

POMPANO BEACH POLICE & FIREFIGHTERS' RETIREMENT SYSTEM

**2335 EAST ATLANTIC BLVD.
SUITE 400
POMPANO BEACH, FLORIDA**

**BOARD OF TRUSTEES MINUTES
SPECIAL MEETING
MAY 26, 2015**

The Board of Trustees convened at the Pompano Beach Police and Firefighters' Pension Office, Pompano Beach, Florida. The Chairman called the meeting to order at 9:01 AM.

PRESENT: Chairman Paul O'Connell
Vice-Chairman Richard Samolewicz
Trustee Sharra Aaronian
Trustee Daniel Christophers
Trustee Vincent Femia (arrived at 9:04 am)
Trustee Patrick Fletcher
Trustee David Hall
Trustee Peter McGinnis
Trustee Jorge Rossi

ALSO PRESENT: Pedro Herrera, Esq., Board Attorney
Glenda Rowley, Executive Director
Debra Tocarchick, Deputy Director
Adam Burns, police member
Debbie Burns, spouse
Andrea Wolfson, Esq., Wolfson & Konigsburg
Susan Silverman, Paralegal, Wolfson & Konigsburg

AUDIENCE TO BE HEARD

None

APPROVAL OF AGENDA

MOTION: To approve the agenda for May 26, 2015, as presented.
PASSED 8-0.

O'Connell			X	
Samolewicz			X	
Aaronian			X	
Christophers			X	
Fletcher		X	X	
Hall			X	
McGinnis			X	
Rossi	X		X	

RATIFICATION AND APPROVAL OF WARRANTS

MOTION: To ratify and approve payment of benefits and expenses as set forth on Warrants No. 4603, \$2,404.20; No. 4604, \$8,400.00; No. 4605, \$20,368.38; No. 4606, \$2,588.00; No. 4607, \$56,232.17; No. 4608, \$3,750.00. PASSED 8-0.

O'Connell			X	
Samolewicz		X	X	
Aaronian			X	
Christophers			X	
Fletcher			X	
Hall			X	
McGinnis			X	
Rossi	X		X	

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			T	T
			E	E
			D	D
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			E	O
			S	
			N	
			O	

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<u>CONTINUATION OF INFORMAL SERVICE-INCURRED DISABILITY HEARING FOR MEMBER ADAM BURNS</u>						
<p>Sugarman & Susskind reported that attorney Wolfson provided a communication on Friday, May 22 that included additional medical records that she indicated were not provided to the IME doctor or made part of the Board record. Ms. Wolfson had expressed concerns through an e-mail exchange with Mr. Herrera regarding the fairness of the record collection process. Sugarman & Susskind's review of the additional records in question identified two physicians, Dr. Cummings and Dr. Gorfine, who were never made a part of the original or the subsequent amended disability application submitted by Mr. Burns. The communications were transmitted to the Board for its advance review on Friday, May 22.</p>						
<p>The Executive Director discussed the process employed to gather the medical records. Mr. Burns personally delivered his disability application package, which included the medical record pages that his attorney wanted in the record. The Executive Director reviewed each record and noticed references to certain tests, hospitals and doctors who saw Mr. Burns and whose records were not included. Records were then requested from those sources. Additionally, there were references to pre-existing conditions so records were requested from Mr. Burns' primary care physician. Everything that came to light during the record review was requested. There were some records that were pulled if they didn't appear relevant, such as discharge instructions from hospitals. The process involves putting the medical records in chronological order and ensuring that the records make sense and that everything that is relevant is included.</p>						
<p>Of the records in question, the Executive Director affirmed that the CT scan is included as page 51 of the Board record. Since doctors exchange records, many times there will be more than one copy of the same record. The best copy is retained for the record and the duplicates are discarded. The reports from Drs. Gorfine, Cummings and Miller were not identified in the record so these reports have not been seen before. The new disability application includes doctors and treating facilities #11 - #14 that were not a part of the original or previously amended disability applications.</p>						
<p>Ms. Wolfson advised the Board that she did not amend the disability application for any reason other than to change the typo with regard to the designation of 'total and permanent' as permitted by the Board. She acknowledged that she did not reflect the treating facilities #11 - #14 on her file either.</p>						
<p>Ms. Wolfson indicated that it was hers' and Mr. Burns' understanding that the Board did not permit them to submit medical records although they did so as a courtesy. They were of the understanding that the Board would set those records aside and obtain the records on its own. The Executive Director acknowledged that she did both – reviewed the records provided and requested the records independently.</p>						

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<p>Ms. Wolfson pointed to a record from Dr. Shapiro, the primary treating physician, which identified Dr. Cummings. She also referred to two of the physicians whose records were included by the Board and which were not treating physicians. Mr. Herrera responded that the disability application specifically requests that all treating physicians be identified. As part of the process for a service-incurred disability, the Board requests the records of the evaluating physicians from the worker's compensation case.</p> <p>Mr. Herrera recommended that due to the concerns that have been raised and the importance of the Board having a full record, that it collect the records from Drs. Cummings, Gorfine and Miller and send them to the IME doctor for review.</p> <p>Ms. Wolfson requested that it be made clear for the record that it is her belief that the initial appointment with the IME doctor was made adversarial in the doctor's mind due to the letter sent by Mr. Sugarman, of which she was not provided until either the day before or the day after. The letter articulated directions on how she and Mr. Burns were to be treated if she showed up at the appointment. Had she been aware of the letter, she would have advised Mr. Burns not to attend the appointment and addressed it with the Board. Additionally, there were problems with the IME doctor only reviewing the narrative reports and not looking at the scans. She claimed that Drs. Cummings' and Gorfine's records are commented on and reviewed by Dr. Shapiro throughout his record. The very injections that the IME doctor speaks to were, in fact, done. Ms. Wolfson indicated that she does not understand why the additional medical records are necessary - and was simply surprised that they were not in the record. Mr. Herrera commented that they were not in the record due to the fact that they were not introduced by her or her client.</p> <p>Ms. Wolfson clarified her position as counsel to her client that the Board should proceed this day with the informal hearing process. Mr. Burns advised the Board that the issue over these additional records was brought to light by him. As he read a paragraph of the IME doctor's report where it was stated that the doctor did not have the film or disc MRI of the right wrist, it caused him to question whether the doctor had the reports. Mr. Burns added that he is comfortable proceeding without providing the additional records to the IME doctor as they are not material to the decision.</p> <p>Mr. Herrera recommended that the Board create a full and complete record of substantial competent evidence for the Board's decision-making process. The process is the same for all disability applicants. There are two treating physicians that the Board does not have medical records for. The applicant is advising that the records are not important and is requesting to proceed without them; however, as legal counsel to the Board, Mr. Herrera requested that the additional records should be obtained independently, made part of the full record, and sent to the IME doctor for review.</p>						

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<p>Ms. Wolfson reiterated that it is her position that the additional records have been fully discussed. If it is the Board's position that it should be aware of the treatment provided to the applicant, the records are and always have been part of the full record as mentioned in Dr. Shapiro's records. Nothing will change the IME doctor's position and she does not feel it is necessary for her client to have the IME doctor see the additional records.</p> <p>Ms. Wolfson stated the following concerns for the record:</p> <ol style="list-style-type: none"> 1. The IME doctor is a psychiatrist - not an orthopedic doctor – and thereby it is questionable whether he is qualified to review the records. 2. The IME doctor did not want the full record and he still to this day does not have it. He never took the CD's of the CT and MRI scans from Mr. Burns. Since he did not review this information, it is strange that it is important that he now be provided the additional records on injections. This information was tendered to him and he did not want it. <p>Mr. Herrera responded in terms of the application process. The application was deficient which caused the medical records to be deficient. The Board is now on notice that there are two treating physicians that were not listed on the initial or amended applications for which there are no medical records included in the complete record. It is the responsibility of the applicant to provide a complete application as required by the Ordinance, state law and the fiduciary responsibility of the Board of Trustees.</p> <p>MOTION: To obtain the records of the missing doctors to complete the total record, send the entire medical record package back to the IME doctor and request that he review the additional records in connection with his prior review. PASSED 8-1 IN A ROLL CALL VOTE</p> <p>Ms. Wolfson commented it seemed facially inappropriate to care whether the IME doctor reviews these additional records. He had an opportunity to review the discs and he didn't care. Mr. Burns expressed his desire to move forward based on the existing record.</p> <p>For the benefit of those present, the procedure of a formal disability hearing was described as similar to the rules of a civil procedure where there would be opportunity for deposition, witnesses, and the examination and cross examination of the doctors.</p>	<p>O'Connell Samolewicz Aaronian Christophers Femia Fletcher Hall McGinnis Rossi</p>	<p>X</p>	<p>X X X X X X X X X</p>	<p>X X X X X X X X X</p>	<p>X</p>	<p>X</p>

ADJOURNMENT

MOTION: To adjourn the May 26, 2015 special meeting at 9:47 AM.
PASSED 9-0.

O'Connell			X	
Samolewicz			X	
Aaronian			X	
Christophers			X	
Femia			X	
Fletcher		X	X	
Hall	X		X	
McGinnis			X	
Rossi			X	

Respectfully submitted,


Glenda Rowley, Executive Director

Distribution:

Board of Trustees
Robert A. Sugarman, Esq.
Pedro Herrera, Esq.
David Harris, Actuary
City Manager
Mayor and City Commission
City Clerk
Assistant City Attorney
City HR Director
President IAFF Local 1549
Marcum
Webmaster

SPECIAL MEETING – MAY 26, 2015

ITEM NO. 4 - WARRANT NOS. 4603 THROUGH 4608

Ratified and Approved on 05/26/2015

WARRANT NO.	PAYABLE TO	DESCRIPTION	AMOUNT
4603	Bank of America	Glenda Rowley: Board meeting supplies, \$58.36; Summary Plan Description Booklets, \$127.11; Educational Symposium Expense, \$143.97; FPPTA registration, \$500.00; Total \$829.44 Debra Tocarchick: Educational Symposium Expense, \$39.20; Meeting supplies, \$42.19; Final AT&T (PBI), 107.89; Filing Fee Annual Report (PBI), \$138.75; WSJ subscription, \$362.49; Telephone and internet, \$258.98; FPPTA registration, \$500.00; Total \$1,449.50 Paul O'Connell: Business lunches, Total \$125.26	2,404.20
4604	President and Fellows of Harvard College	PBFRS portion of Paul O'Connell's <i>Senior Executives in State and Local Government</i> program fee (City of Wilton Manors to pay \$4,000); \$8,400.00	8,400.00
4605	Morgan Stanley Smith Barney	Investment consulting fee quarter ending 3/31/15; \$20,368.38	20,368.38
4606	FP Mailing Solutions Co. US HealthWorks Medical Grp FL, Inc.	Inv No. R1102403031, 5/2/15 – 8/1/15 quarterly postage meter lease; \$78.00 Inv No. 0318316-FL, 1 pre-employment physical; \$270.00, Inv. No. 0318317-FL, 8 pre-employment physicals; \$2,240.00, Total \$2,510.00	2,588.00
4607	Matthew Macneir	Refund of contributions as a result of separation of employment on 3/25/15; \$56,232.17	56,232.17
4608	Morgan Stanley Smith Barney	DROP investment consulting fee qtr starting 4/1/15; \$3,750.00	3,750.00