

# **STATE OF TEXAS MODEL POLICY: MEDICAL AND PSYCHOLOGICAL EXAMINATION OF A LICENSEE**

**PURPOSE:** Monitoring a member's fitness for duty, both medically and psychologically, is essential for the safety and welfare of the members of the agency and the community. The purpose of this policy is to ensure that all members of this agency remain medically and psychologically fit for duty and able to perform their essential job functions.

## **1. POLICY**

**1.1** This agency strives to provide a safe and productive work environment and ensure that all members of this agency can effectively perform the essential functions of their jobs. Under limited circumstances, the agency may require a professional examination of a member's physical or mental capabilities to determine the ability to perform essential functions.

## **2. MEMBER RESPONSIBILITIES**

**2.1** It is the responsibility of each member of this agency to maintain physical stamina and psychological stability sufficient to effectively perform the essential duties of the position.

**2.2** Any member who feels unable to perform their duties shall promptly notify a supervisor. In the event a member believes that another agency member is unable to effectively perform their duties, such observations or belief shall be promptly reported to a supervisor.

## **3. SUPERVISOR RESPONSIBILITIES**

**3.1** All supervisors should be alert to any indication that a member may be unable to safely perform their duties due to an underlying physical or psychological impairment or condition.

**3.2** Such indications may include, but are not limited to the following:

- a) An abrupt and negative change in the member's usual or normal behavior;
- b) A pattern of irrational conduct, hostility, or oppositional behavior;
- c) Personal expressions of instability;
- d) Inappropriate use of alcohol or other substances, including prescribed medication;

- e) A pattern of questionable judgment, impulsive behavior, or the inability to manage emotions; and
- f) Any other factor or combination of factors causing a supervisor to believe the member may be suffering from an impairment or condition requiring intervention.

**3.3** Supervisors shall maintain the confidentiality of any information consistent with this policy.

#### **4. REPORTING**

**4.1** A supervisor observing a member, or receiving a report of a member, who has just cause to believe the member is unable to effectively perform their duties shall promptly document all objective information or observations.

**4.2** The supervisor should attempt to meet with the member to inquire about the conduct or behavior giving rise to the concerns.

**4.3** If a meeting does not resolve the supervisor's concerns or does not take place, the supervisor shall promptly document observations and actions in writing and inform the appropriate supervisor within the member's chain of command.

#### **5. DUTY STATUS FITNESS-FOR-DUTY EXAMINATION**

**5.1** The appropriate supervisors within the member's chain of command should make a preliminary determination regarding the member's duty status.

**5.2** If a determination is made that the member can effectively perform essential job functions, the member should be returned to duty and arrangements made for appropriate follow-up.

**5.3** If a preliminary determination is made that there is just cause to believe the member's conduct or behavior represents an inability to effectively perform essential job functions, the appropriate supervisor should immediately relieve the member of duty pending further examination.

**5.4** Members relieved of duty shall comply with the administrative leave provisions as set out by agency policy.

**5.5** The chief administrator shall be promptly notified if any member is relieved of duty.

## **6. FITNESS-FOR-DUTY EXAMINATION**

**6.1** A fitness-for-duty examination (FFDE) may be ordered whenever circumstances reasonably indicate that a member is unfit for duty.

**6.2 DEFINITION OF A FFDE:** An FFDE is a formal, specialized examination of an incumbent member that results from:

- a) Objective evidence that the member may be unable to effectively perform a defined job function; and
- b) A reasonable basis for believing that the cause may be attributable to a medical or psychological condition or impairment.

As such, an FFDE is considered a “medical” examination under the terms of the Americans with Disabilities Act. The central purpose of an FFDE is to determine whether the member is able to effectively perform his or her essential job functions.

**6.3 THRESHOLD CONSIDERATIONS FOR A FFDE:** Referring an member for an FFDE is indicated whenever there is an objective and reasonable basis for believing that the member, as a result of a medical or psychological condition or impairment:

- a) May be unable to perform one or more essential job functions; or
- b) Poses a direct threat to themselves or others.

An objective basis is one that is not merely speculative but derives from direct observation or other reliable evidence.

**6.4** When deciding whether to conduct an FFDE, both the employer and examiner may benefit from considering its potential usefulness and appropriateness given the specific circumstances, and the employer may consider whether other remedies (for example, education, training, discipline, physical FFDE) are appropriate.

**6.5** The examiner strives to remain impartial and objective and to avoid undue influences by any of the parties involved in the case.

**6.6** Mental health professionals refrain from rendering fitness-for-duty opinions when they are not conducting an FFDE.

## **7. PROCESS FOR NON-SWORN PERSONNEL**

**7.1** The chief administrator, in cooperation with the personnel department, may order a member to undergo an FFDE whenever a question arises as to whether the member is medically or psychologically fit to continue in their duties. The examination shall be conducted by the member’s personal physician, psychiatrist, or psychologist, as required by agency policy.

7.2 To facilitate the examination of any member, the agency will provide all appropriate documents and available information to the person or entity responsible for conducting the examination.

7.3 The examining practitioner will provide the agency with a report indicating whether the member is fit for duty. If the member is unfit for duty, the practitioner will include the existing restrictions or conditions in the report.

7.4 A second examination may be ordered by the appropriate authority if the member, the civil service commission, or the chief administrator questions the practitioner's report. The examination will be conducted by a physician, psychiatrist or psychologist appointed in accordance with the procedure adopted by the governing body. If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the member's fitness shall be decided in accordance with applicable laws, provisions of collective bargaining, meet and confer, other agreements, or policies.

7.5 All reports and examinations submitted by the examining practitioner shall be part of the member's confidential medical file.

7.6 Determinations regarding duty status of members who are found to be unfit for duty or fit for duty with limitations will be made in cooperation with the personnel department.

7.7 Any member ordered to undergo a fitness-for-duty examination shall comply with the terms of the order and cooperate fully with the examining practitioner. Any failure to comply with such an order and any failure to cooperate with the practitioner may be deemed insubordination and shall subject the member to discipline, up to and including termination.

## **8. PROCESS FOR PEACE OFFICERS**

8.1 The chief administrator, in cooperation with the personnel department, may order an officer to undergo an FFDE whenever a question arises as to whether the officer is medically or psychologically fit to continue in their duties. The examination shall be conducted by the officer's chosen physician, psychiatrist, or psychologist, as appropriate and in accordance with applicable laws, including Texas Local Government Code §§ 143.081 and .1115, provisions of collective bargaining, meet and confer, other agreements, or policies.

8.2 The chief administrator shall provide written notice of the examination to the license holder not later than the tenth business day before the deadline to submit to the examination. Written notice shall include the reasons for the examination.

8.3 To facilitate the examination of any member, the agency will provide all appropriate documents and available information.

8.4 The examining practitioner will provide the agency with a report indicating whether the officer is fit for duty. If the officer is unfit for duty, the practitioner will include the existing restrictions or conditions in the report.

8.5 A second examination may be ordered by the appropriate authority if the officer, the civil service commission, or the chief administrator questions the practitioner's report. The examination will be conducted by a physician, psychiatrist or psychologist appointed in accordance with the procedure adopted by the governing body. If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the officer's fitness shall be decided in accordance with applicable laws, provisions of collective bargaining, meet and confer, other agreements, or policies.

8.6 All reports and examinations submitted by the examining practitioner shall be part of the officer's confidential medical file.

8.7 Determinations regarding duty status of officers who are found to be unfit for duty or fit for duty with limitations will be made in cooperation with the personnel department.

8.8 Any officer ordered to undergo an FFDE shall comply with the terms of the order and cooperate fully with the examining practitioner. Any failure to comply with such an order and any failure to cooperate with the practitioner may be deemed insubordination and shall subject the officer to discipline, up to and including termination.

## **9. AGENCY'S RESPONSIBILITIES TO NOTIFY TCOLE**

9.1 **License Holder:** A Texas County Jailer, Peace Officer, or Telecommunicator.

9.2 The chief administrator shall notify the Texas Commission on Law Enforcement (TCOLE) upon a final determination that a license holder is unable to effectively perform essential job functions. This notification shall be in writing and submitted to TCOLE within 30 days of the final determination that the license holder is unable to effectively perform essential job functions.

**9.3** The chief administrator shall notify TCOLE if a license holder fails to submit to an examination within the deadline set by the agency. This notification shall be in writing and submitted to TCOLE within 30 days after the deadline set by the agency has expired.

**9.4** The chief administrator shall notify TCOLE as soon as practicable if a license holder has completed the required examination or received notice that the license holder's circumstances have been successfully resolved.

## **10. FITNESS-FOR-DUTY EXAMINATION MINIMUM STANDARDS**

**10.1** Given the nature of these examinations and the potential consequences to the employer, the examinee, and the public, it is important for examiners to perform FFDEs with maximum attention to the relevant legal, ethical, and practice standards and guidelines. Such standards include, but are not limited to, the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct. Consequently, it is recommended that these examinations be conducted by a psychologist, psychiatrist, or medical doctor with the appropriate qualifications.

**10.2** Depending on the referral question and the examiner's professional judgment, an FFDE examiner strives to utilize multiple methods and data sources to optimize the accuracy of findings. Examiners integrate the various data sources, assigning them relative weight according to their known reliability and validity. The range of methods and data sources used by an FFDE examiner can vary, but such suggestions and further information about this process can be found in the International Association of Chiefs of Police (IACP) 2018 Psychological Fitness-for-Duty Examination.

**10.3** When conducting the FFDE, it may be necessary for the examiner to receive background and collateral information regarding the member's past and recent performance, conduct, and functioning. The information may include, but is not limited to, job class specifications or job description, performance evaluations, previous remediation efforts, commendations, testimonials, internal affairs investigations, formal citizen or public complaints, use-of-force incidents, reports related to officer-involved shootings, civil claims, disciplinary actions, incident reports of any triggering events, health care records, prior psychological examinations, and other supporting or relevant documentation related to the member's psychological fitness for duty. In some cases, an examiner may ask the examinee to provide relevant medical or mental health treatment records and other data for the examiner to consider. It is important that all collected information be related to job performance issues or the suspected job-impairing mental condition. Where possible and relevant, it may prove helpful to gather information from other collateral sources.

**11. APPEALS**

**11.1** Members disputing the application or interpretation of this policy may submit a grievance as provided in the applicable grievance policy.

**12. RESOURCES FOR MEDICAL AND PSYCHOLOGICAL EXAMINATIONS**

1. *2018 Psychological Fitness-for-Duty Evaluation Guidelines from the IACP*
2. *The APA Professional Practice Guidelines for Occupationally Mandated Psychological Evaluations*
3. *2017 American College of Occupational and Environmental Medicine Guidance for the Medical Evaluation of Law Enforcement Officers*