

AUSTIN FIRE FIGHTERS RELIEF AND RETIREMENT FUND

DISABILITY RETIREMENT BENEFIT POLICY

Effective August 26, 2019

PART 1: OBJECTIVES

Under Article 6243e.1, Vernon's Texas Civil Statutes (the "*Act*"), the Legislature has given the Board of Trustees of the Fund (the "*Board*") broad discretion to make certain determinations in connection with disability retirement benefits provided under the Fund, as well as establish rules and procedures with respect to the administration of the Fund. The Board has determined that it is in the best interest of the Fund and its Members to set forth in writing a policy statement that provides guidelines and parameters around the Board's exercise of discretion in connection with disability retirement benefits.

By adopting this Disability Retirement Benefit Policy (this "*Policy*"), the Board intends that the guidelines set forth in this Policy will be consistently applied by the Board, the Medical Board, and the Fund's administrative staff, as applicable, to each disability retirement and the entire disability retirement process. Notwithstanding the previous sentence, the Board acknowledges that each application for a disability retirement, or subsequent review thereof, will be evaluated on a case-by-case basis, and all determinations will be made based on the merits of each case.

Subject to the requirements set forth in Section XI of the Fund's rules, the Board may amend this Policy from time to time in its sole and absolute discretion, including without limitation, an amendment to comply with changes in the Act or other applicable law or to ensure efficient administration of the Fund.

All references to sections herein shall refer to sections of this Policy, unless otherwise specifically stated. Any capitalized term that is not defined herein shall have the meaning of such term as defined in the Act.

PART 2: MEDICAL BOARD

§2.01. Purpose, Composition, and Structure.

(a) *Purpose of Medical Board.* The Board has been granted the authority under the Act to designate a medical board (the "*Medical Board*"). The primary function of the Medical Board is to advise the Board with respect to the merits of a claim for disability retirement based on the Medical Board's professional experience.

(b) *Designation of Members.* The Board will designate three (3) persons to serve on the Medical Board with respect to any single claim, or for certain types of claims, for disability retirement benefits. The persons designated to serve on the Medical Board need not be the same for each claim and may differ depending on the nature of the disability under review. The Board will take reasonable efforts to ensure that the Medical Board has sufficient professional expertise in the field related to the nature of the injury or disability. Specifically, the Board may appoint individuals to serve on the Medical Board with expertise related to a mental or psychological

disability. The Board may establish a list of approved professionals to choose from in selecting members for the Medical Board for a particular claim.

(c) *Eligibility Requirements.* The Board may designate physicians or persons other than physicians to serve on the Medical Board. Any physician who is selected to serve on the Medical Board must be licensed to practice medicine in the state of Texas and in good standing with all applicable regulatory and oversight bodies of the medical profession. Any person who is not a physician and is selected to serve on the Medical Board must be a specialist in the field of practice related to the nature of the injury or disability under consideration and licensed by the state of Texas or other applicable oversight body in such field of practice (i.e., a psychologist, vocational counselor, etc.).

(d) *Governance.* The Board may approve a charter or other governing procedures that the Medical Board must comply with in performing its duties under the Act or this Policy.

§2.02. Responsibilities of the Medical Board.

Pursuant to Section 12.05 of the Act, in connection with each application for disability retirement submitted to the Fund or any subsequent review of a disability retirement under Part 5 of this Policy, the Medical Board shall:

(a) review all medical examinations and reports submitted by the Member or otherwise obtained in connection with the Member's disability retirement;

(b) investigate essential statements and certificates made by or on behalf of a Member in connection with the Member's application for disability retirement benefits; and

(c) report in writing to the Board its conclusions and recommendations on all matters referred to it in accordance with the guidelines set forth in this Policy and any governing document of the Medical Board.

PART 3: APPLICATION FOR DISABILITY RETIREMENT BENEFITS

§3.01. Eligibility for Disability Retirement Benefits.

(a) *Disability Standard.* At the time a Member applies for a disability retirement, in order to be eligible to receive a disability retirement benefit from the Fund, the Member must (i) be unable to perform the duties of the Member's occupation as a firefighter and (ii) have separated from service with the Fire Department. A Member's "occupation as a firefighter" includes the position that the Member held with the Fire Department at the time the disability occurred or any other position in the Fire Department that is currently being offered to the Member and that would pay an amount that is at least equal to the pay the Member was receiving in his or her position with the Fire Department at the time that the disability occurred ("*Equivalent Position*"). A Member will not be eligible for a disability retirement if the Member is capable of performing the duties of the available Equivalent Position and the Member elects not to take such Equivalent Position. The Fund's administrative staff shall make available, upon request and if available from the Fire

Department, a written description of the duties of the Member's position in the Fire Department and the duties of the available Equivalent Position, if any.

(b) *Nature of Disability.* A Member may be disabled as a result of a physical disability or a mental disability and may be eligible to receive a disability retirement benefit from the Fund whether the disability was incurred in connection with the Member's performance of his or her duties as a firefighter (i.e. an "on-duty" disability) or resulted from an action or event unrelated to the Member's employment as a firefighter (i.e. an "off-duty" disability), *provided that* the disability occurred while the Member was an active member of the Fire Department.

(c) *No Salary or Service Credit While Receiving Disability Retirement Benefits.* For any period during which a Member receives a disability retirement benefit from the Fund, the Member may not receive salary or other form of compensation (including payments for sick leave or vacation) from the Fire Department or accrue service credit under the Fund.

(d) *Disability and the Deferred Retirement Option Plan ("DROP").* A Member who becomes disabled after he or she has elected to participate in the Forward DROP will not be eligible to receive any disability retirement benefits from the Fund. A Member who becomes disabled while participating in the Forward DROP under Section 8.01 of the Act may apply for normal retirement with the Fund.

§3.02. Application for Disability Retirement Benefits.

(a) *Application Form.* Any Member who is applying for a disability retirement benefit must submit an application (or an application must be filed on behalf of the Member by the Member's legal representative) to the Fund on a form approved by the Board and made available by the Fund (the "*Application*"). The Board may provide for certain medical-related questions included in the Application to be answered on a separate supplemental addendum to the Application to be reviewed only by the Fund Administrator for completeness and by the Medical Board in order to best maintain confidentiality. The Board or Fund may develop procedures with respect to the process for filing an Application.

(b) *Statement by Attending Physician.* The Application must be accompanied by a sworn statement, in writing on a form approved by the Board, from the Member's attending physician of the medical condition which caused or resulted in the Member's disability (the "*Physician's Statement*"). All customary and standard tests necessary to diagnose the alleged disability should be performed by the Member's attending physician and documented in the Physician's Statement. The Member is responsible for all costs related to obtaining the Physician's Statement and all customary and standard testing. At a minimum, the Physician's Statement must include (i) a description of the Member's diagnosis and current medical condition with respect to the alleged disability, (ii) a description of each clinical and/or laboratory test performed by the physician in connection with such diagnosis and the results of each, and (iii) a statement of whether, in the physician's professional opinion, the Member is incapable of performing the duties of the Member's position in the Fire Department or the available Equivalent Position, if any.

(c) *Other Documentation.* The Member will be required to consent to the release of all relevant medical records to the Fund as part of the Application. The Board recognizes that certain information relevant to the Member's Application may be highly sensitive in nature. A Member may submit additional documentation, other than the information required to be included in the Application and the Physician's Statement, for the Medical Board's consideration in a sealed envelope, and such information will not be provided to the Board without the additional consent of the Member.

(d) *Filing of Application.* The Application and Physician's Statement must be filed by the Member (or the Member's legal representative) with the Fund Administrator no later than thirty (30) days after termination of employment with the Fire Department. If the Application is not completed in its entirety, the Physician's Statement is missing or is incomplete, or requested supporting documentation has not been provided, the Fund Administrator may immediately return the Application to the Member for completion and re-submission to the Fund. An Application will not be considered filed for purposes of this Policy until the Fund Administrator determines that the Application is complete and notifies the Member that the Application has been accepted for review. The Fund Administrator may waive the filing deadline provided under this paragraph in the case of extraordinary circumstances that prevented the Member from timely completing the filing.

§3.03. Medical Board Review and Recommendation.

(a) *Medical Board Review.* Provided that the Application appears to be complete and accompanied by appropriate supporting documentation, the Fund Administrator will deliver (i) the Application, Physician's Statement, and all supporting documentation and (ii) a written description of the duties of the Member's position in the Fire Department and the available Equivalent Position, if any, to the designated representative of the Medical Board selected by the Board to review the Application. The Medical Board will meet to consider the Application in accordance with its governing procedures as soon as possible, but not more than sixty (60) days after the Medical Board receives the Application.

(b) *Inadequate Information.* If the Medical Board determines that the Member's attending physician did not perform the customary and standard tests required to properly diagnose the alleged disability, the Medical Board may request that the Member re-submit the Physician's Statement after the Member's attending physician has performed such tests. The Member will be solely responsible for the cost of any such customary and standard testing.

(c) *Request for Independent Evaluation and Other Documentation.* The Medical Board may request (i) that an independent physician or other relevant professional perform any evaluation that the Medical Board deems necessary or appropriate for its review of a Member's disability status, including without limitation any physical, psychiatric, or psychological evaluation, test, procedure, or imaging (an "***Independent Evaluation***") or (ii) any other supporting documentation that it deems appropriate for its review of the Member's Application. Any request made by the Medical Board must be submitted to the Fund Administrator who will communicate such request to the Member. The Fund will be responsible for any fees or costs incurred to obtain an Independent Evaluation requested by the Medical Board under this Section 3.03. The Fund

Administrator may approve up to a total of \$10,000 of expenses per Application for an Independent Evaluation requested by the Medical Board without requiring prior Board notification or approval. To the extent the Medical Board requests additional opinions, evaluations, or testing that exceed \$10,000, in the aggregate, the Fund Administrator will notify the Board of the total amount of the anticipated expense and the total expenses incurred by the Fund to date with respect to the Application and request the Board's approval prior to communicating such request to the Member.

(d) *Medical Board Report and Certification.* The Medical Board shall prepare and submit a written report to the Board that provides a summary of the Medical Board's review and findings with respect to the Application and an official certification as to whether or not, in the professional opinion of the Medical Board, the Member is disabled pursuant to the standard set forth in Section 3.01(a) (the "**Medical Board Report**"). The form and content of the Medical Board Report will be in accordance with its governing charter or procedures, if any. If the Medical Board determines that it cannot make an official certification as to the Member's disabled status for any reason, including, without limitation, a lack of conclusive medical information or the Member's failure to cooperate with a request for an Independent Evaluation, the Medical Board shall submit the Medical Board Report to the Board without an official certification, but shall include a statement explaining why it cannot certify the Member's disability status.

§3.04. Board Review and Determination on Application.

(a) *Consideration by Board.* The Board will review the Medical Board Report and consider the Application for approval or denial.

(i) If the Medical Board has certified that the Member is disabled, the Board (A) may approve the Application, or (B) if no Independent Evaluation was requested by the Medical Board, may require an Independent Evaluation be performed and refer the Application back to the Medical Board for re-consideration with the results of the Independent Evaluation. If upon re-consideration, the Medical Board continues to find that the Member is disabled, the Board will approve the Application.

(ii) If the Medical Board has certified that the Member is not disabled, the Board (A) may deny the Application or (B) may require an Independent Evaluation be performed and refer the Application back to the Medical Board for re-consideration with the results of the Independent Evaluation. If upon re-consideration, the Medical Board continues to find that the Member is not disabled, the Board will deny the Application. The Board may not approve an Application for a Member whom the Medical Board has determined is not disabled.

(b) *Request for Independent Evaluation.* If the Board requests an Independent Evaluation, the Fund will be responsible for any fees or costs incurred to obtain such evaluation under this Section 3.04.

(c) *Approval by the Board.* Before the Fund may pay a disability retirement benefit to a Member, the Board must approve the Member's Application by formal action during a meeting of the Board. The Board's approval will specify the date the Member's disability retirement benefits shall begin which may be no more than ninety (90) days prior to the date on which the

Application was filed with the Fund and not before the date of the first normal benefit payment cycle immediately following the last date that the Member received salary or any other form of compensation from the Fire Department, regardless of when the event or injury causing the disability actually occurred.

PART 4: DISABILITY RETIREMENT BENEFITS FOR THE FIRST THIRTY MONTHS

§4.01. Initial Disability Retirement Benefit.

(a) *Amount of Initial Disability Retirement Benefit.* Unless otherwise provided by the Act or this Policy, the amount of the initial disability retirement benefit shall be equal to the monthly annuity the Member would be eligible to receive as a normal service retirement annuity under Section 5.04 of the Act on the effective date of the Member's disability retirement as approved by the Board based on the Member's years of service credit and average monthly compensation as of such date; *provided, however*, if the Member has not accrued at least twenty (20) years of service credit as of the date the Member's Application for disability retirement is approved by the Board, the Member's disability retirement annuity will be calculated as if the Member had twenty (20) years of service credit.

(b) *Length of Initial Disability Retirement Benefit.* Unless otherwise provided by the Act or this Policy, including Section 4.02 below, a disabled Member is entitled to receive thirty (30) monthly annuity payments of his or her initial disability retirement benefit without additional review or approval by the Board.

§4.02. Termination or Reduction of Benefit During First Thirty (30) Months. Notwithstanding as may be otherwise provided under this Policy, if at any time during the first thirty (30) months following the Board's approval of the initial disability retirement benefit (the "*Initial 30-Month Period*") the Board reasonably believes that the Member has recovered to the extent that he or she is able to perform the duties of the position the Member held in the Fire Department or the Equivalent Position that was available to the Member at the time he or she filed for a disability retirement, if any, the Board may take any and all action it deems necessary or appropriate to investigate the Member's disabled status and terminate the Member's disability retirement benefit if, based on the results of its investigation, the Board determines that the Member has recovered from his or her disability such that the Member is no longer disabled pursuant to the standard set forth in Section 3.01(a).

§4.03. Impact of Review for Continuation of Disability Retirement Benefits. The Board's review of the Member's disability retirement benefits pursuant to Part 5 of this Policy will not affect the Member's right to receive disability retirement benefits for thirty (30) months under Part 4 of this Policy.

PART 5: CONTINUATION OF DISABILITY RETIREMENT BENEFITS

§5.01. Eligibility for Continuation of Disability Retirement Benefits.

(a) *Continuing Disability Standard.* In order to be eligible to continue receiving a disability retirement benefit from the Fund beyond the Initial 30-Month Period, the Member must be unable to be employed. A Member is unable to be employed when he or she is unable to perform the duties of any occupation for which the Member is reasonably suited based on the Member's education, training and experience.

(b) *Periodic Reviews.* No later than the end of the Initial 30-Month Period, the Board shall perform a review of the Member's disabled and financial status to determine if the Member is eligible to continue receiving a disability retirement benefit under Section 5.01(a). Except as provided under Section 5.01(c) below, the Board shall continue to perform such reviews at least once per calendar year thereafter.

(c) *Waiver of Thirty (30)-Month Review and Periodic Reviews.* The Board may waive the periodic review requirement in certain circumstances as set forth in subsections (i) and (ii) below. No Member shall be exempt from the periodic review requirements set forth in Part 5 of this Policy unless specifically approved by the Board. The Board may revoke any exemption or waiver from the periodic review requirements at any time. The Member will be promptly notified of any such waiver or exemption or if such waiver or exemption has been revoked.

(i) *Total and Permanent Disabilities.* The Board recognizes that certain types of disabilities by their nature are likely to be total and permanent or continue for a protracted duration. Accordingly, the Board may, on a case by case basis, exempt certain disabled Members from any periodic review either for some fixed period of time or indefinitely, as the Board in its discretion may determine.

(ii) *Attainment of Normal Retirement Age.* The Board will consider a waiver of the periodic review of a Member's disability retirement benefit at the time the Member would have qualified for a normal service retirement benefit under the Act if the Member had remained continuously employed by the Fire Department for the period during which the Member received disability retirement benefits from the Fund. The Board is not required to grant a waiver at such time and may continue to require periodic reviews of any Member who is receiving disability retirement benefits beyond normal retirement age.

§5.02. Notice of Review and Request for Information.

(a) *Notice Required.* The Fund Administrator shall notify the Member of an upcoming review of the Member's disabled and financial status no later than (i) for purposes of the first periodic review following the Initial 30-Month Period, one-hundred and eighty (180) days prior to such review and (ii) for purposes of any subsequent periodic review pursuant to Part 5 of this Policy, ninety (90) days prior to such review.

(b) *Content of Notice.* The notice of review will include a request for information for the Board's review, including, without limitation, (i) a true and correct copy of the Member's most

recently filed federal income tax return, (ii) proof of current employment, if any, and (iii) an updated Physician's Statement from a physician of the Member's choice. The notice will also include a request that the Member consent to the release of all relevant medical records to the Fund in connection with the review.

(c) *Procedures.* The Board may adopt procedures that set forth the manner and timing of providing a notice of review under this Section 5.02 and may specify any additional information that the Board will require from a Member in order for the Member to continue receiving a disability retirement benefit.

§5.03. Review for Continuation of Disability Retirement Benefits.

(a) *Board's Preliminary Review.* In conducting a review for the continuation of disability retirement benefits, the Board will conduct a preliminary review of the information submitted by the Member under Section 5.02 prior to any review of the Member's disabled status by the Medical Board.

(i) *Earned Income Analysis.* As part of its preliminary review, the Board will review the Member's most recently filed federal income tax return, current employment status, and any other relevant information to determine the amount of income that the Member earned during the last tax year ("***Earned Income***"). Earned Income does not include the amount of the disability retirement benefit that the Member received from the Fund or any investment or passive income that the Member received during the tax year. Earned Income, however, does include any amounts received on account of the Member's disability, including any worker's compensation or disability benefits from insurance, Social Security, the military, or any other source.

(1) If the sum of the Member's Earned Income plus the Member's disability retirement benefit from the Fund exceeds 110% of the current annual base pay of the position and seniority level that the Member held in the Fire Department at the time he or she applied for disability retirement (the "***110% Threshold***"), the Board will reduce the Member's disability retirement benefit by the amount that the Member's Earned Income exceeds the 110% Threshold (the "***Excess Income***"). The Member will continue to receive the reduced amount of his or her disability retirement benefit until the next periodic review by the Board (unless such benefit is otherwise terminated earlier than such date in accordance with this Policy). Following the reduction of the Member's disability retirement benefit, the Board may waive any further evaluation or review set forth in Part 5 of this Policy. Notwithstanding the above, if the Member's Excess Income is equal to or greater than the amount of the Member's disability retirement benefit, the Board will terminate the Member's disability retirement benefit.

(2) If a Member has no Excess Income, the Board may, in its discretion:

(I) approve the continued payment of the Member's disability retirement benefit at the same amount as the Member is currently entitled to receive until the Member's next periodic review without additional evaluation by the Medical Board or a Vocational Evaluation (as defined below), *provided, however,*

if it is the first periodic review following the Initial 30-Month Period, the Medical Board must also review the Member's disabled status as set forth in Section 5.03(b),

(II) request an Independent Evaluation, a Vocational Evaluation, or any other information or reports that the Board in its discretion deems appropriate for its review or the Medical Board's review pursuant to Section 5.03(a)(ii) below, or

(III) send the updated Physician's Statement submitted by the Member and any other relevant documentation to the Medical Board for review of the Member's disability status.

(ii) *Requests by the Board.* The Fund will be responsible for any fees or costs incurred to obtain an Independent Evaluation or Vocational Evaluation requested by the Board under this Section 5.03. A "***Vocational Evaluation***" means an evaluation of the Member's earning capacity by a certified professional in order to determine the amount, if any, that the Member is capable of earning in an occupation for which the Member is reasonably suited by education, training and experience considering the existence and severity of the Member's disability, regardless of whether or not the Member is employed at such time. Any report submitted to the Fund as a result of an Independent Evaluation or Vocational Evaluation requested by the Board will be delivered to the Fund Administrator. Prior to the Board's review of such report, the Fund Administrator will review the contents of the report and may present a redacted version of the report to the Board in an effort to preserve confidentiality of the Member's personal and medical information. Notwithstanding the above, the Board will be entitled to review the entire report upon request.

(iii) *Failure to Provide Information or Cooperate.* If the Member fails to provide the requested information to the Board in a timely manner or refuses to cooperate with the Board in its request for an Independent Evaluation or Vocational Evaluation, the Board may terminate or suspend the Member's benefit in the Board's discretion.

(b) *Medical Board's Review and Recommendation.*

(i) *Medical Board's Review.* Unless the Board has terminated the Member's disability retirement benefit or waived the disability review requirement in connection with a reduction of such benefit pursuant to Section 5.03(a)(i)(1) or approved the Member's disability retirement benefit pursuant to Section 5.03(a)(i)(2)(I), the Board will deliver to the Medical Board the Physician's Statement and any medical records or other information submitted by the Member that may be relevant to the Medical Board's review of the Member's current disability status. A copy of any Independent Evaluation or Vocational Evaluation requested by the Board, if any, shall be provided to the Medical Board.

(ii) *Request for Independent Evaluation.* The Medical Board may request (A) an Independent Evaluation if the Board did not request an Independent Evaluation as part of its preliminary review or (B) additional medical records or other relevant documentation from the Member's attending physician. Any request made by the Medical Board must be submitted to the

Fund Administrator who will communicate such request to the Member. The Fund will be responsible for any fees or costs incurred to obtain an Independent Evaluation requested by the Medical Board under this Section 5.03. The Fund Administrator may approve up to a total of \$10,000 of expenses per review for an Independent Evaluation requested by the Medical Board without requiring prior Board notification or approval. To the extent the Medical Board requests additional opinions, evaluations, or testing that exceed \$10,000, in the aggregate for each review, the Fund Administrator will notify the Board of the total amount of the anticipated expense and the total expenses incurred by the Fund to date with respect to the review and request the Board's approval prior to communicating such request to the Member.

(iii) *Medical Board Report.* The Medical Board shall prepare and submit an updated Medical Board Report to the Board which must include a statement as to whether or not, in the professional opinion of the Medical Board, the Member is disabled pursuant to the standard set forth in Section 5.01(a).

(c) *Final Review and Determination by Board.* The Board will review the updated Medical Board Report and any reports from an Independent Evaluation or Vocational Evaluation requested by the Board, if any, and will consider the effect, if any, that the amount of the Member's Earned Income and the severity of the Member's disability should have on the amount of the Member's disability retirement benefit. The Board may require that the Member undergo an Independent Evaluation or Vocational Evaluation, or both, in connection with its final review if the Board did not already make such a request during its preliminary review under Section 5.03(a)(ii).

(i) *Member Remains Disabled.* If the Medical Board determines that the Member remains disabled such that he or she cannot perform the duties of any occupation for which the Member is reasonably suited, the Board may (A) continue the Member's disability retirement benefit in full at the same amount that was previously approved by the Board or (B) reduce the Member's disability retirement benefit by any amount that exceeds the 110% Threshold under the calculation set forth in Section 5.03(a)(i)(1) above, using the amount, if any, that the Member should be able to earn based upon the results of the Vocational Evaluation as Earned Income for purposes of such calculation.

(ii) *Member is Not Disabled.* If the Medical Board determines that the Member is not disabled and that the Member is capable of performing the duties of an occupation for which the Member is reasonably suited, regardless of whether the Member is actually employed, the Board shall discontinue the Member's disability retirement benefit, to be effective as of the date of the next normal benefit payment cycle immediately following the Board's action to discontinue such benefit.

(d) *Review Procedures.* The Board may adopt procedures under which it will evaluate and may adjust the amount of a Member's disability retirement benefit under this section.

§5.04. Reinstatement of a Benefit. The Board may reinstate a disability retirement benefit that was previously terminated or reduced under the circumstances set forth below. Prior to the reinstatement of a disability retirement benefit, the Board will review the Member's request for

reinstatement and all related documentation in accordance with the review process set forth in Part 5 of this Policy.

(a) *Condition Worsened.* If a Member's disability retirement benefit was previously reduced or terminated by the Board and the condition for which the Member was previously granted a disability retirement has worsened, the Member may submit a written request for reinstatement of his or her disability retirement benefit to the Board. Such request must be accompanied by a recent Physician's Statement attesting to the worsening of the Member's condition.

(b) *Earning Capacity Diminished.* If a Member's disability retirement benefit was previously reduced by the Board due to the Member having Excess Income and the Member's earning capacity subsequently diminishes such that the Member had no Excess Income for the immediately preceding taxable year, the Member may submit a written request for reinstatement of his or her disability retirement benefit to the Board. Such request must be accompanied by a Vocational Evaluation attesting that the Member cannot earn more than the 110% Threshold. A Member whose disability retirement benefit was previously terminated pursuant to Section 5.03(a)(1) will not be eligible for a reinstatement of his or her disability retirement benefit under this subsection if his or her earning capacity later diminishes.

PART 6: CONFIDENTIALITY, PRIVACY, AND HIPAA COMPLIANCE

§6.01. Confidential Information and Recordkeeping.

(a) *Confidential Information.* Pursuant to Section 2.13 of the Act and the Public Information Act (Chapter 552, Texas Government Code), all information in the records and custody of the Fund concerning a Member, retiree, or beneficiary of a Member is confidential and may not be disclosed in a form that identifies the Member, retiree, or beneficiary. Any information or records related to a Member's disability retirement that are obtained by or held in the custody of the Fund, including, without limitation, the Member's Application for disability retirement benefits, Physician's Statements, Medical Board Reports, Independent Evaluations, and Vocational Evaluations, will be treated as confidential and will not be disclosed to anyone other than the members of the Medical Board, the Fund Administrator, or members of the Board, unless required by law, without the express written permission of the Member.

(b) *Open Meetings.* Pursuant to the exception in Section 551.078 of the Texas Open Meetings Act, the Board may go into closed session to discuss a Member's medical or psychiatric records, including the records of an applicant for a disability benefit. Pursuant to this exception, the Board will hold all discussions related to an Application for disability retirement benefits or the subsequent review of disability retirement benefits in closed session, except for the Board's vote to approve, deny, continue or terminate such benefits which must be conducted in an open meeting. The Fund Administrator will assign a number to each disability applicant, and any discussion or vote with respect to a disability applicant's benefits will be referred to only by the assigned number in open session. The Board will not identify the applicant's name or disclose any information about the applicant's condition on the public agenda or in its discussions during open session.

(c) *Recordkeeping.* The Fund Administrator is responsible for the protection and retention of all confidential information obtained in connection with a Member's disability retirement. Any confidential information related to a Member's disability retirement that is obtained by or held in the custody of the Fund will be stored in a locked file cabinet in the Fund Administrator's office to which the Fund Administrator has sole and exclusive access or maintained in an electronic file with adequate security protection to ensure no other Fund staff have access.

§6.02. Protected Health Information and HIPAA Compliance. The Fund, the Board, and the Medical Board will comply with all federal rules and regulations concerning the privacy and security of "protected health information" under the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*") and any applicable state laws, rules or regulations regarding the protection of confidential health information.

PART 7: MISCELLANEOUS

§7.01. Disability Retirements to Which Policy and Procedures Apply. The provisions of this Policy shall apply to all disability retirements approved for the first time after the effective date of this Policy. Disability retirements approved prior to such effective date will be governed by the policy in effect at the time such retirements were approved.

§7.02. Eligibility for Normal Service Retirement Annuity. Pursuant to Section 6.08(b) of the Act, if a Member becomes eligible to receive a normal service retirement annuity while receiving a disability retirement annuity, the amount of the Member's normal service retirement annuity will be reduced by the amount of any disability retirement annuity that the Member continues to receive.

§7.03. Board's Authority Under this Policy. Notwithstanding any provision of this Policy to the contrary, the Board has complete and absolute discretion to take any and all action that it deems necessary, appropriate, and in the best interest of the Fund, including, without limitation, requiring additional Independent Evaluations, Vocational Evaluations, proof of income, or conducting an investigation of the Member to obtain additional evidence as to the physical or mental capabilities and lifestyle of the disabled Member. The Board may adopt procedures for the efficient administration and enforcement of this Policy.

§7.04. Right of Appeal. The Member has a right to appeal any decision of the Board with respect to the Member's disability retirement benefit in accordance with the appeals procedures adopted by the Board.

§7.05. Governing Law. If there is any conflict between the Act and the terms of this Policy, the Act will control.