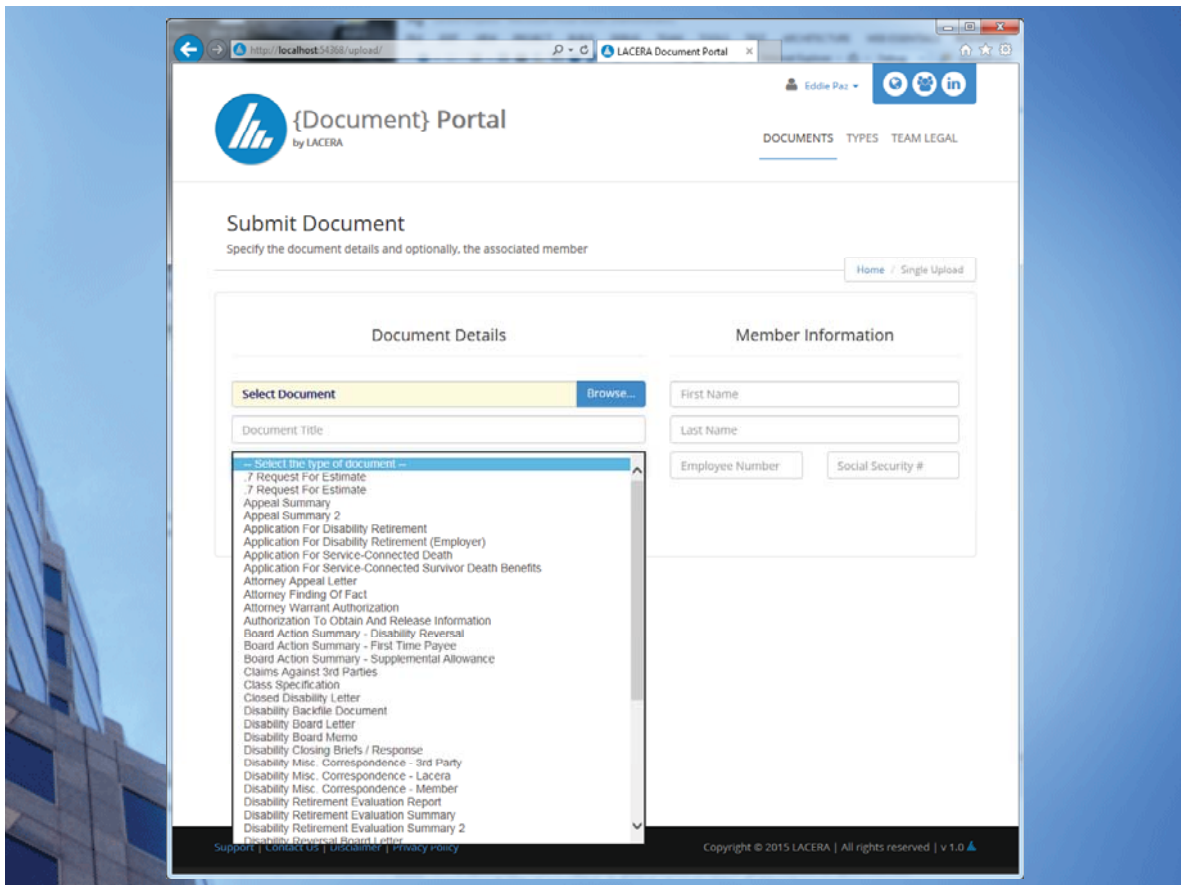
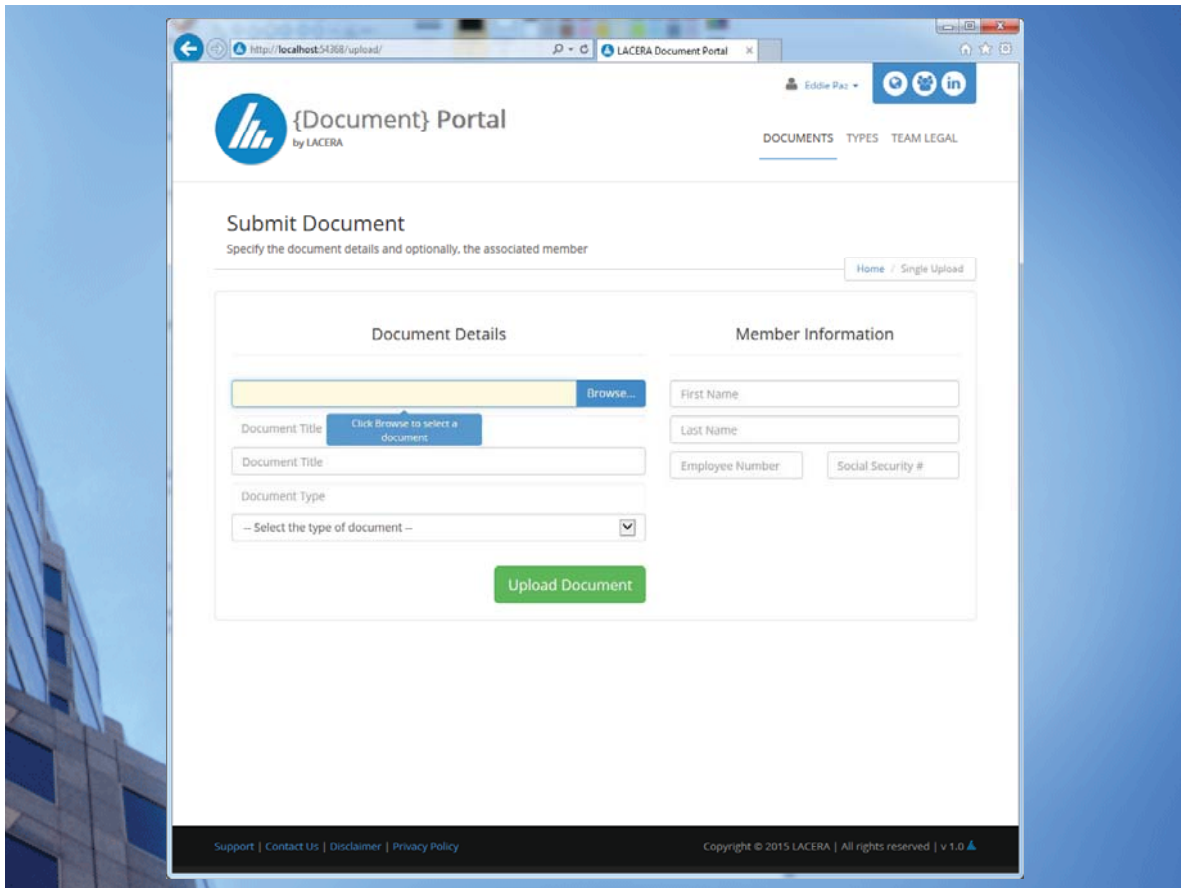
- Define key processes to implement in workflow
Completed on 12/31/2014
- Identify documents that will participate in the workflow processes
Completed on 12/31/2014
- Implement workflow management and document imaging for key processes
In progress: training and beta testing to begin in August, 2015

Demo

Phase 3: Document Management The Milestones

- External digital documents from business partners
In progress (demo)
- Secure document drop-off (business partner inbox)
In progress
- Internal digital documents for case management
In progress
- Member document submission
Pending





Browser: http://localhost:54320/admin/types/ LACERA Document Portal

Eddie Paz

{Document} Portal by LACERA

DOCUMENTS TYPES TEAM LEGAL

Document Types

List of available workflow document types.

Home / Administration / Document Types

[+ Create New](#)

Name	Description	Group	Submittible?	
ADWWAR	Attorney Warrant Authorization	Disability	<input type="checkbox"/>	
BAS1PAYEE	Board Action Summary - First Time Payee	Disability	<input type="checkbox"/>	
BASDISRVSL	Board Action Summary - Disability Reversal	Disability	<input type="checkbox"/>	
BASSUPALLW	Board Action Summary - Supplemental Allowance	Disability	<input type="checkbox"/>	
DEPOSITION	Transcripts/Depositions	Disability	<input type="checkbox"/>	
DIS101	Application For Disability Retirement	Disability	<input type="checkbox"/>	
DIS104	Authorization To Obtain And Release Information	Disability	<input type="checkbox"/>	
DIS107	Physicians Statement	Disability	<input type="checkbox"/>	
DIS110	Disability Retirement Evaluation Summary	Disability	<input type="checkbox"/>	
DIS110-2	Disability Retirement Evaluation Summary 2	Disability	<input type="checkbox"/>	

1 2 3 4 5

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{Document} Portal by LACERA

DOCUMENTS TYPES TEAM LEGAL

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List of documents received from copy service providers.

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SSN	Document	Service	Provider	Requested	
XXX.XX 9255	Disability Retirement Evaluation Report	Team Legal	Kaiser	6/15/2015	

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