

CONTRACT LANGUAGE ON FIT FOR DUTY EXAMINATIONS

What follows is a draft of proposed language OAPFF locals may want to consider when negotiating fit for duty examinations in their collective bargaining agreements. Of course, model language should always be modified to fit the needs of the Local and the issues encountered by them, but this draft may be a starting point for locals.

To give credit where credit is due, Bill Quinn, current OAPFF Secretary-Treasurer, drafted much of the language that follows.

ARTICLE __
MEDICAL EXAMINATIONS and OCCUPATIONAL FITNESS

Section 1. Annual Medical Examination. Annually, each Member shall undergo a panel of medical and physical evaluations conducted by a medical provider selected by the Employer. The purposes of the Annual Medical Examination shall include, but are not limited to: providing Members with information about their current health, promoting wellness, identifying conditions that interfere with a Member's physical or mental ability to safely perform essential job tasks without undue risk of harm to self or others; referring the Member for appropriate further evaluation and treatment; providing Members with information and education about occupational hazards; providing a cost-effective investment in work-related disease prevention, early detection, and health promotion for Members; and complying with federal, state, local and/or other jurisdictional requirements. The examination shall use NFPA 1582 as a guideline and shall be conducted in accordance with Section 4, below.

Section 2. Occupational Health Program. The Employer shall throughout the duration of this agreement institute an occupational health program designed, in part, to provide at a minimum; rehabilitative services in cases of illness or injury; alcohol and drug testing and/or treatment services; physical examinations, evaluations, assessments or review; and such other programs and/or services as may be determined. Participation in the program shall be on a voluntary basis, and shall not be limited by participation in the Employer's healthcare provider/insurer/plan.

Section 3. Fitness For Duty Examinations. The Fire Chief may require a Member to be examined and approved as fit for duty in those instances where it is reasonably believed that the Member may not be able to fulfill all of the essential duties of the Member's position due to a physical or mental condition. The Fire Chief shall provide a list of all facts and evidence that support a reasonable belief that the Member may not be able to fulfill all of the essential duties of the Member's position due to a physical or mental condition prior to or at the time the Member is ordered to submit to an examination. Any examination/evaluation shall be by a licensed doctor of medicine or osteopathy who has been designated by the fire department to provide professional expertise in the areas of occupational safety and health as they relate to emergency services. All costs associated with the examination/evaluation shall be paid for by the Employer.

Section 4. Procedure for Annual Medical and Fit for Duty Examinations. The medical examinations permitted in Sections 1 and 3, above, shall be conducted in accordance with the provisions of the IAFF / IAFC Wellness Fitness Initiative (WFI) while utilizing the evaluation standards contained in the National Fire Protection Association (NFPA) 1582 as a guideline. The costs of such examinations, including any follow-up tests or examinations deemed necessary for the purpose of making a fit for duty certification, shall be paid by the Employer.

The current NFPA 1582 document (2013 edition) includes a flexible guide or standards for incumbent fire fighters medical determinations, which are based upon their condition, as well as the duties and functions of their job. Job tasks are identified in Chapter 9 of the standard (NFPA 1582) with an explanation of medical conditions that can potentially interfere with a Member's ability to safely perform essential job tasks. The presence of one or more of the conditions listed for incumbent fire department Members does not indicate a blanket prohibition for the

incumbent Member from continuing to perform essential job tasks, nor does it require automatic retirement or separation from the fire department. The utilization of NFPA standards shall be to provide the Fire Department Physician guidance to determine a Member's ability to medically and physically function using an individual medical assessment for the conditions listed in the standard. In the final decision making process of a fit for duty evaluation, the greatest weight should be placed on the Member's demonstrated ability to perform the essential job tasks of fire fighting.

The examination or evaluation and all records of the examination or evaluation are confidential. A comprehensive report of the medical findings will be provided to the Member for his/her records and to be shared with healthcare professional(s) of the Member's choosing. No report or records shall be provided to the Employer except as provided in this paragraph. No Member shall be requested to sign an authorization to release any medical records to the Employer. Following the medical evaluation of a Member, including the evaluation of the Member's medical history, physical examination, any laboratory or other tests that may be required, should the physician conclude that there exists a physical or medical condition(s) that prevents the affected Member from performing his/her essential job functions without undue risk of harm to the Member or others, the physician shall notify the Fire Chief immediately of these findings. The report shall not contain or list any specific medical condition(s), rather only a professional medical opinion that the Member is or is not physically capable of performing the essential tasks of a fire fighter. If the Employer obtains any records or reports beyond those permitted herein, such records or reports and all copies shall be turned over to the Member.

The Fire Chief, after reviewing the examining physician's report, may place the Member into one of the following duty status classifications:

Full Duty. The Member is deemed medically qualified for firefighting operations.

Conditional Full Duty. The Member is deemed medically qualified for firefighting operations if he/she complied with additional monitoring and treatment requirements to maintain the ability to safely perform the essential functions, job duties and requirements of the position.

Limited Duty. The Member is temporarily assigned to a non-operations position while further medical evaluation is conducted to determine duty status. While placed in this duty status the Member shall be permitted the option to utilize sick leave, or other leave options as identified in this agreement, in lieu of a limited duty status.

Administrative Medical Leave. The Member is placed on administrative leave with pay while further medical evaluation is conducted to determine duty status.

In the event the Member disagrees with the duty status determination, the Member may obtain, at the Member's cost, an opinion from a licensed doctor of medicine or osteopathy selected solely by the Member. If the second opinion differs from the original determination, the Fire Chief may:

- a) make the determination of fitness based on the most recent report submitted by the Member's examining physician, placing the Member back on active duty, or;
- b) require that the Member obtain a third opinion from a licensed doctor of medicine or osteopathy mutually selected by the Employer and the Member.

Any costs associated with this third opinion shall be paid for by the Employer.

The opinion of the third physician shall be final and binding on both the Employer and Member.

In the event that the physician who conducts the final determining examination finds the Member unable to safely perform his/her essential job functions, the examining physician shall provide or arrange for a prescriptive rehabilitation and/or fitness program when indicated to aid the Member's recovery from illness or injury and enhance his/her ability to once again safely perform those essential job tasks. During any rehabilitation period, the Fire Chief may require the Member to provide progress reports from the Member's attending physician and/or to submit to an examination(s) by a physician designated and paid for by the Employer. As a condition of continued participation in the rehabilitation program, the Member must comply with the medical and physical components as prescribed by the physician. The treating/examining physician shall include in all progress reports a compliance statement indicating the participation, or lack thereof, of the Member.

If, at the end of the rehabilitation period the Member remains unable to perform his essential duties, and he/she has failed to participate in the rehabilitation program and/or in the opinion of the treating physician has failed to show improvement, the Member may be disability separated from service as outlined below.

A Member who has been compliant with, and has completed the prescriptive rehabilitation and/or fitness program as described above shall be considered administratively compliant and returned to active duty. However, if in the opinion of the treating physician the Member has reached maximum medical improvement (MMI) and is still unable to safely perform his/her essential job functions, the Employer may proceed with a disability separation. If a disability separation is sought, the following process shall be followed;

- a) within thirty (30) days of receiving notification from the Fire Chief the Member shall make disability application with the Ohio Police & Fire Pension Fund (O.P.&F.).
- b) supply the O.P.& F. copies of all medical records associated with the Member's exams and subsequent prescriptive rehabilitation and/or fitness program that the Member pursued.
- c) supply to the Employer monthly progress reports of the disability pension process including all appointments, meetings and/or hearings.

In the event the O.P.&F. fails to award a minimum of 51% disability pension, the Member shall be considered fit-for-duty and returned to his/her former position.

Section 5. Wellness Fitness Initiative and Fitness Assessments. The most vital resource of any fire department is its Members. The IAFF/IAFC Wellness Fitness Initiative in concert with the NFPA standards identified in this Article are to be implemented in a process aimed at improving Members' health and wellness. The intent is to reduce the risk and burden of fire service morbidity and mortality while improving the welfare of the fire fighters. Implemented as a positive individualized program that is non-punitive, all components results are measured against the individual's previous examinations and assessments and not against any standard or norm. However, medical practice standards may be used when results indicate that life saving

intervention is required.

The parties hereby agree that the fire department upon the agreement of the union shall establish and provide a health-related fitness program (WFI) that enables Members to develop and maintain a level of health and fitness to safely perform their assigned functions. The intent of this program is to promote health and fitness in a "mandatory, non-punitive" manner. Mandatory, non-punitive implies a program with universal participation; however, failure to achieve defined of individual fitness objectives should not be the basis for any employment sanctions, discipline or other punitive actions.

The fitness assessment conducted under this provision shall comply with the program components of the IAFF/IAFC WFI and NFPA 1583 - 6.4 which list the following components:

1. Aerobic capacity
2. Body composition
3. Muscular strength
4. Muscular endurance
5. Flexibility

The protocols used in the aerobic capacity component of the WFI shall be used to give the Member a baseline measurement of aerobic capacity in ml/kg/min that they can utilize to monitor their progress in each subsequent re-evaluation. WFI protocols shall not be used to establish a pass/fail criteria in any of the components and are prohibited from being utilized to make medically fit/unfit determinations.

TENTATIVELY AGREED TO: _____

For the Employer:

For the Union:

