

Essential Job Functions, Disabling Conditions & the ADA

International Association of Chiefs of Police
Annual Conference 2012
Legal Officers' Section

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Fit for duty as a law enforcement officer?



Fit for duty as a law enforcement officer?



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Fit for duty as a law enforcement officer?



Fit for Duty?



Key Questions

- ▶ How do agencies insure for a safe, effective and healthy workforce without violating the Americans With Disabilities Act?
 - ▶ What is the proper use of medical inquiries and examinations to meet this goal?
 - ▶ What is “consistent with business necessity?”
 - ▶ What are medical guidelines to which agency medical advisors can refer?
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Overview of the ADA and Its Requirements for Employers

Eugenia Esch, Esq.
U.S. Department of Justice
Civil Rights Division

Identifying Essential Functions

Karen J. Kruger, Esq.

IACP Legal Officers' Section

October 1, 2012



FUNK & BOLTON

ATTORNEYS AT LAW

Evaluating Fitness

- ▶ Can the person safely and effectively perform all of the essential functions of a law enforcement officer, with or without reasonable accommodations?
 - ▶ What accommodations does the person need, if any?
 - ▶ Are those accommodations reasonable?
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Threshold Issue

- ▶ What are the essential functions of a law enforcement officer?
 - ▶ How do we determine what the core essential functions are?
 - ▶ The answers will define “job-relatedness” and “consistent with business necessity”
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Example of Function: Make Arrests

- ▶ What are the actual tasks involved in making an arrest?
 - ▶ Does one need to have two hands to make an arrest?
 - ▶ Does one need to be able to see to make an arrest?
 - ▶ Does one need two legs in order to make an arrest?
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What does making an arrest actually involve?

- ▶ Intellectual understanding of probable cause
 - ▶ Memory sufficient to recognize crime
 - ▶ Able to catch a falling person to prevent injury
 - ▶ Able to support a person to place into vehicle
 - ▶ Able to use voice commands
 - ▶ Use submission holds to control a person
 - ▶ Use a radio while maintaining custody of person
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Firing a Weapon of Deadly Force

- ▶ See and identify a target
 - ▶ Be accurate under differing climate/lighting conditions
 - ▶ Hold weapon still and squeeze trigger
 - ▶ Use of judgment to determine timing
 - ▶ Able to reload weapon under stressful circumstances
 - ▶ Apply basic first aid for gunshot wounds
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Steps to Establishing a Defensible Medical Screening System

- ▶ Develop a detailed, core job description that identifies the essential functions of the job
 - ▶ Create medical guidelines to highlight potentially disqualifying medical conditions
 - ▶ Establish process for medical review
 - ▶ Create written protocols and forms
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Developing a Job Description

- ▶ Conduct a Job Task Analysis
 - ▶ Start with a “raw” task list generated by subject-matter experts
 - ▶ Identify which tasks are *essential* – as opposed to tasks that are incidental to the job
 - ▶ How to determine whether a particular function of a job is essential?
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Factors Involved

- ▶ Does the position exist to perform the function? *E.g.* police officer job exists to enforce the law
 - ▶ Are there other employees available to perform the task or must the employee be able to perform the task alone?
 - ▶ How frequently is the task performed?
 - ▶ What degree of expertise is needed to perform the task?
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More Factors to Consider

- ▶ What are the consequences of inadequate performance?
 - ▶ When should this task be learned and competence achieved?
 - ▶ In what different settings may the task be required?
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How to Identify These Factors?

- ▶ Survey of representative incumbents – patrol officers and supervisors
 - ▶ Survey group should represent:
 - Diversity of type of work
 - Geographic variances
 - Ethnic/racial/gender representation
 - Sufficient number to be statistically significant
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Raw Task List

- ▶ Subject matter experts develop a raw task list
 - ▶ List should be specific and include use of standard equipment/tools
 - ▶ Survey participants rate each task on:
 - Frequency
 - Criticality – What is consequence of inadequate performance?
 - When learned
- 

What tasks are “essential?”

- ▶ Those which are fundamental, basic, necessary or vital to the job
 - ▶ Eliminating any such task would be inconsistent with “business necessity”
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Interview Follow Up

- ▶ Interviews with incumbents are helpful to further refining/expanding the task list
 - ▶ Interviews may discover observable job behaviors that are not otherwise specifically defined by a task on the raw task list
 - ▶ Supervisors are best source of this information
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Collate and Analyze Data

- ▶ Statistical analysis of data to create the core job description
 - ▶ Expectation is that *all* sworn officers are fit to perform at least these duties
 - ▶ Specialized assignments may have additional essential tasks, require specialized equipment, higher level of fitness
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Core Job Description Uses

- ▶ Self-screening for applicants
 - ▶ Setting state certification standards
 - ▶ Development of training objectives and timing
 - ▶ Content validation for performance evaluations, promotional tests
 - ▶ Medical and fitness selection standards
 - ▶ Medical and fitness maintenance standards
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Medical Evaluations for Applicants

- ▶ Agency medical provider must be trained on the essential functions of the job
 - ▶ Best case scenario – Medical Guidelines that identify certain conditions/disease AND given examples of tasks that might be negatively affected by the condition, e.g. are thus potentially disqualifying
 - ▶ Plus guidance on what follow up to do if such condition exists
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Applicant Screening

- ▶ Medical examinations may only be administered after employers make a conditional offer of employment
- ▶ One of the “conditions” may be “subject to approval by the agency medical provider”

Reasonable Accommodations

- ▶ If applicant has a potentially disqualifying condition, agency may ask him/her to demonstrate that he/she can perform the essential functions to the employer's satisfaction with or without a reasonable accommodation
 - ▶ Generally, employer determines what is reasonable
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Medical Evaluations & Questions for Incumbent Employees

- ▶ Fitness for duty exams limited to “only the information necessary to determine whether the employee can perform the essential functions of the job with or without reasonable accommodations without posing a direct threat”
 - ▶ Examination must be job-related and timely
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Fitness for Duty Exams

- ▶ Employer must have a reasonable belief based on objective evidence that as a result of a medical condition or disability the applicant cannot perform the essential functions of the job
 - ▶ Or that employee is unable to perform the essential functions without posing a direct threat to health and safety of self or others
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Reasonable Accommodations

- ▶ Incumbent employees may also be entitled to reasonable accommodations
 - ▶ Agency policy can require employee to identify/ask for accommodation
 - ▶ Agency not expected to “guess” at what accommodation is needed
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Developing Medical Screening Guidelines

Fabrice Czarnecki, M.D.



Medical Definitions

- ▶ Impairment: Deviation, loss or loss of use of any body structure or body function (AMA)
 - ▶ Disability: Activity limitations or participation restrictions (AMA)
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Medical Definitions

- ▶ Accommodation: Any modification of the workplace or a specific job that allows a person with a disability to perform essential functions of a job and or be able to be gainfully employed (AMA)
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Medical Definitions

- ▶ Accommodations– Able to do EJF
 - In LE: ergonomic changes (duty belt, handgun grip), latex-free gloves, scheduling changes...
 - ▶ Restrictions – Not able to do EJF
 - In LE: light duty, new assignment, termination, refusal to hire
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Everybody can work.

But not everybody can be a full-duty LEO.

Role of the Police Physician

- ▶ Individualized assessment of applicant or employee (no “blanket exclusion”)
- ▶ Assessment of:
 - Risk of sudden incapacitation
 - Inability to perform essential functions *from a medical perspective*
- ▶ Outcome: Full duty or restrictions

Role of the Police Physician

- ▶ Post-offer/pre-placement “physical” (not pre-employment)
 - ▶ Fitness for duty exam (for cause or return to work)
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Role of the Police Physician

- ▶ Personal (treating) physician may not provide "clearance"

Role of the Police Physician

- ▶ The police physician does not evaluate job performance
 - Tourette syndrome case
 - Obesity
 - We can advise on the curability of the condition

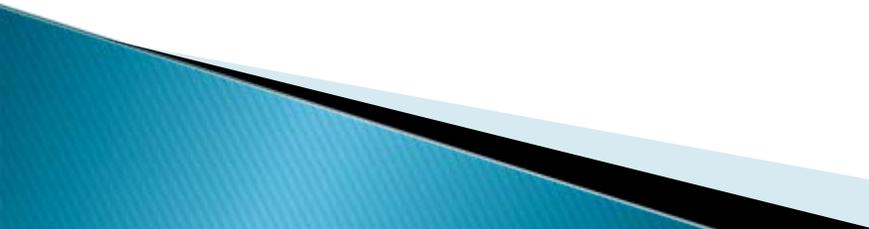
Medical Restrictions

- ▶ Risk of sudden incapacitation
(seizure, heart attack...)
- ▶ Inability to do the [full-duty] job
(blindness, paralysis...)
 - Essential job function
 - Accommodation

Risk of sudden incapacitation?

- ▶ Uncontrolled blood pressure
- ▶ Recurrent seizure
- ▶ Recurrent syncope
- ▶ Unstable angina
- ▶ Poorly controlled diabetes (low blood sugar)
Medications: anticoagulants, blood pressure medications

Inability to do the job?

- ▶ Hearing
 - ▶ Vision
 - ▶ Psychosis
 - ▶ Prostheses
 - ▶ Substance abuse
 - ▶ Joint with limited range of motion
 - ▶ Third trimester of pregnancy
 - ▶ Acute infection
 - ▶ Medications: sedatives, narcotics
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Process

- ▶ Fitness for duty examination
 - ▶ Accommodations
 - ▶ Restrictions
 - ▶ Independent medical examination (IME)
 - ▶ Reassignment:
 - Within the police department (sworn or non-sworn)
 - Within government agencies
 - ▶ Termination / Disability pension
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Medical Guidelines

Example of Diabetes





45 year old officer with type II diabetes, on oral medications, poorly controlled, no hypoglycemic reactions.

**One month ago is started on insulin regimen.
Now sugars very well controlled.**

**His chief found out he was injecting medication,
and is sending him in for a fitness exam as soon as he
gets back from patrol.**



State of New York
Governor George E. Pataki

Amended April 23, 2003

Municipal Police Training Council



**Medical & Physical Fitness Standards
and
Procedures for Police Officer Candidates**

Prescribed by the
Municipal Police Training Council



New York

- (i) **Endocrine and metabolic systems.** Requires a case-by-case assessment as to the control of the condition and the presence and severity of symptoms and complications to determine if the candidate is able to perform the essential functions of the position.
- (1) Uncontrolled Thyroid Disease.
 - (2) Diabetes Mellitus.
 - (3) Adrenal Dysfunction, including but not limited to, Addison's Disease and Cushing's Disease.
 - (4) Symptomatic Hypoglycemia.
 - (5) Untreated Thyroid Malignancy.

**KENTUCKY LAW ENFORCEMENT COUNCIL
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**MEDICAL SCREENING GUIDELINES
IMPLEMENTATION MANUAL**

FORM G-3

Kentucky

SECTION NINE – ENDOCRINE AND METABOLIC SYSTEMS

9.1 UNCONTROLLED THYROID DISEASE

9.2 DIABETES MELLITUS

Potential excludability requires a case by case assessment as to the control of diabetes and presence and severity of symptoms and complications.

9.3 ADRENAL DYSFUNCTION

Including, but not limited to, Addison's disease and Cushing's disease

9.4 INSULIN REACTIONS

9.5 ANY MALIGNANCY

Potential excludability requires a case by case evaluation of relevance to performance of essential tasks.

Relevant Essential Tasks:

- 1) Perform Numerous Physically Demanding Duties, e.g. Fight, Run, Pull, Carry, etc.
- 2) Endure Emotionally Stressful Circumstances, e.g. Domestic, Death Scene, Deadly Force, etc.
- 3) Endure Exposure to Numerous Environmental Circumstances, e.g. Cold, Heat, etc.
- 4) Work without Relief and Around the Clock.
- 5) Perform without Dysfunction During Irregular Work Schedule.

Commonwealth of Massachusetts

Human Resources Division

Physician's Guide

Initial-Hire Medical Standards

(Effective June 6, 2003)

Massachusetts

(m) Endocrine And Metabolic

1. Category A medical conditions shall include:

- a. uncontrolled diabetes mellitus or diabetes controlled through use of an insulin pump.

2. Category B medical conditions shall include:

- a. diseases of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance,
 - b. nutritional deficiency disease or metabolic disorder,
 - c. diabetes mellitus not covered in Category A,
 - d. any other endocrine or metabolic condition that results in an individual not being able to perform as a police officer.
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Mississippi

27.3.1.3.2.1 Height/Weight has been annotated and the doctor has marked either satisfactory or excessive/deficient. If the applicant's weight exceeds the threshold weight values to the degree that a reasonable person should know to a moral certainty that the officer's performance/safety would be adversely affected, the condition must be corrected before admittance.

Medical Guidelines

ACOEM Guidelines





DID YOU KNOW?

Topics discussed at the 1893 Conference

- **Uniformity of police regulations and uniform equipment**
- **Uniform standards to select all police officers according to mental and physical qualifications**
- **How a department should select a detective bureau**
- **Protection of police officers when making arrests without a warrant**
- **Uniform practice of making arrests on telegrams when**



AMERICAN COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE

- ▶ **Public Safety Medicine Section Physicians**
 - ▶ Medical Guidance for Law Enforcement Officers Task Group

Stakeholders



Content Experts and Advocacy Groups



How?

- ▶ Chapter drafted
- ▶ Discussed during meetings and teleconferencing
- ▶ Subject matter experts reviewed
- ▶ Meetings with stakeholders and advocacy groups
- ▶ Passed by ACOEM Board of Directors



Published Chapters

- ▶ Diabetes
 - ▶ Cardiovascular
 - ▶ Hearing
 - ▶ Eyes and Vision
 - ▶ Medications
 - ▶ Pregnancy
 - ▶ Infectious diseases
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Pending Chapters

- ▶ Substance abuse*
- ▶ Prostheses*
- ▶ Seizures
- ▶ Respiratory disorders
- ▶ Bleeding disorders
- ▶ Sleep disorders
- ▶ Risk assessment

Contact Information

- www.leo-medical.com
- www.acoem.org/leoguidelines.aspx