

requirement to undergo vaccination with products approved by the Food and Drug Administration (e.g., for national security reasons or in order to fulfill the duties of a position designated as national security sensitive). The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or employees notified in writing of the reasons for including the positions in the program.

§ 339.206 Disqualification on the basis of medical history.

An employee or applicant may not be disqualified for any position solely on the basis of medical history. For positions subject to medical standards and/or physical requirements, and for positions under medical evaluation programs, a history of a particular medical condition may result in medical disqualification only if the condition at issue is itself disqualifying, recurrence of the condition is based on reasonable medical judgment, and the duties of the position are such that a recurrence of the condition would pose a significant risk of substantial harm to the health and safety of the applicant or employee or others that cannot be eliminated or reduced by reasonable accommodation or any other agency efforts to mitigate risk.

Subpart C—Medical Examinations

§ 339.301 Authority to require an examination.

(a) A routine pre-employment medical examination is appropriate only for a position with specific medical standards and/or physical requirements, or that is covered by a medical evaluation program established under this part.

(b) Subject to § 339.103, an agency may require an applicant or employee who has applied for or occupies a position that has medical standards and/or physical requirements, or is covered by a medical evaluation program established under this part, to report for a medical examination:

(1) Subsequent to a tentative offer of employment or reemployment (including return to work from medically

based absence on the basis of a medical condition);

(2) On a regularly recurring, periodic basis after appointment in accordance with § 339.205; or

(3) Whenever the agency has a reasonable belief, based on objective evidence, that there is a question about an employee's continued capacity to meet the medical standards or physical requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an injury or disease covered under the provisions of the Federal Employees' Compensation Act to report for an examination to determine medical limitations that may affect job placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force under part 351 of this chapter to undergo a relevant medical evaluation if the position to which the employee has assignment rights has medical standards and/or physical requirements, that are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination that 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 applicant or employee, the safety of others, and/or the vulnerability of business operation and information systems to potential threats, or

(ii) A psychiatric examination or psychological assessment is part of the medical standards for a position having medical standards or required under a medical evaluation program established under this part.

(2) A psychiatric examination or psychological assessment authorized under paragraphs (e)(1) of this section must be conducted in accordance with accepted professional standards by a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and

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Neurology, or by a licensed psychologist or clinical neuropsychologist, and may only be used to make inquiry into a person's mental fitness as it directly relates to successfully performing the duties of the position without significant risk to the applicant or employee or others, and/or to the vulnerability of business operation and information systems to potential threats.

§ 339.302 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric examination or psychological assessment) in situations where the agency needs additional medical documentation to make an informed management decision. This may include situations where an employee requests, for medical reasons, a change in duty status, assignment, working conditions, or any other different treatment (including reasonable accommodation or return to work on the basis of full or partial recovery from a medical condition) or where the employee has a performance or conduct problem that may require agency action. Reasons for offering an examination must be documented. When an offer of an examination has been made by an agency and the offer has been accepted by the applicant or employee, the examination must be carried out in accordance with the authorities cited in § 339.103. The results of the examination must also be used in accordance with the authorities cited in § 339.103.

§ 339.303 Medical examination procedures.

(a) When an agency requires or offers a medical or psychiatric examination or psychological assessment under this subpart, it must inform the applicant or employee in writing of its reasons for doing so, the consequences of failure to cooperate, and the right to submit medical information from his or her private physician or practitioner. A single written notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart. An agency may establish timeframes, in writing, for submission of medical documentation, with allowances for reasonable extensions.

(1) Refusal or failure to report for a medical examination ordered by the agency may be a basis for a determination that the applicant or employee is not qualified for the position. In addition, an employee may be subject to adverse action.

(2) Refusal or failure on the part of an applicant or the employee to authorize release of any results from an agency ordered or offered medical examination issued in accordance with §§ 339.301 or 339.302, or the results of any previous medical treatments or evaluations relative to the identified medical issue, to authorized agency representatives, including the agency physician or medical review officer and/or independent medical specialists, may be a basis for disqualification for the position by the hiring agency. In addition, an employee may be subject to adverse action.

(b) The agency designates the examining physician or other appropriate practitioner, but must offer the applicant or employee an opportunity to submit medical documentation from his or her private physician or practitioner for consideration in the medical examination process. The agency must review and consider all such documentation supplied by the private physician or practitioner. The applicant or employee must authorize release of this documentation to all authorized agency representatives. In situations where the medical documentation of the applicant or employee's private physician or practitioner is contradictory and cannot be resolved by the examining physician or the agency physician or medical review officer, the agency may, at its option, pursue another opinion from an appropriate specialist at agency expense. An applicant or employee also may, at his or her option, pursue another opinion from an appropriate specialist at his or her expense in the event of conflicting or contradictory medical documentation.

§ 339.304 Payment for examination.

(a) An agency must pay for all medical and/or psychological and/or psychiatric examinations required or offered by the agency under this subpart, whether conducted by the agency's physician or medical review officer, an