

FDA STAFF MANUAL GUIDES, VOLUME III - GENERAL ADMINISTRATION

PERSONNEL

CONFLICT OF INTEREST

MEDICAL DETERMINATIONS RELATED TO EMPLOYABILITY

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1. PURPOSE

The purpose of this Guide is to officially and formally document the procedure utilized in the Food and Drug Administration (FDA or Agency) when:

- A. An employee requests, for medical reasons, a benefit or special treatment;
or,
- B. It is in the best interests of the employee and/or the Agency to obtain medical information relevant to an employee's ability to perform his/her duties safely and efficiently, but the employee's position does not have medical standards or physical requirements which otherwise require or authorize the collection of medical documentation.

2. BACKGROUND

For a number of years, FDA has had in place a procedure for the confidential collection and evaluation of medical documentation and for providing recommendations related to the medical evaluation to managers/supervisors to assist in their decision-making process. This procedure ensures that employees are treated uniformly and managers are provided with adequate information on which to base sound and informed decisions or recommendations.

3. REFERENCES

- A. Title 5 of the Code of Federal Regulations (C.F.R.), Part 339, Medical Qualification Determinations.

B. Federal Personnel Manual (FPM), Chapter 339, Medical Qualification Determinations.

4. DEFINITIONS

Definitions included in the texts of the references cited above are not duplicated here. The following are additional pertinent definitions:

A. FDA Consulting Physician (or Agency Consulting Physician or Medical Consultant). A physician or group of physicians under contract to the Food and Drug Administration engaged specifically to:

1. Review and evaluate medical documentation submitted by employees or collected via Agency-offered examination(s); and,
2. Provide necessary related written reports and recommendations.

The contract is administered by the Division of Human Resources Management (DHRM) and only the Project Officers for the contract (or their designees) may authorize work orders to be performed by and/or contact with the contract physician(s).

B. Benefit or Special Treatment. A change in duty status or working conditions requested by an employee, such as but not limited to: any request for approval of extended leave (i.e., in excess of five work days, or less if for an employee on leave restriction); advance sick leave; excusal from overtime, travel, physical exertion; reasonable accommodation due to a handicapping condition; reassignment; reemployment on the basis of full or partial recovery from a medical condition; etc., any of which are requested based on medical reasons.

5. PROCEDURES

A. When Medical Documentation is Requested. Medical documentation should be requested when:

1. An employee requests, for medical reasons, a benefit or special treatment; or,
2. A supervisor has documentable concerns about an employee's ability to perform his/her duties safely and efficiently, but the employee's position is not covered by medical standards or physical requirements and it is in the best interests of the employee and the Agency to obtain relevant medical information for consideration in the decision-making process.

In such cases, the supervisor should request that the employee submit relevant medical documentation in accordance with the provisions of 5 C.F.R. Part 339 and FPM Chapter 339 for review and evaluation by the Agency's consulting physician.

- B. Where to Get Advice and Assistance.** For Headquarters and Headquarters Field Activities employees, managers/supervisors should contact the Employee Relations Specialist in the Division of Human Resources Management who services their program area for assistance and advice. For Field employees, managers/supervisors should contact the regional personnel office servicing their organization for assistance and advice. These offices will help with preparing a document requesting necessary medical information and advising the employee how to submit it. In the event a regional personnel office does not have access to a medical consultant locally, field supervisors and their regional personnel office may utilize the FDA contract physician by coordinating through DHRM's Employee Relations Branch or Compensation, Benefits, and Training Branch, as appropriate. If it is more appropriate for another personnel specialist to assist on a particular request, the personnelist contacted will make a referral.
- C. Kind of Medical Documentation Required.** The kind of medical information required is cited in 5 C.F.R. Part 339 and will be included in (or attached to) each memorandum/letter requesting such documentation. Documentation is to be submitted in a narrative format and should be responsive to the relevant items cited in the memorandum/letter and/or its attachment(s). However, because the wording of 5 C.F.R. Part 339 is revised periodically, that information is not repeated here. The employee will also be advised that an acceptable alternative to a narrative prepared by the employee's physician(s) is a copy of the pertinent medical records provided they are responsive to the items cited in the requesting memorandum/letter and/or its attachment (s).
- D. Securing the Employee's Medical Documentation.** The memorandum/letter will advise the employee to take it and its attachment(s) to his/her physician(s). This will enable the physician(s) to be aware of the employee's due date for submitting the medical documentation and to understand the nature, reasons, and specificity of the request so that he/she will be able to respond appropriately to the employee's request. However, it is the employee's responsibility to obtain and submit (or arrange for and ensure the submission of) the documentation. Any expense incurred in obtaining and submitting medical documentation from the employee's physician(s) is the employee's responsibility. It will not be necessary for the employee to undergo a new

examination if the employee is currently being seen/treated for the condition.

- E. Confidentiality.** In the memorandum/letter requesting the medical documentation, the employee will be advised how to maintain confidentiality of the documentation. Specifically, the employee will be advised that if the medical documentation is enclosed in a sealed envelope marked "MEDICAL CONFIDENTIAL" and addressed to the consulting physician in care of the personnelist assisting the manager/supervisor and employee, it will be reviewed only by the Agency's consulting physician and appropriate servicing personnelist(s) and not the manager/supervisor.
- F. Time Frame for the Employee to Provide Medical Documentation.** The employee will be given a specific due date (usually within seven to ten calendar days of the date of receipt of the requesting document) by which the medical documentation is to be submitted. The employee will also be given directions on how to submit the medical documentation to the consulting physician in care of the appropriate personnelist. The employee should promptly get the necessary information so that the decision on his/her request or employment status made by management has included review of medical documentation provided by the employee and is not unduly prolonged.
- G. Agency Offer of Examination to Obtain Medical Documentation.** In some cases, the Agency may offer a medical examination to obtain necessary medical information. Such offers may be made only within the provisions of U. S. Office of Personnel Management regulations and guidance and are entirely management's option. Such an offer may be considered appropriate particularly when the Agency initiates the request for medical documentation due to concerns about safe and efficient performance. An employee may also submit documentation from his/her personal physician when an Agency-initiated examination is offered.
- H. Compliance With Requests for Medical Documentation.** The employee will be advised that it is important to comply with the request within the specified time frame (which upon written request citing legitimate need may be extended by the requesting manager/supervisor) because decisions will be based on the information in the record as of the specified date. If the employee refuses or fails to submit the requested information (or refuses or fails to take an offered examination), the manager/supervisor will be advised to act on the basis of the information he/she has available. For example, the supervisor may deny a benefit or special treatment requested by the employee which is not supported by adequate medical documentation, or the Agency may take action based

on the employee's performance or conduct after considering the current medical information available.

- I. The Role of the Agency's Consulting Physician.** The Agency's consulting physician will review the documentation submitted by the employee to determine whether it is acceptable, complete, and sufficient for him/her to render a recommendation on the employee's request. More specifically, he/she will determine whether the diagnosis or clinical impression is justified according to established diagnostic criteria and whether the conclusions and recommendations are consistent with generally accepted professional standards. The consulting physician will report his/her findings to the manager/supervisor (through the personnelist assisting on the request) along with a recommendation as to whether the requested benefit/special treatment is reasonable in light of the medical documentation reviewed. The Agency's consulting physician will also review and report on medical documentation collected in an Agency-offered examination, when applicable. If necessary, the Agency's consulting physician may contact the employees' physician(s) who provided medical documentation.

- J. Responsibility for Decisions and Determinations.** It is a management decision, not the decision of the employee or the employee's physician(s) or the Agency's consulting physician, whether or not to grant the benefit/special treatment, either as requested or in some modified form. The only expectation is that the U.S. OPM is the deciding official on applications for disability retirement.