



City of Lacey, Washington LEOFF I Disability Board Meeting Agenda

Refer to the bottom of the agenda for meeting information.

Monday, August 28, 2023

9:00 AM

CM Large Conference Room and
Online

Call to Order

1. Roll Call

2. Approval of the Agenda

3. Approval of Meeting Minutes

- A. Meeting minutes from May 4, 2023
- B. Meeting minutes from July 13, 2023

4. Business Items

- A. Current policies mailed to all LEOFF 1 Members
- B. Review/Approval of LEOFF 1 claims
- C. Approval of updates to Section 5 of the City of Lacey LEOFF 1 policies
- D. Review/Update contact information for distribution to members

5. Other Business

- A. Public Comment

6. Adjourn

Attend Remote or In Person

The public may attend the meeting in person, or you may view or listen to the meeting using one of the following platforms:

- In Person: City Manager Large Conference Room at Lacey City Hall
420 College Street SE, Lacey, WA 98503
- Zoom: <https://us02web.zoom.us/j/86289315100>
- Website: <https://cityoflacey.org/government/public-meetings/>
- YouTube: <https://www.youtube.com/watch?v=UlrXscKECmA>
- Phone: (888) 788-0099 or (877) 853-5247 (Webinar ID 862 8931 5100)





LEOFF I DISABILITY BOARD
Meeting Minutes
Regularly Scheduled Meeting: In Person & Remote Attendance
Thursday, May 4, 2023 @12:15-1:45pm

MEMBERS PRESENT:

Bob Cecil, Police Representative
Michael Steadman, Council Member

STAFF PRESENT:

Jennifer Schaefer, Human Resources Recruitment & Wellness Coordinator | LEOFF I HR Liaison

CALL TO ORDER:

HR Representative Schaefer welcomed everyone to the May 4, 2023 **LEOFF I Disability Board**. The meeting was called to order at 12:15pm.

Police Representative Cecil, Council Member Steadman and LEOFF I HR Liaison Schaefer were present for the meeting.

HR Representative Schaefer noted that there was not a quorum.

Public Comment: None.

LEOFF I HR LIAISON SCHAFFER ADJOURNED THE MEETING @12:24 PM



LEOFF I DISABILITY BOARD
Meeting Minutes
Regularly Scheduled Meeting: In Person & Remote Attendance
Thursday, July 13, 2023 @12:15-1:45pm

MEMBERS PRESENT:

Bob Cecil, Police Representative
Larry Greenstein, Chair
Ed Sorger, Police Representative

STAFF PRESENT:

Jennifer Schaefer, Human Resources Recruitment & Wellness Coordinator | LEOFF I HR Liaison
Leialani Su'e | HR Director

CALL TO ORDER:

Chair Greenstein welcomed everyone to the July 13, 2023 **LEOFF I Disability Board**. The meeting was called to order at 12:15pm.

Police Representative Cecil, Chair Greenstein, Police Representative Sorger, LEOFF I HR Liaison Schaefer, and HR Director Jensen were present for the meeting.

AMENDMENT OF AGENDA ITEMS:

Chair Greenstein proposed an amendment to the agenda to fill the vacant Member-At-Large position on the board.

Police Representative Cecil made a motion to approve the amendment. Police Representative Sorger seconded. The motion passed unanimously.

APPROVAL OF AGENDA ITEMS:

Chair Greenstein called for a motion to approve the agenda. Police Representative Sorger made a motion to approve the agenda; Police Representative Sorger seconded. The agenda passed unanimously.

APPROVAL OF MEETING MINUTES FROM January 12, 2023:

Chair Greenstein asked if everyone had a chance to review the meeting minutes from January 12, 2023 and requested if any changes should be made. Police Representative Sorger made a motion to approve the meeting minutes; Police representative Cecil seconded. The motion passed unanimously.

REPORT/REVIEW OF CLAIMS PENDING APPROVAL:

LEOFF I HR Liaison Schaefer presented charges for board review \$6,500.00 for hearing aides. The member provided medical documentation supporting need.

Police Representative Cecil made a motion to approve the charges. Police Representative Sorger seconded. The motion passed unanimously.

LEOFF I HR Liaison Schaefer presented charges for board review \$6,800.00 for hearing aides. The member provided medical documentation supporting need.

Police Representative Cecil made a motion to approve the charges. Police Representative Sorger seconded. The



motion passed unanimously.

Police representative Sorger noted that some situations require appointments with an audiologist and that the RCW requires that we can suggest going through insurance, but the board can only recommend.

REPORT OF CLAIMS APPROVED BY HR LIAISON:

HR Liaison Schaefer approved charges for a member for a total of \$589.50 for a dental reimbursement.

HR Liaison Schaefer approved charges for \$1,440.13 for medical reimbursement.

HR Liaison Schaefer approved charges for \$720.00 for massage therapy reimbursement.

HR Liaison Schaefer approved charges for \$249.00 dental reimbursement.

HR Liaison Schaefer approved charges for \$720.00 for massage. This was a re-submittal.

HR Liaison Schaefer approved charges for \$432.00 dental reimbursement.

HR Liaison Schaefer approved charges for \$115.00 dental reimbursement.

HR Liaison Schaefer approved charges for \$960.00 massage therapy reimbursement.

HR Liaison Schaefer approved charges for \$496.60 vision reimbursement.

HR Liaison Schaefer approved charges for \$992.00 massage therapy reimbursement.

HR Liaison Schaefer approved charges for \$530.00 reimbursement for the WASLEA Conference.

HR Liaison Schaefer approved charges for \$1,089.84 for travel reimbursement for travel accommodations for the WASLEA Conference.

HR Liaison Schaefer approved charges for \$3,000.00 for a vision reimbursement.

Chair Greenstein asked if the board had any questions regarding the claims that were approved by HR Liaison Schaefer. The board had no questions.

NEW BUSINESS:

- ✓ Recommendation of appointment of Ed Pole as Member-At-Large.

Chair Greenstein interviewed Ed Pole and requested the board consider appointment as the Member-At-Large.

Chair Green made a motion to approve appointment of Ed Pole as the Member-At-Large. Police Representative Sorger seconded. The motion passed unanimously.



BOARD DISCUSSION:

HR Director Su'e proposed calling a Specially Called meeting in August to review:

- ✓ The vote and appointment of a board meeting.
- ✓ Approve final policy updates proposed by the board at January meeting.

Public Comment: None.

CHAIR GREENSTEIN ADJOURNED THE MEETING @12:32 PM



LEOFF I DISABILITY BOARD POLICIES AND PROCEDURES

RULE I: GENERAL ADMINISTRATION AND OFFICERS

Section 1: Purpose

The policies and procedures contained herein apply to all LEOFF I members currently employed by or retired from the City of Lacey and are promulgated for the purpose of:

- A. Establishing the general operation procedure and reducing to writing the administrative policies of the Disability Board.
- B. Making available to local LEOFF I members and the general public information relating to the uniform manner, methods and standards for processing all types of claims under the LEOFF system and providing consistency and uniformity in dealing with individual members.
- C. Recognizing that conditions may exist or come into existence which are not properly encompassed by guidelines and reserving the right to properly deal with such situations, even if inconsistent with these guidelines.

Section 2: Definitions

- A. Disability Board, hereafter referred to as the Board, means the City of Lacey Disability Board Provided for in RCW 41.26.110
- B. Medical Services include:
 - 1. Those items listed in RCW 41.26.030(19).
 - 2. Nonprescription drugs prescribed by the member's physician.
 - 3. Psychiatric services provided by psychiatrists licensed under RCW 18.71.
 - 4. Counseling services when the member is mentally disabled and such condition substantially interferes with his/her job performance.
 - 5. Sterilization.
- C. Application means either disability retirement or leave application unless one is specifically intended.
- D. "Days" means whenever a number of days are mentioned herein, it shall mean working days or days that Lacey City Hall is open for business.

- E. “Substantial evidence” is sufficient evidence to persuade a fair-minded, rational person of the truth of a declared premise.
- F. “Disabled” or “disability” means the existence of a physical or mental condition which renders the member unable to discharge with average efficiency the duty of the grade or rank to which the member belongs, or the position in which the member is serving. Provided, that no member shall be entitled to a disability retirement allowance if there is an available position to which one of such grade or rank is normally assigned and the duties of which the member can perform.
- G. “In line of duty” means injury, sickness or illness in consequence or as a result of the performance of the applicant’s duties.

Section 3: Composition of the Board

The composition of the Board shall be provided by RCW 41.26.110 (a) as follows:

- A. Two members of the City Council appointed by the mayor.
- B. Two active or retired law enforcement officer to be elected by the law enforcement officers employed by or retired from the City.
- C. One member from the public at large who resides within the city to be appointed by the other three members.

Each member shall serve a two (2) year term except when an individual is appointed to the remainder of an unexpired term, he/she shall serve for the remainder for the unexpired term.

Section 4: Disability Board Officers

- A. The elective officers of the Board shall consist of a Chairperson and a Chairperson Pro Tem. The Personnel Director shall select and appoint a qualified individual to act as Secretary to the Board.
- B. Nomination of elective officers shall be made from the floor at the annual election meeting which shall be held at the regular meeting in January of each year. The election shall follow immediately thereafter. A nominee receiving a majority vote of those present at the election meeting shall be declared elected.
- C. The elective officers shall take office at the regular meeting after the election and shall serve for a term of one year.
- D. Vacancies in elective offices shall be filled immediately by regular election procedure for the unexpired portion of the term.
- E. Duties of Officers:
 1. Chairperson – the Chairperson shall preside at all meetings and public and/or disability hearings of the Disability Board and call special meetings. The Chairperson shall have the privilege of discussing all matters before the Board and voting thereon except where to do so would constitute violation of an appearance of a fairness doctrine or a conflict of interest. He/she shall

have all the duties normally conferred by parliamentary procedures on such officers and shall perform such other duties as may be requested by the Disability Board.

2. Chairperson Pro Tem – The Chairperson Pro Tem shall assume the duties and powers of the Chairperson in his/her absence. If the Chairperson and Chairperson Pro Tem are both absent, the Disability Board members may elect a temporary Chairperson by a majority vote of those present at a regular, adjourned or special meeting, who shall assume the duties and powers of the Chairperson and Chairperson Pro Tem during their absence.
3. Secretary – The Secretary shall keep the minutes of all regular, adjourned and special meetings of the Disability Board; such minutes shall be approved by the Board and copies shall be distributed to all members of the Board, Chief of Police, and distribution list as maintained by the Secretary. The Secretary shall give notice of all regular and special meetings to the Board members, post all notices of adjournment or continuance of meetings and public and/or disability hearings, and shall draft and sign routine correspondence of the Board. The Secretary shall maintain a file of all rules, findings, orders, recommendations and all other official records of the Disability Board.

Section 5: Meetings

- A. **The regular monthly meeting of the Disability Board of the City of Lacey shall be held on the second Thursday of each quarter in City Hall or virtually at 12:15 p.m.** In the event the second Thursday is a holiday, the meeting shall be on the next working day. Regular meetings may be cancelled by the Secretary if no imminent action is required of the Board. Special meetings of the Board shall be held upon the call of the Chairperson, of which notice shall be give in accordance with RCW 42.30. All meetings shall be open to the public. Provided, however, that pursuant to RCW 42.30.140(2), the Board reserves the right to close those portions of meetings in which the Board is deliberating upon quasi-judicial matters relating to specific requests for benefits, where the Board finds that such deliberations might be expected to include discussion of sensitive personal information relating to a particular applicant.
- B. Medical evaluation reports relating to specific members shall not be distributed to the public or media, and in the event specific requests are made for such reports pursuant to Chapter 42.17 RCW (public disclosure law), the City Attorney shall determine whether or not such document is exempt from disclosure and, if not, whether a court injunction should be sought to enjoin such distribution pursuant to Chapter 42.14 RCW.
- C. At no time shall the media be authorized to videotape or tape record portions of Disability Board meetings unless specifically authorized by the Board.
- D. Three (3) members shall constitute a quorum and the same shall have the power to transact all business. Each Board member is expected to notify the Chairperson or Secretary three (3) working days prior to a scheduled meeting if that member will be unable to attend the meeting. Such notice will serve to establish such absence as excused.
- E. An agenda shall be prepared by the Secretary and mailed to the members on the Friday preceding each regular monthly meeting. The order of business on the agenda shall be as follows:
 1. Approval of Minutes

2. Approval of Claims.
 3. Hearings.
 4. New Business.
- F. "Robert's Rules of Order" shall guide the Board where the proceedings are not otherwise governed by rules of state law.

Section 6: Policies and Procedures

- A. All personnel covered by the City of Lacey LEOFF Disability Board shall be subject to the policies and procedures contained herein to the extent consistent with applicable state statutory provisions and shall at all times follow the procedures contained herein. If any of the policies or procedures conflict with state law, the latter shall govern.
- B. Upon adoption of these rules, each member of the Police Department who is covered under LEOFF shall be provided a copy of these rules, and it shall be the responsibility of the Chief to document each member's receipt of such rules. Any new employee who is covered under the LEOFF system shall be provided with a copy of these rules when they start their employ; provided, however, that failure of a member to receive a copy of these rules shall not invalidate any decision by the Board.
- C. Whenever the Board is considering amendments to these rules, the proposed amendment shall be posted on the bulletin board in the Police Department for fourteen (14) calendar days prior to adoption and a copy shall be sent to the City Attorney for comment. Employees who wish to submit comments or suggestions to the Board concerning adoption of the proposed rule may do so by submitting their comments in writing to the Secretary of the Disability Board prior to the meeting at which the amendments are scheduled to be considered. After consideration of any written comments or suggestions, the Board may proceed to adopt the rules at the meeting.
- D. If any person(s) on the Board concludes that he/she has a conflict of interest or an appearance of fairness problem with respect to a matter pending before the Board so that he/she cannot discharge his/her duties, he/she shall disqualify himself/herself from participating in the deliberations and the decision making process with respect to the matter.
- E. The City Attorney shall be the legal counsel of the Board. Legal counsel shall provide written opinions when required by the Board or any member thereof touching any subject the Board may be required to act upon.

RULE II: MEDICAL SERVICES

Section 1: Payment for Medical Services

Whenever any active member, member on disability leave or member retired for service or disability requires medical services, such services shall be paid for by the employer, subject to approval by the Disability Board. Only those medical services which are deemed necessary shall be approved, unless the Board finds the condition which has caused the need for such medical services was caused or brought on by dissipation or abuse. Determinations of dissipation or abuse and the necessity of such medical services shall be determined by the Board after considering the medical evaluation of the Board's appointed physician, together with any other

relevant evidence. Applications to the Board for medical services shall be approved by the Board prior to the receipt of services except in extraordinary circumstances. Medical services payable by insurance provided by an employer pursuant to RCW 41.26.150 shall not be subject to approval by the Board. In the event the member has obtained medical services without obtaining prior approval of the Board, the Board may authorize payment upon filing of such claim by the applicant.

Medical services payable shall be reduced by any amount received or eligible to be received under workers' compensation, Medicare, insurance provided by another employer, other pension plan, or other similar source. In the event any alternative source of payment is available, it shall be incumbent upon the requesting member to apprise the Board of such source, if known to the member, and failure to do so may result in a loss of medical benefits. It shall be the policy of the board to seek repayment from other sources.

The board delegates approval of medical claims to the City's HR LEOFF I Liaison up to \$3,000 in between regularly scheduled board meetings. Any claims that stand out as unusual requests that appear to be questionable in nature will be brought to the board for consideration further consideration.

Section 2: Disability Board Physician or Chiropractor

A duly licensed and practicing physician shall be appointed by the Board. The Board doctor shall perform or supervise all re-entry examinations and all examinations on claims for disability retirement after obtaining the report of any necessary specialist. No disability retirement shall be approved by the Board without prior examination of the claimant by the Board doctor or a specialist of the Board doctor's selection, on or near the expiration of the disability leave period. The doctor shall render such other medical service as may be requested by the Board.

A duly licensed and practicing chiropractor shall be appointed by the Board and will work in conjunction with the Board physician.

In order to carry out the duties of this position, each Board doctor is required to be knowledgeable concerning the duties, functions and general demands required of the employee being examined; provided, that the Disability Board shall furnish the examining physician the job and/or position description of the applicant.

Section 3: Dental Provision

Includes \$3,000 annually to include payment of dental premiums per year and routine dental services such as exams and up to 2 cleanings per year, fillings and crowns up to the annual amount of \$2,000 by submitting the LEOFF claim reimbursement form and associated documentation and payment receipt for reimbursement. For dental work exceeding \$3,000, the member will submit the Claim Form, along with a treatment plan from the dentist, to be approved by the LEOFF Board prior to the work being done. Once the board has approved the work, the member will be notified to proceed with the treatment. The Board retains its authority to use its discretion in determining whether dental and orthodontic treatment should be approved for payment as a medical expense under all the facts and circumstances of a given case.

Section 4: Denture Provision

Member is required to submit two quotes from dentist/licensed denturists. Dentures (full/partial) will be reimbursed at 100% of lowest quote. LEOFF Board approval must be obtained prior to receiving services.

Section 5: Long Term Care

The LEOFF statute provides that a LEOFF 1 member is entitled to reimbursement for the medically “reasonable charges” incurred for Long Term Care (LTC) that are not otherwise covered by Medicare, insurance or any similar source.

If medically possible, the Board prefers to pay for in-home care rather than nursing home care.

Home Based Care, Assisted Living or Group Home Care for members who are unable to perform two or more ADLs (Activities or Daily Living) is deemed superior alternatives to Nursing Home Care as long as it is practical and effective.

The Board reserved the right to have an independent assessment agency evaluate the member’s home based care needs. The Board also reserves the right to approve or deny home health care reimbursement based upon the findings of the independent assessment agency.

LTC Definitions:

1) Homemaker Services: Service providing help with house hold tasks that cannot be managed alone. Homemaker services include “hands-off” care such as cooking, cleaning and running errands.

2) Home Health Aide Services: Home health aides offer services to people who need more extensive care. It is “hands-on” personal care, but not medical care. This is the rate charged by a non-Medicare certified, licensed agency and includes respite care.

3) Adult Day Health Care: Provides social and support services in a community-based, protective setting. Various models are designed to offer socialization, supervision and structured activities. Some programs may provide personal care, transportation, medical management and meals.

4) Assisted Living Facility (ALF): Residential arrangements providing personal care and health services. The level of care may not be as extensive as that of a nursing home, or an intermediate level of long-term care and includes Boarding Houses and Continuing Care Retirement Communities at the Assisted Living Level.

5) Nursing Home Care: These facilities often provide a higher level of supervision and care than Assisted Living Facilities. They offer residents personal care assistance, room and board, supervision, medication, therapies and rehabilitation, and on-site nursing care 24 hours a day. This includes Adult Family Homes, Hospice Care, Alzheimer Care and Continuing Care Retirement Community at the Nursing Home Level.

Section 5: Exceptions to Board Physicians

In the event the applicant or retiree is residing at a location more than 100 miles from Thurston County, he/she shall be authorized to be examined by a physician or chiropractor in his/her immediate area; provided, however, such physician or chiropractor shall be first approved by the Disability Board and prior to such evaluation, the examining physician or chiropractor shall be appraised of the basis upon which the examination is to be conducted and the issues to be addressed within his evaluation report.

Section 4: Submittal of Claims for Medical Services

All claims must be accompanied by:

- A. A medical and /or prescription claim form containing the doctor's name, nature of illness, date(s) of service, amount billed, amount paid by insurance and balance due (see Appendix A).
- B. Doctor's billing statement indicating date(s) of service, reason for service, and total charges.
- C. Any insurance worksheets where the claimant is entitled to reimbursement from any insurance source.

RULE III: DISABILITY RETIREMENT AND LEAVE

Section 1: Retirement for Disability

Retirement of a police officer for disability shall be as provided by RCW 41.26 or such prior act of which the police officer was making retirement contributions on March 1, 1970, as he/she elect.

Section 2: Leave for Disability

Disability leave shall be granted by the Board as provided by RCW 41.26 and these rules. An application for disability leave shall be deemed to have been "filed" upon submission of a complete application in accordance with these rules and RCW 41.26 to the Secretary of the Disability Board for disability leave. All applications for disability leave shall be reviewed at the next regular Disability Board meeting. In the event any application for disability leave is disapproved by the Disability Board, retroactive adjustments shall be made to comply with the Board's decision except where annual sick leave was taken by the individual.

Section 3: Application for Disability Leave or Retirement

Whenever an employee wishes to apply for disability retirement, he/she shall make application by submitting the following to the Disability Board Secretary:

- A. Disability retirement or leave application form as provided by the Board (see Appendix B).
- B. Statement from the Board physician.
- C. An employer's statement and report on the employee's claimed disability (see Appendix C.)
- D. If the applicant is claiming the disability was incurred in the line of duty, a written statement outlining in detail the circumstances.
- E. In addition, an examination may be required by a physician designated by the Board.

The Board physician shall review the application, submitted medical reports, and findings and submit a report to the Secretary reporting his/her findings. Upon receipt of the Board physician's report, the Secretary shall place the application on the agenda for the Board's next meeting.

Section 4: Notice to Applicant and Opportunity to be Heard

The Secretary shall give the applicant five (5) days written notice of the date of the meeting at which his application will be discussed.

The applicant and/or his/her attorney will be permitted to appear at the meeting at which the Board considers his/her application. The application shall be considered in accordance with the rules set out in Rule IV.

Section 5: Consideration of Application by the Board

- A. At the meeting, the Board shall review all relevant information pertaining to the question of the applicants' fitness for duty. If, in the opinion of the majority of the Board members present, substantial evidence supports the conclusion that the applicant is unfit for duty, and that his/her disability has been continuous from the end of service, such member shall be granted disability leave or retirement and shall be separated from active service. In the event a regular meeting of the Board proceeds by no more than 40 days, the date at which the full six months will conclude and the evidence is clear that the disability can be expected to continue through the full six month period, the Board may make a finding of six months continuous disability prior to the actual conclusion of the six month period, so as to eliminate unnecessary delay of receipt of retirement benefits.
- B. In considering the application, the Board shall consider the nature of regular work assignments consistent with the applicant's position description, the evaluation of the Board physician, if any, and any other evidence the Board deems relevant.
- C. In the event the Board finds that insufficient evidence or information is available to make a determination, the matter shall be continued to the next regular Board meeting or be set for consideration at a special meeting.

The Board shall advise the Board Secretary of what additional information is desired by the Board. The Secretary shall notify the applicant by certified letter or personal service of his/her obligation to provide additional information and the date by which the information must be provided to the Board.

- D. Applicants for disability retirement will be re-examined during the fifth or sixth month of disability leave in order to determine their eligibility for disability retirement, except in conditions where the medical authority assures the Board that the applicant's condition has not and will not be corrected before the end of the sixth month. No applicant will be granted a disability retirement allowance unless the conditions imposed by this section are met.
- E. If the Board concludes that the applicant is not disabled or that the disability has not been continuous, since discontinuance of service, the Board shall enter a written decision denying disability leave or retirement.

Section 6: Finding of Duty Incurred Disability

In the event an applicant for disability leave or retirement alleges that the disability was incurred in the line of duty, the Board shall not rule that the injury was incurred in the line of duty unless the applicant has complied with Section 3(d) of Rule III and the applicant has demonstrated by a preponderance of the evidence that the disability was incurred in the line of duty. The Board shall require the Board physician to render a medical opinion relating to the cause of disability.

Section 7: Method and Form of Decision

- A. Hearing Before the Board: In a hearing before the Board, no member thereof who has not heard the evidence or who has not read the entire record of the proceedings shall vote on or take part in the decision.

- B. Form of Decision: The decision shall be in writing and shall contain findings of fact supported by substantial evidence, which represents the official determination of the Board and specify the reason for the determination, conclusions and the order of the board denying or granting leave or retirement and shall contain the following presented in clear and concise terms:
 - 1. Whether or not the disability was incurred in the line of duty.
 - 2. Whether incurred in other employment, if applicable.
 - 3. Dates encompassing disability leave and/or dates relating to approved or authorized trial basis return to duty. Further, when utilizing return to duty on a trial basis, the factual basis for such decision.
 - 4. Dates encompassing waiver of disability leave, if applicable.
 - 5. That applicant established that such disability will be in existence for a period of six months.

- C. A copy of the decision shall be delivered to the applicant personally or sent to him/her by certified mail, postage prepaid, return receipt requested. Copies shall also be mailed or delivered to:
 - 1. Police Chief
 - 2. City Attorney
 - 3. Applicants attorney, if any
 - 4. State Retirement Board

Section 8: Date of Commencement of Disability

In general, the Board may set the date of commencement of the disability retroactively to the date a proper application is made or prior to said application if the member is reasonably unable to immediately apply as a result of the disability but makes application as soon thereafter as he/she is able.

Section 9: Reexamination and Return to Duty

In the event a member is placed on retirement, the Board shall determine whether or not the member is so disabled that no possibility exists for return to duty or that there is no possibility that rehabilitation could restore the member to fitness for duty. In making such determination, the Board shall take into account the proximity of the member's age to 50 years of age. In the event the Board finds that re-examination is needed, it shall be incumbent upon the Board's representative to order such re-examination and advise the Board of the results thereof. In the event the retired member is residing at a location more than 100 miles from his former place of employment, the member may be authorized to be examined by a physician in his immediate area,

provided, however, such physician shall be first approved by the Board and prior to such evaluation the examining physician shall be appraised of the basis upon which the examination is to be conducted and the issues to be addressed within his evaluation report. After examination, the Board Physician shall submit a report summarizing his findings to the Board for their review.

In the event a medical evaluation or other relevant evidence indicates that a member on disability leave or retirement is fit to perform the duties of the rank, the member shall be brought before the Disability Board for a hearing and further consideration. Notice to the member shall be given in accordance with Rule II, Section 5. The hearing shall be held in accordance with Rule IV. In the event such evaluation discloses fitness to perform all of the duties of the rank or position held by the member at the time of disability retirement, the member shall be brought before the Board for hearing and further consideration of the matter. Such member shall receive notice of such hearing and the hearing shall comply with the Administrative Procedure Act, Chapter 34.05 RCW.

NOTE: The hearing required by RCW 41.26.140(2) must be held, unless the retiree waives such hearing, prior to actual cancellation of a disability retirement allowance.

The retirement allowance of any member who fails to submit to medical examination as provided above shall be discontinued and in the event such refusal continues for (1) year, his/her retirement allowance shall be cancelled. Failure of the member to affirmatively respond to the request for re-examination shall be deemed a continuing refusal.

Section 10: Obligations of Members While on Disability Leave

- A. **Return to Active Service:** It shall be incumbent upon all employees granted disability leave pursuant to RCW 41.26 to seek authorization to return to work at the earliest possible time he/she believes he/she is fit for duty. In the event the Board finds that a member has not actively sought authorization to return to active service immediately upon cessation of disability, the Board shall have the authority to retroactively set the date of return to service and cancel the member's disability allowance for the period in question.
- B. **Members Cooperation in Board Evaluation:** While on disability leave, the member shall be obliged, upon possible penalty of loss of benefits, to comply with all lawful directives of the Board, including but not limited to requests for medical and psychological evaluation, submission of other relevant reports, and order to appear before the Board. In the event a member fails to comply with such requests, the Board shall make a finding as to whether compliance was within the control of the member, and upon an affirmative finding, may discontinue the member's disability benefits as deemed appropriate. Such a discontinuance of disability benefits shall not be deemed a termination of disability leave, but rather a suspension of benefits and shall be counted as a portion of the six (6) months disability period, for the purposed of fixing the date of commencement of disability retirement.

Upon reinstatement of disability leave, it shall be presumed that the disability was continuous for the period of suspension, unless the member returned to active service during the suspension of benefits.

- C. **Activities of Members While on Disability Leave:**
 - 1. A member who engages in any employment while on disability leave and incurs any injury or illness as a result thereof may needlessly confound the issue of whether or not his disabling condition was incurred in the line of duty. No member should engage in any activity while on

disability leave which is contrary to the directives of the disability Board or which would otherwise be detrimental to his/her return to active service

2. If a member in receipt of disability leave allowance moves of his/her own volition, any travel expenses incurred to appear before the Board or its designated physician shall be borne by the member. Such member shall keep the Board advised of his/her current address.
- D. **Obligation to Comply with Rehabilitation Directives:** During the period of disability leave, the Board shall have the authority to inquire of any examining physician as to what physical, medicinal or therapeutic treatments might be employed to rehabilitate the applicant and based upon such evaluation may request that the applicant participate in rehabilitation.
- E. **Falsification:** All applications and other documents filed in connection with disability retirement or disability leave must be accurate and truthful. RCW 41.26.062 provides as follows:

“Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, shall be guilty of a felony.”

Section 11: Conditional Return to Duty

Authorization to return to work may be issued by written order of the Board or a Board approved physician, if such authorization is documented with the representative of the Board and the Board has delegated this authority. In the event the medical evidence is inconclusive, the Board may specify in written order a reasonable trial period to determine the member’s fitness for active duty. The reasonable length of such conditional return to service shall be supported by medical evidence. Such a conditional return to service does not entitle the member to a second six-month period of disability leave for the same disability, if based upon this trial period of service, he/she is then found to be still disabled.

RULE IV: HEARING PROCEDURES

Whenever the Board holds a hearing pursuant to these rules or RCW 41.26, the following rules shall govern the general conduct of such hearing.

Section 1: Subpoenas

- A. **Filing of Affidavits:** Upon request by a member of the Board, the legal advisor, the Board physician, or the member applying for retirement, the Board may order the issuance and service of a subpoena for the attendance of witnesses. The issuance and service of such subpoena may be obtained upon the filing of an affidavit therefore, which:
 1. States the name and address of the proposed witness
 2. Specifies the nature of the evidence sought and the material thereof to be issued involved; and
 3. States that the witness has the desired evidence in his/her possession or under his/her control.

The board may refuse to issue a subpoena when the affidavit is defective or incomplete in any particular. The Board’s secretary is authorized to sign the subpoena for the Board Chairperson.

- B. Failure to Attend: Any person who refused without lawful excuse to attend any hearing or to produce material evidence in her/his possession or under her/his control as required by a subpoena issued by the Board and served upon such person as provided for herein shall be guilty of a misdemeanor.
- C. Service of Subpoena: Any subpoena issued by the Board shall be in the manner provided for any civil suit according to the Washington Court rules.

Section C: General Procedure for Conduct of Hearings

- A. Submission of Briefs: The member applying for retirement may submit a brief of evidence in support of his/her application. The brief must be submitted to the Board's Secretary three (3) working days prior to the hearing.
- B. Record: A record of the entire proceeding shall be made by tape recording. Such tape recording shall be preserved for a period of two (2) years by the Board's Secretary. The cost of any reproduction of the tape shall be paid by the requesting party unless requested by the Board.
- C. Continuances: The Board may grant continuances for good cause. Good cause is to be determined by the Board.
- D. Oaths—Certification: In any proceeding under the Board's rules, any member of the Board may administer the oaths and affirmations and certify to official acts.
- E. Reasonable Dispatch: The Board and its members shall proceed with reasonable dispatch to conclude any matter before it.
- F. Rules of Evidence: Hearings need not be conducted according to the technical rules relating to evidence and witness.
- G. Oral Evidence: Oral evidence shall be taken only on oath or affirmation.
- H. Hearsay Evidence: 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 in courts of competent jurisdiction in this state.
- I. Admissibility of Evidence: Any relevant evidence shall be admitted if it is the type 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 rules which might make improper the admission of such evidence over the objection in civil action in a court of competent jurisdiction in this state.
- J. Exclusion of Evidence: Irrelevant and unduly repetitious evidence may be excluded by the Board.
- K. Rights of the Applicant Member: The member applying for retirement shall have these rights, among others:
 - 1. Call and examine witnesses on any matters relevant to the issues presented in the hearing.
 - 2. Introduce documentary and physical evidence.

3. Cross examine witness on any matter relevant to the issues of the hearing.
4. Impeach any witness regardless of who called her/him to testify.
5. Rebut the evidence against her/him.
6. To represent her/himself or to be represented by legal counsel.

L. Presentation of Testimony

1. Order of Presentation of Testimony: The applicant member, who bears the burden of proof, shall present her/his evidence first. Then other witnesses may testify as directed by the Board. After any witness concludes his/her testimony, the Board may direct questions to the witness.
2. Closing Statement: After presentation of all testimony and evidence, the applicant member or her/his representative shall be allowed to make a summarizing statement. The Board may impose a reasonable time limit on such a statement, but a minimum of fifteen (15) minutes shall be allowed.

M. Official Notice

1. What May Be Noticed: In reaching a decision, official notice may be taken either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the Board or departments and ordinances of the City or rules and regulations of the Board.
2. Applicant Member to be Notified: The applicant member, if present at the hearing, shall be informed of the matters to be noticed by the Board, and these matters shall be noted in the record, referred to therein, or appended thereto.
3. Opportunity to Refute: Any applicant member or her/his representative, if present at the hearing, shall be given a reasonable opportunity, upon request, to refute the officially noticed matters by evidence or by written oral presentation of authority, the manner of such refutation to be determined by the Board.

RULE V: RECONSIDERATION OF BOARD DECISION

Any party aggrieved by a decision of the Board may request the Board to reconsider its action by filing a written request with the Board's Secretary for reconsideration within fifteen (15) days of the decision of the Board. The request for reconsideration shall set forth a concise statement of the facts or errors upon which the request for reconsideration is based. The Board may direct that a copy of the request for reconsideration be mailed to other interested parties at least three (3) days prior to any Board meeting to consider the request.

For issues involving reimbursement of medical services¹:

¹ Matters of disability leave, retirement, and/or cancellation of retirement benefits may be appealed to the Director of the LEOFF retirement system if notice of appeal is filed within 30 days following the Board's decision on reconsideration.

May request the Board to reconsider by filing a written request with the Board's Secretary for reconsideration within fifteen (15) days of the decision of the Board. The request for reconsideration shall set forth a concise statement of the facts or errors upon which the request for reconsideration is based.

Following Board Action

If not satisfied with Board decision, the member's next step would be to apply to superior court for a review of the Board's decision per RCW 7.16.040.

RULE VI: APPEAL FROM DECISION OF THE BOARD

If the Board denies disability leave or disability retirement or cancels a previously granted disability retirement, the applicant shall be immediately notified in writing and advised of the right to appeal such decision or order to the State LEOFF Board, pursuant to RCW 41.26.200. Such notification it to be reflected in the Board records.

RULE VII: SEVERABILITY

The provisions of these rules are, hereby, declared to be severable. If any section, subsection, sentence, clause or phrase of these rules or their application to any person or circumstance is for any reason held to invalid or unconstitutional, the remainder of these rules shall not as a result of said section, subsection, sentence, clause or phrase be held unconstitutional or invalid.

ADOPTED:

EFFECTIVE: