

## **QUESTIONS AND ANSWERS ADDRESSING MEDICAL DOCUMENTATION**

***U.S. Office of Personnel Management  
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***1. Why are agencies sometimes in a position only to offer a medical examination while at other times, agencies may order an employee to participate in an examination?***

As explained in the answers below, there is a distinction between an agency's authority to order a medical examination and its discretion to offer an examination. The situations under which an agency may order an employee are limited by the restrictions defined in the answer to question #2. Agencies may offer examinations when legitimate business needs exist for obtaining medical information about an employee. This is more fully outlined in the answer to question #4. It is important for agencies to understand the authority, and limitations on that authority, when requiring medical information and when dealing with an employee's possible refusal to participate in an examination or provide medical information. The important distinction between an offer and an order is the penalty attached to a refusal (see questions 6 and 7).

***2. When can an agency order an employee to take a medical or psychiatric examination?***

An agency's right to order a medical or psychiatric examination is restricted by the provisions of 5 CFR 339.301. These exams may be ordered in the following situations:

1. An employee who occupies a position with medical standards or physical requirements or which is part of an established medical evaluation program may be required to submit to an examination
  - prior to reemployment on the basis of full or partial recovery from a medical condition;
  - on a regularly recurring, periodic basis; or

- whenever there is a direct question about the employee's ability to meet the physical or medical requirements of a position.

2. An agency may require an employee who has applied for or is receiving continuation of pay or compensation under OWCP to submit to an examination to determine the medical limitations that may affect placement.
3. An employee released from his/her competitive level during RIF may be required to undergo a relevant medical exam if the position to which the employee has reassignment rights has medical standards or physical requirements which differ from those required in the employee's current position.

Agencies must demonstrate a link between an order for a medical examination (or for medical information from a personal physician) and a legitimate business concern relating to the requirements of the job. NOTE: Unless a psychiatric examination is specifically called for under medical standards or a medical evaluation program, an agency may only require a psychiatric examination after receiving the results of a medical examination. (5 CFR §339.301(e))

### ***3. What are the differences between a medical standard, physical requirements and medical surveillance programs?***

Each of these terms is used in the regulations at 5 CFR Part 339 to describe job qualifications, job requirements, and agency efforts to monitor the health of employees in certain types of jobs.

A medical standard is a qualification standard set by OPM (or an agency if it has more than 50% of the positions in that occupation Governmentwide) that identifies certain medical conditions that would be disqualifying because there is a direct relationship between the condition and the essential duties of the specific positions to be filled.

A medical standard means that a particular medical condition, by its very nature, is disqualifying in all cases because no individual with this condition would be presumed to be able to successfully perform the duties of the position without undue hazard to himself or others.

For example, it would be permissible to exclude, without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a Government vehicle, but it may not be permissible to automatically disqualify all those who are blind in just one eye. (See the attachment for a summary of the occupational series that have medical requirements.)

A physical requirement is established by an agency to describe specific activities that an employee must be able to do in order to accomplish the duties of the position. Any physical requirement established must be clearly tied to the requirements of the job. For example, a firefighter position would probably include the ability to climb ladders and a materials handler position would probably include a requirement that the employee be capable of lifting a certain weight. Generally speaking, however, pushups, situps, mile runs and other fitness related activities are not appropriate as physical requirements because they do not relate directly to an employee's ability to do the duties in question.

A medical surveillance program is a program established by the agency to monitor and determine the effect of certain jobs on the health of the individual. Under these programs, employees participate in medical and/or psychiatric examinations on a routine basis to monitor the effect of high stress jobs or jobs in which the employees may be exposed to contagious diseases, hazardous chemicals, or other environmental contaminants.

#### ***4. Can an agency offer a medical or psychiatric examination at any time?***

An agency must have a legitimate need for the medical or psychiatric evaluation in order to offer an employee an examination under 5 CFR 339.302. This offer is appropriate in any situation where the agency needs additional medical documentation to make an informed employment decision. In offering the examination to the employee, an agency must document the specific reason(s) for making the offer.

#### ***5. What information should be included in a letter requesting medical documentation from an employee?***

Always include a straightforward explanation of why the information is needed at this time. Identify who will review the medical information. Provide information for the physician that explains the problem, the key aspects of the job, and what you need to know to make a determination about the employment status of his/her patient. Avoid confusing language. Be direct about what you need to know. If you are preparing a separate letter directly to the physician, ask questions like:

- If the employee has a medical condition, how does that condition affect his/her ability to do the critical aspects of the job?
- When will the employee be able to return to his/her job?
- Will there be any restrictions? What are these restrictions?
- The employee has requested a part-time schedule as an accommodation for his condition. Will this accommodation allow him to perform the critical aspects of his job? Please state the medical basis for your conclusion.

Do not routinely request all of the information listed in 5 CFR 339.104 (*Medical documentation or documentation of a medical condition*). Select the information necessary to resolve the employment decision that is pending.

**6. What are the options available to agencies when an employee refuses an offer of an examination?**

Where there are deficiencies in the employee's performance or conduct, the agency may take appropriate action based upon the information available at the time. In responding to proposed performance-based or adverse actions, the employee may elect to provide appropriate medical documentation as a part of an affirmative defense against the action. Agencies should not attempt to address performance or conduct problems by way of a medical examination. An employee's medical condition is generally not an agency concern unless it affects the employee's conduct or ability to perform.

**7. What are the options available to an agency when an employee refuses to comply with a proper order to submit to a medical examination?**

In those cases where an agency exercises its right to order a medical examination, an employee's refusal constitutes misconduct and the agency should respond with appropriate disciplinary action under the provisions of Part 752. Agencies should always insure that its order is based on one of the conditions cited in the answer to question #2 before proceeding with disciplinary action.

**8. Can an employee submit medical documentation from a physician of his/her own choosing?**

Yes. Under the provisions of 5 CFR 339.303 (b), when a medical exam is required, an agency must offer the employee an opportunity to submit medical documentation from

his/her own physician or practitioner. The agency must consider all medical documentation received from the employee. In situations described in the answer to question #2, if the information received does not satisfy the agency's need for information, an employee remains obligated to submit to a properly ordered medical examination.

***9. If an agency determines that the medical documentation submitted is insufficient or does not support the employee's request for accommodation, what options are available to the agency in situations which do not require an employee to submit to a medical examination?***

An agency may request additional medical information from the employee and/or offer an agency examination. If both are refused, the agency may act on the basis of information currently before it. In situations where the documentation is found to be inconclusive or insufficient, the agency will need to defend that finding if the action is appealed. This usually requires the opinion of an agency physician or a contract physician who is qualified to review the documentation and point out the inconsistencies or the lack of information about the condition.

If, on the other hand, the agency takes an action which is not in accord with the recommendations of the employee's physician, the agency will have to defend its decision to accept the opinion of the medical officer over the opinion of an attending physician who has the benefit of having treated the employee. Third parties give significant deference to the opinion of a physician with first-hand knowledge of the employee.

It is very important for agency officials who are making determinations based on medical information to remember that any agency action must be based on a management decision, not just a medical opinion, regarding the employee's ability on the job. Physicians or practitioners provide opinions regarding an employee's medical status and potential limitations for certain duties, but it is management's responsibility to make a determination as to whether or not the employee can do the job (considering reasonable accommodation) and to take appropriate action.

***10. Is there a requirement that medical documentation submitted by an employee be prepared by a board certified physician?***

No. The regulations at 5 CFR 339.104 state that medical documentation is a statement from a "licensed physician or other appropriate practitioner." Practitioner is defined as a "person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question."

Agencies should note that if an attempt is made to refute documentation submitted by an employee, the medical opinion of a Board certified physician or specialist may carry more weight before a third party.

**11. Can an agency ask for the credentials/qualifications of the individual submitting the documentation?**

Yes. But agencies should consider the relevance of the information. In most instances, this becomes an issue because the information is insufficient to answer the agency's questions regarding the medical/psychiatric status of an employee. Rather than challenging the individual's credentials, the agency may just want to inform the employee that the documentation is not sufficient. In some cases involving a claim of disability discrimination, however, the lack of medical credentials may be a part of the agency's argument that the employee has not met his/her burden of proof (see *Bordelon v. HHS*, 54 MSPR 400 (1992)).

**12. How long should an employee be given to submit medical documentation?**

This will depend upon the nature of the condition and the accessibility of qualified physicians. Other relevant considerations are the amount of documentation the employee has already submitted, the recency of his/her last examination by an attending physician, and how long the physician has been treating the employee for the specific condition. Another factor will be the need of the agency to make a decision in order to keep up with the needs of the organization.