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Calls It Clear He's Unable to Perform Duties

## Judge Slams NYCERS for Seeking To Compel Disabled EMT to Resume Job

By MARK TOOR | DECEMBER 5, 2016

Using unusually charged language, a state judge declared that the effort by the Medical Board of the New York City Employees' Retirement System to return an FDNY Emergency Medical Technician from the disability rolls to active duty presented a danger to the public.

"This court cannot allow the petitioner to return to duty as an EMT," Brooklyn State Supreme Court Justice Ellen M. Spodek wrote in her Nov. 17 opinion. "An EMT is a trusted member of public service whose duty is to render aid to those in need. Placing petitioner back into the line of duty would endanger those people who, when asking for the services of an EMT, are at their most vulnerable."

### **EMT's Lawyer 'Startled'**

"The ruling startled me," said Jeffrey L. Goldberg, the attorney for the retired EMT, Emmanuel Lidakis. Mr. Goldberg noted that courts rarely overturn Medical Board decisions, more commonly returning cases to a pension board for reconsideration.

But in the case of Mr. Lidakis, he said in an interview, Justice Spodek wrote that "it's dangerous to put him out there in any capacity." She found that the Medical Board's decision was arbitrary and capricious—unreasonable and made without proper consideration of the circumstances.

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The Medical Board found in February 2007 that Mr. Lidakis was disabled and awarded him a three-quarters-of-final-average-salary pension. Justice Spodek wrote that Mr. Lidakis had injured one or both knees three times between 2003 and 2005: carrying a patient downstairs in a stretcher, slipping on the ice while getting into an ambulance and having a box fall on his knee in a hospital supply room.

The Medical Board granted the disability pension on condition that he be re-examined after a year to see whether he was still disabled. The March 2008 exam determined that he was no longer disabled.

## **Had Right to Challenge**

NYCERS informed him that he would be placed on a preferred list for re-hiring but, Mr. Goldberg said, did not inform him of his rights to have the decision reviewed by a special medical committee or to challenge it through an Article 78 proceeding in the courts.

Mr. Lidakis filed two Article 78 proceedings, in 2009 and 2011, both of which resulted in the case being sent back to the Medical Board. Both times the board concluded that he was not disabled. He filed a third Article 78 proceeding in 2015, which came before Justice Spodek.

Mr. Lidakis's condition appeared to worsen during the court battles, according to the judge. His doctor said he could not walk or drive long distances or take part in "heavy lifting or strenuous-type activity." In 2010, his car was fitted with hand controls because his knee problems kept him from operating it safely, and after an examination by the city Health and Hospitals Corporation, he was granted a disabled-parking permit.

"It's very difficult to get the handicapped permit in this city," Mr. Goldberg said.

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## Got S.S. Disability Pay

In April 2015, Mr. Lidakis was awarded Social Security disability benefits, based in part on an exam by an independent physician. NYCERS said it would not consider the award in dealing with his case because it does so only for active employees, not retirees.

The Medical Board re-examined Mr. Lidakis only once since the 2008 review that found he was no longer disabled.

Mr. Goldberg argued that two factors especially militated against revoking Mr. Lidakis's disability status. First, his pain pills included opioids and FDNY rules specify that EMTs may not "take any medication that causes you to be impaired." Second, he was unable to drive a vehicle without hand controls and EMTs, as a condition of the job, must drive ambulances that lack them.

NYCERS contended that it was entitled to resolve any conflicts in the medical evidence and that a decision could not be declared arbitrary and capricious "as long as it is based in 'some credible evidence.'" The agency said its 2008 examination found Mr. Lidakis's knees had a full range of motion and that he did not complain of discomfort.

But Justice Spodek wrote, "Simply because the Medical Board reserves the right to resolve conflicts of medical opinion, it does not have the right to ignore the overwhelming credible evidence that happens to contradict its own findings."

### **'Didn't Mention Obstacles'**

She added, "Respondents fail to make mention of the issues petitioner would face if he were to be rehired by the FDNY." These included inability to drive a standard vehicle,

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the opioids, his use of a cane while walking, and duties that included carrying heavy equipment and moving patients down multiple flights of stairs, she wrote.

“The court finds that NYCERS’s denial was not based on a complete and accurate picture of the facts,” she concluded. She ordered that Mr. Lidakis remain on disability retirement.

“It’s very unusual for a judge to say the Medical Board is wrong,” Mr. Goldberg said, adding that Justice Spodek’s decision should be definitive, although the city could appeal. “Hopefully, it’s the end of the story,” he said.

Mr. Lidakis has continued to receive his disability checks, Mr. Goldberg said. “The only way the pension stops is if they offer you a job and you refuse the job,” he said, adding that because of Mr. Lidakis’s physical condition “the Fire Department was never going to take him back.”



JEFFREY GOLDBERG: ‘ A stinging rebuke to pension system.’



HON. ELLEN SPODEK: Would endanger those who need help.