



# Board Administration Policy Disability Retirement and Active Member Death Policy and Procedure

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## I. Purpose

A. The purpose of this policy is to provide a procedure for acting upon applications to the Board for disability retirement and related rights, benefits and privileges inuring to Members of the San Joaquin County Employees' Retirement Association (SJCERA) and their designated beneficiaries. It is intended that applications be fairly and expeditiously processed, that the applicant and the Board have fair notice of any required hearing and consider sufficient facts to arrive at a true and fair decision on the application. For the purposes of a fair hearing, the Board shall act as an independent body, finding facts and applying law. Upon receipt of the recommendation from the SJCERA Chief Executive Officer (CEO), the Board may approve, dismiss, or deny the application, or take other appropriate action authorized by the California Employees Retirement Law of 1937 (CERL) and, if applicable, the Public Employees' Pension Reform Act of 2013 (PEPRA).

## II. Definitions

- A. Unless the context otherwise requires, the definitions in this section shall govern the construction of this policy and procedures.
1. "Interested Party" means any person, including an Applicant, a Member to whom an Application pertains, the Fund, and any authorized representatives of each of them, disclosed by the records of SJCERA or by the Application to have a legal interest in the subject matter of the Application.
  2. "Applicant" means any person or entity that has filed an application for disability retirement benefits or a survivor allowance resulting from an active Member's death, which may include any Member of SJCERA, the head of the office or department in which the Member is or was last employed, the Board or its agents, or any other person claiming benefits, rights, or privileges under the CERL and, if applicable, PEPRA.
  3. "Application" means a claim for disability or active member death benefits, rights, or privileges under CERL and, if applicable PEPRA, submitted to SJCERA by an Applicant on a form authorized by SJCERA for that purpose.
  4. "Application Packet" means the documents that an Applicant is required to provide to SJCERA before an Application will be deemed submitted or filed for processing and evaluation. These documents include: a completed and signed application form, completed and signed questionnaires, signed authorizations for release of information, all relevant medical records and reports, and such other documents and information reasonably required by

SJCERA pursuant to this policy and procedure.

5. "Board" means the San Joaquin County Employees' Retirement Association's Board of Retirement.
6. "Board's Counsel" means an employed staff attorney, an attorney from the Office of County Counsel, or other independent counsel designated by the Board pursuant to Government Code Section 31529.9.
7. "The Fund" means the trust fund governed by the Board pursuant to Government Code Section 31588 and administered under the CERL solely for the overall best interest of Members and their beneficiaries. The Fund shall be a real Party in interest at all disability hearings conducted under this policy and independent Fund Counsel, who does not advise the Board with respect to such proceedings, shall represent the Fund in such hearings.
8. "Disability Medical Provider" means medical, psychiatric, or other healthcare experts retained by SJCERA to examine Members and provide opinion evidence regarding permanent disability and causation issues.
9. "Referee" means an outside hearing officer, administrative law judge, or another Retirement System organized under the 1937 County Employees' Retirement Law.
10. "Retirement Office" means the physical office of SJCERA at the address posted on [www.sjcera.org](http://www.sjcera.org).
11. "Member" means the SJCERA member who is the subject of the Application or on whose behalf the Application is filed.
12. "Fund Counsel" means the attorney retained by SJCERA to represent the interests of the Fund in investigating and evaluating Applications, providing recommendations to SJCERA, and representing the Fund before the Board.
13. References to written notice or any notice in writing from or by SJCERA mean that such notice may be delivered electronically, by first class mail or certified mail at the discretion of the CEO.

### **III. Representation by Counsel**

- A. Any Interested Party, at that Party's expense, may hire and be represented by an attorney subject to the provisions of this section. No Applicant is required to have an attorney at any time. It is advised, however, that Applicants consider retaining an experienced attorney knowledgeable in CERL and disability retirement matters.
- B. If any Interested Party becomes represented by an attorney, either such Party or such attorney shall promptly file with the Retirement Office and serve upon all other Interested Parties written notice of such representation, including the attorney's name, address, and telephone number. Unless appearing with an

Interested Party at a hearing, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served. The Interested Party shall be deemed represented by said attorney until written notice of withdrawal or substitution of said attorney is filed with SJCERA and served on all other Interested Parties.

- C. The failure to retain an attorney or to provide written notice of representation by such attorney shall in no event be considered good cause, in and of itself, to delay any proceeding under this policy and procedure.

#### **IV. Communication with Individual Board Members**

- A. The Board is the decision-maker for all Applications. As such, communications concerning the merits or substance of an Application between any Board member and any Interested Party or their representatives, other than the CEO, are forbidden until the Board's decision is final and the time to appeal by writ or otherwise has expired. This prohibition shall remain in effect during the pendency of any writ, appeal, and rehearing. A copy of the *Ex Parte Communication Policy* can be found at [www.sjcera.org](http://www.sjcera.org).

#### **V. Confidential Records**

- A. All individual records of Members (including, but not limited to, reports, sworn statements, medical reports and records, applications, notices, orders, and findings and decision relating to an application for disability retirement) are confidential and shall not be disclosed by SJCERA to anyone except as set forth in these procedures, upon order of a court of competent jurisdiction, or upon written authorization by the Member.

#### **VI. Application Process**

- A. Applications may be filed by SJCERA Members, the head of the office or department in which the Member is or was last employed, the Board or its agents, any other person acting on a Member's behalf, or as authorized by CERL.

##### **B. Claim**

1. A claim for disability retirement or survivor allowance shall be made by filing a complete Application Packet with the Retirement Office. The Application shall not be deemed complete or filed until the Applicant has submitted all of the following to the Retirement Office:
  - a) An Application, on a form approved by SJCERA for that purpose, signed and complete with all requested information therein. The Application shall include a specific description of the injuries, conditions, and diagnoses that give rise to that alleged permanent incapacity.

- b) Signed authorizations for release of medical and other information deemed by SJCERA relevant to a full and complete evaluation of the Application.
- c) A physician's statement dated no earlier than a year prior to the date of the Application, in a form approved by SJCERA for that purpose complete with all requested information therein, signed and dated by the physician, stating that the Member is permanently incapacitated.
- d) Copies of all medical/psychiatric reports and records relevant to the claims made in the Application.
- e) All other documents and information that support the granting of the Application.

C. Initial Review of the Application Packet

- 1. Within 30 days of receipt of an Application Packet for filing, SJCERA shall review the submitted Application Packet and determine whether the application is complete and acceptable for filing. If the Application is determined to be complete, SJCERA shall notify the Applicant electronically and/or by U.S. mail that the Application has been accepted for filing. A complete Application shall be deemed filed as of the date SJCERA received the Application.
- 2. If, during the 30-day review period in this section, the Application Packet is determined to be incomplete, SJCERA shall notify the Applicant of the deficiency(ies) and that the application has been rejected for filing as incomplete.

D. Further Information Required from Applicant

- 1. If at any time during the pendency of the Application, the Applicant changes, in any material way, the facts or claims set forth in the Application, the Applicant shall immediately file with the Retirement Office, and serve on all Parties, written notice of such change, including any changes in employment or accommodation and any medical evidence supporting such an amendment. The failure to do so, may, in the discretion of the Board, preclude the Applicant from asserting the facts so alleged or introducing evidence with respect thereto. Notice of any such amendment shall be given, in writing, to Retirement Office within ten (10) days of the date thereof, and in no event later than thirty (30) days prior to any proceeding before the Board or Referee.
- 2. At any time during the pendency of an Application or in connection with any re-evaluation of the Member's disability status permitted under CERL, the Board or SJCERA may, by written notice to the Applicant, require that the Applicant produce within 30 days any or all of the following items. Said items shall be accompanied by a declaration (on a form approved by SJCERA for that purpose) signed by the Applicant under penalty of perjury affirming that

the Applicant has made a diligent search and reasonable inquiry and that no other responsive items exist.

- a) Copies of records, reports, notes, statements, documents, photographs, or other writings, within the definition of Evidence Code Section 250.
  - b) A narrative report of the Member's current medical condition, and a list of the names and contact information for all of the Member's healthcare providers.
  - c) Written responses to written questions concerning any matter that is reasonably calculated to lead to the discovery of evidence that would be admissible at a hearing. Said written responses shall be accompanied by a declaration (on a form approved by SJCERA for that purpose) signed by the Applicant under penalty of perjury affirming the truthfulness and completeness of the responses.
3. Any Interested Party shall be entitled to notice and take oral depositions in the manner prescribed by the California Code of Civil Procedure, except that there shall be no distinction between the depositions of expert and non-expert witnesses, and the provisions of the California Code of Civil Procedure pertaining to the depositions of expert witnesses shall not apply. The Party noticing a deposition shall pay any and all deposition costs and the fees to which a witness may be entitled.

#### E. Investigation and Evaluation

1. Before an administrative recommendation is made to the Board or a hearing before a Referee is set, the following shall be completed:
  - a.) Within 90 days after an Application is accepted for filing, SJCERA will request any and all records that may be relevant to the determination of the Application. These may include, but are not necessarily limited to, the following: medical, psychiatric, psychological, chiropractic, physical therapy, and acupuncture records; radiology and ultrasound records; electrodiagnostic testing records; laboratory (blood, urine, pathology, etc.) testing records; psychological testing records; personnel and human resources records, incident and injury reports; reports prepared by any law enforcement agency; the Member's complete worker's compensation file pertaining to the subject claim and other potentially related claims including all medical records, reports, deposition transcripts, etc.; HIV and alcohol treatment/testing records in cases where these conditions are at issue.
  - b.) SJCERA shall require a written statement from the employer/department regarding employment status, job duties, work restrictions and accommodations, if any.

- c.) All reasonably pertinent records will be provided to the Disability Medical Provider and the Fund's Counsel.
- d.) The Fund's Counsel and/or the Disability Medical Provider will review and summarize the records. The Fund's Counsel will coordinate independent medical examination(s) as necessary and appropriate.
- e.) Additional records may be requested or subpoenaed of the Applicant or others.
- f.) All medical examinations required of the Member are completed and reports thereof have been submitted to SJCERA.
- g.) The Fund's Counsel will review medical findings and other evidence and make recommendations to the CEO.
- h.) Applicant is notified of pending action.
  - i. If the Fund's Counsel determines based upon findings and SJCERA procedures that the Applicant has met their burden of proof to show eligibility for a disability retirement benefit, staff will place the matter on the closed session consent calendar at a Board of Retirement meeting with a recommendation to grant the application.
  - ii. If the Fund's Counsel determines based upon findings and SJCERA procedures that the Applicant has not met their burden of proof to receive a disability retirement benefit, the CEO will be notified. The Applicant will be notified and given the option to request a hearing. (See below.)

#### F. Medical Examinations

1. Members may be required to undergo one or more medical or psychiatric examinations by a physician or physicians of SJCERA's choice as necessary to evaluate the conditions and diagnoses presented in the Application. Such examinations may be unnecessary in the following cases: (1) where the Member has already been examined by at least one qualified medical expert and there is overwhelming and undisputed medical evidence that the Member is permanently incapacitated, such that referring the Member to another examination would be futile; and (2) where the Applicant has not submitted substantial medical evidence that the Member is permanently incapacitated, such that referring the Member to an examination would be unjustified.
2. Members must cooperate during the medical or psychiatric examination process and, if requested, must promptly provide additional medical records and information, or submit to additional examinations.
3. SJCERA shall at least fifteen (15) days before the appointment date, serve

the Member (and if the Applicant is not the Member, the Applicant) with written notice of the date, time and place of the medical or psychiatric examination. Notice may be served electronically and/or by first-class mail through the US Postal Service. If the Member is unable to keep the examination appointment, the Member or their attorney shall notify SJCERA or the Fund's Counsel in writing of such fact at least ten (10) calendar days before the scheduled examination. Failure to provide such notice and appear for the medical examination without good cause may result in the Board assessing medical cancellation fees against the Member and/or any other penalties for failure to comply with these Disability Retirement procedures.

4. The cost of such medical examinations shall be borne by SJCERA.
5. If the examination is at a facility located outside of San Joaquin County, Members may request SJCERA reimburse mileage costs incurred for travel between the examination address and either the San Joaquin County line or the Member's home address, whichever is less. SJCERA will not reimburse for out-of-state travel. Except as set forth in this paragraph, unless otherwise authorized by the Board, travel expenses that are incurred by Members or other Interested Parties relating to these procedures, including but not limited to appearances at hearings, Board meetings and medical examinations, are not eligible for reimbursement by SJCERA.

#### G. Penalties for Failure to Comply with Disability Retirement Procedures.

1. The failure of an Applicant to comply with the requirements set forth in these procedures may result in a recommendation to dismiss the Application. Upon the Board's own motion or a recommendation by the CEO, and 30 days' written notice to the Applicant without cure, the Board may:
  - a) Dismiss any Application in which the Board finds the Applicant to be non-compliant with these procedures. Failure to comply includes, but is not limited to: failure to submit to a duly noticed medical examination, failure to cooperate with any medical examination without good cause, failure, or refusal to comply with, any notice or demand made pursuant to this policy, failure to cooperate in the formal hearing process, and failure to comply with any order of the Board or the Referee.
  - b) Dismiss the Application with prejudice upon a finding of bad faith actions, dilatory or frivolous tactics causing undue delay in the proceedings, disobedience to a lawful order, and/or obstruction of the due course of a hearing proceeding.

#### H. CEO's Recommendation

1. The CEO may recommend to the Board that a Member be retired for service-connected or nonservice-connected disability retirement benefits. The recommendation shall be in writing and include:
  - a) A determination of permanent physical or mental incapacity for the

performance of the Member's duties;

- b) A determination whether the incapacity is the result of an injury or disease arising out of and in the course of the Member's employment and whether such employment contributed substantially to the incapacity;
- c) A summary of the evidence in support of the recommendation.

#### I. Setting the Matter for Hearing

1. If, after investigation, the CEO determines that the Applicant has failed to meet their burden of proof regarding any element legally necessary for the granting of the Application, the Applicant will be notified of its decision in writing, giving the Applicant the following options, if applicable:
  - a) If the Applicant has met their burden of proof regarding permanent incapacity but not service connectedness:
    - i. The Applicant may amend the Application from service-connected to nonservice-connected disability retirement or death to permit SJCERA to recommend that the Board grant a nonservice-connected disability retirement or death without need for hearing; or
    - ii. The Applicant may request both of the following: a hearing on the issue of service-connection, and a request that the Board grant a nonservice-connected disability retirement or survivor allowance;
  - b) Stipulate to waive the right to hearing and withdraw the Application.
  - c) Request a hearing on all issues presented by the Application.
2. If a written response is not received from the Applicant within thirty (30) calendar days after issuing the written notice in section VI.I.1 above, SJCERA shall commence dismissal procedures under section VI.G for noncompliance.
3. In cases where, as set forth in section VI.I.1.a above, the Applicant has opted to amend the Application from service-connected to nonservice-connected disability retirement, or where the Applicant requests a nonservice-connected disability retirement or survivor benefit and a hearing on the issue of service-connection, SJCERA will recommend that the Board grant a nonservice-connected disability retirement or death benefit.
4. The Applicant may withdraw the Application at any time prior to the Board's final determination. Any withdrawal of an application prior to the assignment to a Referee shall be deemed a withdrawal without prejudice. A withdrawal without prejudice means that any re-submission of the withdrawn application will be considered a new application that must meet all filing requirements, including timely filing requirements. Any withdrawal of an application after the assignment to a Referee will be deemed to be with



prejudice. An application withdrawn with prejudice precludes subsequent submission of the withdrawn application based on the same disability, injury or disease in the absence of new evidence.

## **VII. Hearings Before A Referee**

### **A. Referral to Referee**

1. If the Applicant timely requests a hearing, the matter shall be referred for hearing de novo before a Board-appointed Referee. The Referee shall be provided by the Office of Administrative Hearings of the State of California or by a prescreened panel of acceptable Referees selected by SJCERA. Compensation for the Referee shall be determined by the CEO and shall be paid by SJCERA.

### **B. Notification of Referral to Referee and Statement of Issues; Certification of Issues, Documents and Witnesses**

1. Before a hearing date is set, the following notifications and certifications shall be provided:
  - a) The Fund's Counsel shall notify the Applicant in writing that SJCERA has referred the matter to hearing before a Referee and that a Referee will be appointed and a hearing scheduled as soon as SJCERA receives the certification required by this section. The written notice will further advise that if SJCERA does not receive the required certification within 30 calendar days, SJCERA will commence dismissal procedures under section VI.G for noncompliance.
  - b) The written notice will include the following:
    - i. A list of issues to be determined at the hearing and the names and contact information of all witnesses that may be called by the Fund's Counsel to testify at the hearing.
    - ii. A copy of SJCERA's Disability Retirement Policy and Procedures.
    - iii. An electronic copy of all medical records, reports, and other nonprivileged documents in SJCERA's file that have been obtained as part of the disability retirement application process. If the Applicant is not the Member, such records shall not be disclosed to the Applicant unless authorized by the Member, the Referee or the Board of Retirement.
  - c) Notwithstanding anything in this subdivision, unless otherwise ordered by the Referee or the Board, SJCERA shall only furnish psychiatric and/or other mental health reports and records to the Member's attorney or a treating physician designated by the Member in writing.
  - d) Enclosed with the notice to the Applicant will be a form which will require the Applicant to certify the following:

- i. That there are no additional documents to introduce as evidence at the hearing other than those provided to the Applicant in electronic form along with SJCERA's letter. If there are additional documents, the Applicant must provide them to SJCERA along with the signed certification form. Unless otherwise ordered by the Referee or by stipulation of the parties, any documents not produced with the certification will be barred from introduction as evidence at hearing.
- ii. Whether the Applicant will be represented by an attorney at the hearing and, if so, the name and contact information for the attorney.
- iii. List the names and contact information for any witnesses the Applicant intends to call to testify at the hearing. Unless otherwise ordered by the Referee or by stipulation of the parties, any witnesses not identified by the Applicant on the certification shall be barred from testifying at the hearing.

#### C. Setting the Hearing Date

1. Within 30 days of the timely receipt of the Applicant's certification of documents and witnesses, the Fund's Counsel shall contact the Applicant or their attorney to select a mutually agreeable hearing date. The hearing date selected must be no later than 90 days after the filing of the Applicant's certification of documents and witnesses. If an Applicant fails to respond to SJCERA's reasonable requests to set a hearing date, SJCERA may either schedule a hearing date or notify the Applicant in writing that continued failure to confer on a hearing date may result in dismissal of the Application for noncompliance. If the Interested Parties cannot agree on a hearing date, either Interested Party may request a prehearing conference with the Presiding Judge of the Office of Administrative Hearings to set the hearing date.

#### D. Time and Place of Hearings

1. Unless the parties and the Referee agree otherwise, all hearings shall take place at the Retirement Office. When the date and time of the hearing are selected, SJCERA shall notify the parties and the Referee of the time and place of the hearing.
2. Unless the parties and the Referee agree otherwise, all hearings are deemed set for one full day, beginning at 9:30 a.m. Unless the parties and the Referee agree otherwise, hearings which are not completed by the end of the day shall be continued to the next agreeable hearing date which shall be no more than 30 days from the initial hearing date.

#### E. Prehearing Conferences

1. At the request of any Interested Party, a prehearing conference may be scheduled with the Referee for the purpose of resolving any evidentiary,

discovery and/or other prehearing disputes or issues. Prehearing conferences may be conducted personally or telephonically. Following the prehearing conference, the Referee may issue any orders relating to briefing, discovery, and/or the conduct of the hearing, including the final exchange of documents and witnesses.

2. Unless otherwise stipulated by the parties, a prehearing conference is mandatory in all cases where the Applicant is unrepresented by counsel.

#### F. Determining Issues

1. The Referee shall determine all issues presented by the Application by a preponderance of the evidence, including the following, if applicable:
  - a) Whether the Member was employed prior to January 1, 1981, and was required as a condition to such employment to execute a waiver for the alleged disability under Government Code Section 31009;
  - b) Whether the Member is disabled, that is, whether there is a substantial mental or physical incapacity to perform the Member's normal and usual employment duties ("incapacity");
  - c) Whether the incapacity is permanent;
  - d) Whether, for nonservice-connected disability, the Member has completed five (5) years of service;
  - e) Whether for a service-connected disability:
    - i. the incapacity is a result of injury or disease
    - ii. the injury or disease arose out of and in the course of the Member's employment; and
    - iii. the employment contributed substantially to the incapacity.
  - f) Whether, for Members described in Government Code Sections 31720.5, 31720.6, 31720.7 or 31720.9 alleging heart trouble, cancer, blood-borne infectious disease, or illness due to exposure to biochemical substances:
    - i. the Member has completed five (5) years of safety service, if required;
    - ii. the Member has the condition alleged;
    - iii. the Member is permanently incapacitated due to the condition alleged;
    - iv. the condition developed while a qualified Member of SJCERA;
    - v. and whether the presumption of the relevant Government Code Section has been rebutted

## G. Conduct of Hearing

1. A stenographic reporter shall record the proceedings of all hearings authorized by the Board at SJCERA's cost. Any transcription and copies shall be charged to the requesting Party. The hearing shall be considered closed to the public unless applicant asks for it to be in open session. The Referee shall mark for identification only, and not as evidence, all exhibits submitted by the parties, which should include:
  - a) the completed Application Packet;
  - b) the notice of hearing, with proof of service on the Applicant;
  - c) other documents required to be submitted by this policy including, without limitation, relevant medical reports, medical records, employment records, worker's compensation records, etc.
2. Hearing Process.
  - a) Each Party may make an opening statement.
  - b) Each other Party then shall present evidence, in the order determined by the Referee in accordance with each Party's burden of proof and burden of presenting evidence to establish such proof.
  - c) Each Party may cross-examine witnesses.
  - d) Rebuttal evidence may be presented.
  - e) Each Party may make oral closing arguments.
  - f) Upon the conclusion of all closing arguments, the Referee shall determine if all parties are ready to submit the matter for decision, and if so, or if the Referee otherwise orders for good cause, the Referee shall close the hearing and declare the matter submitted for decision.

## H. Stipulations

1. Nothing in these procedures may be construed as preventing the parties from stipulating to lesser time requirements than prescribed in these procedures. The Referee may, upon written notice and for good cause shown, lengthen or shorten the times specified in these procedures.

## **VIII. Rules of Evidence**

### A. Burden of Proof

1. The Applicant has the burden of proving by a preponderance of the evidence each affirmative issue on which the Application depends. In addition, if the Applicant seeks to assert one or more of the legislative presumptions afforded by the Government Code then the Applicant first

must establish their entitlement to invoke the asserted presumption by offering prima facie evidence of each foundational element required by the applicable Government Code section(s), and the presumption(s) so invoked shall be rebuttable as provided in the applicable section(s).

B. Evidence

1. Oral evidence shall be taken only on oath or affirmation. Unless expressly waived by an opposing Party, all written evidence shall be sworn to or given under penalty of perjury, subject to Subsection E, below.

C. Witnesses

1. Each Party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the Applicant or any other Party does not testify on that Party's own behalf, that Party may be called and examined as if under cross-examination under Evidence Code Section 776.

D. Refusal of Witness

1. Refusal by an Applicant or other Party to submit to examination or to answer relevant questions shall be grounds for considering those questions to be answered unfavorably to the refusing Party for the purpose of that hearing, and for denying the relief or benefits sought by the refusing Party.

E. Hearing Conduct

1. The hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

F. Certified Copies

1. Certified copies of the reports and records of any governmental agency, division or bureau, will be accepted as evidence in lieu of the original thereof.

G. Deposition Transcripts/Video Recordings

1. Any Party may offer, and the Referee shall receive into evidence, any relevant deposition transcript and/or video recording thereof if: (1) the deposition was taken in the manner provided by law or by stipulation of the Parties; and (2) at least twenty (20) calendar days before the hearing the offering Party delivered a copy of the transcript and/or video recording of the deposition to all Parties along with notice of intent to introduce same

into evidence. Nothing herein shall require or permit receiving into evidence any deposition testimony to which objection is properly raised if such testimony would be inadmissible were the witness present and testifying at the hearing. Deposition transcripts/video recordings shall be admissible notwithstanding that the deponent is available to testify. Depositions of experts, including medical experts, may be introduced in lieu of live testimony pursuant to Code of Civil Procedure Section 2025.620(d)

#### H. Written Medical Reports As Evidence

1. A written medical report bearing the signature of the medical witness shall be admissible in evidence as the author's direct testimony. Such medical reports shall not be inadmissible on the basis that they constitute hearsay. Each Party has the right to cross-examine the authors of medical reports pursuant to a subpoena issued and served in compliance with these procedures.

#### I. Subpoena Powers and Witness Fees

1. Subpoena powers shall be vested in the Board officers, the CEO and the Referee in accordance with Government Code Section 31535. Subpoenas shall be requested through the Fund's Counsel who shall transmit the request to SJCERA. Subpoenas issued shall be transmitted to the Party requesting the subpoena. The requesting Party shall have the sole responsibility for serving and enforcing the subpoena and for paying all costs associated with the subpoena.
2. A written motion to quash a subpoena may be made to the Referee on one or more of the following grounds, which shall be clearly and fully stated in the motion and supported by declarations under penalty of perjury:
  - a) Compliance will be unduly burdensome or against public policy.
  - b) The things subpoenaed are privileged by law.
  - c) The things subpoenaed are irrelevant or unnecessary to the proceedings.
  - d) The things subpoenaed have not been described with sufficient clarity to enable the witness to comply. Before it commences or continues with the proceeding, the Referee shall wholly or partially grant or deny the motion to quash.
3. The Party calling a witness to testify (whether by subpoena or otherwise) shall be solely responsible for paying any expert or nonexpert witness fees, mileage charges, and other costs associated with the witness' testimony. Non-expert witness fees and mileage charges shall be calculated as provided by law.

#### J. Service of Proposed Findings of Fact and Recommended Decision

1. Within 30 days after closing the hearing, the Referee will prepare a summary of the evidence received, findings of fact, conclusions of law, and a recommended decision. In accordance with the provisions of Government Code Section 31533, the findings of fact and proposed recommendation of the Referee shall be served on the CEO, who in turn shall distribute a copy to all parties.
2. Either Party may submit written objections to the Referee's recommended decision to SJCERA within ten (10) calendar days from the date SJCERA distributes the notice to all parties. The non-objecting Party may submit their response to the objections 10 days after the filing of the objections. The written objections and response shall be incorporated into the record submitted to the Referee's consideration.

**K. Board's Decision**

1. Upon receipt and review of the recommended decision of the Referee and any filed objections and responses, the Board may:
  - a.) Approve and adopt the recommended decision of the Referee, or
  - b.) Refer the Application to the Referee for further hearing and/or consideration, or
  - c.) Require a written transcript or summary of all testimony plus all other evidence received by the Referee to be submitted by the CEO to the Board. Following its receipt and review of the transcript and evidence, the Board shall:
    - i. Take action as is appropriate to the evidence and the provisions of the CERL, or
    - ii. Refer the matter back to the Referee with or without instruction for further proceedings; or
    - iii. Set the matter for hearing de novo before itself. The Board shall hear and decide the matter as if it had not been referred to the Referee. Unless otherwise allowed by the Board, the hearing shall be confined to the evidence, witnesses, and issues set forth in the certification and statement required by this policy. All hearings before the Board shall require the attendance of at least the same seven (7) members throughout the hearing and shall be conducted as if it were a hearing held before a Referee in accordance with this policy.

**IX. Final Decision**

- A. The Board's decision shall become final upon notice of the decision on all parties, including the employer.
- B. Judicial Review. In those cases where a Party or Applicant is entitled to judicial review of the proceedings before the Board, any petition for writ of mandate

shall be filed with the superior court within ninety (90) days from the date the notice of this Board's decision is mailed to the Party or Applicant or is delivered to the Party or Applicant.

**X. Law Prevails**

A. In the event a conflict between this policy and CERL, PEPRA, or other applicable statutes arises, the law shall prevail.

**XI. Policy Review**

A. Staff shall review this policy every three years to ensure that it remains relevant, appropriate, and in compliance. Any revisions or amendments to this policy must, be approved by the Board of Retirement in accordance with the bylaws. Effective upon adoption.

**XII. History**

- 3/1/2018 Bylaw Sections 8, 9, 10 & 11 Converted to Board Policy and Board of Supervisor approved Bylaws
- 06/28/2018 Staff updated format
- 08/10/2018 Modified the definitions of Applicant and Application to conform with SJCERA's adopted code sections
- 07/12/2019 Revised to include definitions, add requirements that an application must meet before being filed, allow the member to elect not to go to hearing, allow the use of depositions, clarify mileage reimbursement may be requested for out-of-county travel to SJCERA-scheduled examinations, and specify that SJCERA may determine an examination is not required in some cases.
- 7/10/2020 Amended to clarify the use of a Referee for hearings, the order of the prehearing and hearing process, subpoena options, and penalties for noncompliance.
- 07/14/2023 Updated to reflect current practices including non-Member Applicant role, travel reimbursement, deadline for Referee's recommended decision, and other minor clarifications.
- 01/12/2024 Updated to reflect new legislation adding additional presumptions.
- 07/16/2024 Amended to clarify applicant is allowed to have their hearing in open session instead of closed session.

**Certification of Board Adoption:**



Clerk of the Board

7/16/2024

Date