

ARTICLE 51

DOCUMENTATION OF MEDICAL STATUS

SECTION 1

All medical documentation acquired under this Article, whether submitted by the employee or obtained through medical examination, will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other legal authorities. No medical information other than information on how the medical condition affects an employee's job requirements will be shared with supervisors or LR/ER representatives, unless an employee consents to a broader medical release. Reports produced during any such examinations will be maintained in accordance with applicable provisions of 5 CFR 293 and other legal authorities. The report of an examination conducted pursuant to this Article will be available to the employee pursuant to 5 C.F.R. 293.504(b) and 5 C.F.R. 297.205.

SECTION 2

Employee Initiated Requests. When an employee requests a change in duty status, assignment, or working conditions, or any other benefit, special treatment, or accommodation based on medical reasons, the employee will submit a request in writing to his/her supervisor, along with medical documentation in support of the request. The documentation shall be limited to the specific information necessary for the Employer to make a determination regarding the validity of the employee's request. Subject to Federal law, the Employer shall not require the employee to provide a statement of a specific diagnosis or medical condition or disability to the Agency. In the event the medical documentation submitted is inadequate for the Employer to make a sound and informed decision, the Employer may request that the employee provide additional medical / documentation in accordance with 5 CFR 339. It is the employee's option to provide the requested information. However, if sufficient medical documentation to support the request is not provided, the Employer may not approve the request. The Employer retains responsibility for granting requests, for granting requests in modified form and for denying requests, as appropriate.

SECTION 3

A. When the Employer orders or offers a medical examination under the provisions of the OPM regulations, it will inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate. Except in emergency situations, an employee is entitled to at least seven (7) calendar days' advance written notice that s/he is to take a fitness-for-duty examination or psychiatric examination. In the event that the employee is requested to set up an appointment, s/he will be allowed reasonable time to do so. The notice will set forth the reasons for the examination (including the behavior the Employer has observed), and the general scope and character of the examination. Any employee ordered to take an examination by the Employer will be allowed to do so on duty time.

- B. *Continuation of Pay/Workers' Compensation* - The procedures in this article are not designed to address benefit claims filed with the Department of Labor, Office of Workers Compensation Programs (OWCP), for alleged job-related injuries. Employees filing such claims must adhere to the OWCP rules, regulations, and policies. The Employer may order any employee who has applied for, or is receiving, continuation of pay or workers' compensation resulting from an on the job injury or occupational disease to undergo examinations(s) at the Employer's expense in accordance with 5 CFR 339. An employee's refusal to be examined, in accordance with a properly authorized order of the Employer under 5 CFR 339, will be grounds for appropriate disciplinary or adverse action.
- C. Medical examinations under this Article must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations. Employees directed by the Employer to take a medical examination will have an opportunity to submit to the Employer the names of three (3) physicians located in the commuting area to be considered to conduct the examination. If the Employer does not agree with any of the choices submitted by the employee, the Parties recognize that, pursuant to 5 CFR 339.303(b), the Employer retains the authority to designate the examining physician. In the event that a physician not suggested by an employee is designated to conduct the examination, any medical documentation submitted by the employee's personal physician will be reviewed and given due consideration by the Employer or its agents. The employee will be responsible for furnishing such medical documentation to the designated examining official.
- D. *Employees Whose Positions Are Not Subject to Physical Requirements/Medical Standards* - If the Employer has offered the employee an opportunity to provide acceptable supporting documentation from his/her own physician(s) and the medical documentation provided is inadequate for the Employer to make an informed decision, the Employer may offer an employee a medical examination at the Employer's expense in accordance with 5 CFR 339. The Employer's designated medical consultant and the examining physician, chosen by the Employer, will consider any documentation the employee has submitted to the Employer from his/her own physician. If the employee declines to submit to the examination offered by the Employer, the Employer will base its decisions on the documentation it has received.
- E. 1. The Employer may direct an employee occupying a position for which physical requirements, medical standards or medical evaluation programs have been established to undergo a fitness for-duty examination only under those conditions authorized in prevailing OPM regulations (currently found at 5 C.F.R. Part 339) at the time the examination is requested or ordered. The Employer will provide the examining physician with a copy of the applicable standards and requirements for the position, and/or a detailed description of the duties of the position, including critical elements, physical demands, and environmental factors. An employee's refusal to be examined, in accordance with a properly authorized order of the Employer under 5 CFR 339, will be grounds for appropriate disciplinary or adverse action. This provision shall not be interpreted as granting to the Employer any right to conduct drug screening, HIV testing, or any other medical testing or procedure not specifically mandated by law, rule or regulation.

2. When an individual is hired for a position which is subject to physical safety requirements and/or medical standards, the Employer will follow the requirements and procedures in government-wide regulations in assessing whether the prospective employee satisfies those requirements and/or standards. If the Employer has reason to believe that the employee no longer meets such requirements and/or standards at a subsequent point in time, it will similarly adhere to government-wide regulations in order to determine whether the employee still meets the necessary requirements/standards for employment in that position.

F. An agency may order a psychiatric examination (including a psychological assessment) only when:

1. The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions that may affect the safe and efficient performance of the individual or others, or
2. A psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under 5 C.F.R. § 339.

A psychiatric examination or psychological assessment authorized under 1 or 2 above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

G. An examining physician's report may not be used as a basis for a reduction in grade or termination of an employee due to unacceptable performance unless:

1. The job has specific medical requirements as a condition of acceptable performance; or
2. The employee, due to the medical condition(s) addressed in the report, is unable (with or without reasonable accommodation) to perform the essential functions of his/her position. However, if the employee asserts that medical reasons contributed to his/her performance problems, such reports of medical evidence must be considered.

SECTION 4

An employee experiencing health-related problems potentially attributable to working at a computer and/or an associated workstation will promptly inform the Employer (either directly or through the Union) in writing of all pertinent facts. The Employer will consult with the appropriate officials and a determination will be made whether an ergonomic adjustment is necessary to resolve the problem. If those measures do not correct the problem, the employee may submit medical documentation, in accordance with 5 CFR 339, for the Employer's further consideration. If review of the documentation by the Employer's consulting physician supports a determination that damage to the employee's health will likely result from continued work on the computer and/or on associated workstation, the Employer will attempt either to take further reasonable measures at the employee's workstation or, where reasonably practical, to reassign the

employee to other appropriate work. The Employer may, at its option, offer a voluntary medical examination in such circumstances. Nothing in this Section is intended to alter either an employee's right to request, or the Employer's duty to respond to a request for reasonable accommodation of a qualified handicapped individual's documented disabling condition.

SECTION 5

The Employer will pay all costs for the examination(s) of employees which it orders or offers under the provisions of this article. Employees must pay for medical examinations conducted by a private physician or practitioner where the purpose of the examination is to secure a benefit sought by the employee such as but not limited to a request for a reasonable accommodation or advance sick leave.