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Chapter: Personnel

Modification No. 001

Subject: **Medical Examinations and Fitness for Duty**

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- I. Montgomery College is committed to providing a safe workplace for the benefit of the College community. In order to provide a safe work environment, employees must be able to perform their job duties in a safe, secure, productive, and effective manner. Employees who are not fit for duty may present a safety hazard to the employee, other employees, students, and others.
- II. It is the policy of Montgomery College that the College may require current employees to undergo a medical examination to determine the employee's fitness for duty under limited circumstances to ensure the safety of the employee, other employees, students, the College, or the public. The College will cover the evaluation costs of any mandated referrals the College makes to a licensed physician or mental health provider. Any such medical examinations must be conducted in full compliance with applicable law, including the American with Disabilities Act. Medical examinations shall not be used as a substitute for disciplinary action. The President will provide notification to the Board of Trustees of any medical examination initiated pursuant to this policy.
- III. Nothing in this policy supersedes or alters the policies set forth in 32106-Employment of Individuals with Disabilities or 35004-Leave Program.
- IV. The President is authorized and directed to establish procedures necessary to implement this policy.

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Board Approval: January 24, 2018

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I. Purpose and Scope

- A. The purpose of these procedures is to:
  - 1. Ensure that applicants and employees possess the requirements expected, described within the position that are necessary to perform the essential functions of the job, or noted elsewhere in College Policies and Procedures.
  - 2. Evaluate an employee's fitness for duty when an employee is:
    - a. Having observable difficulty performing work duties in a manner that is safe for the employee, other employees, students, the College, or the public; or
    - b. Posing an imminent and serious safety threat to the employee or to others.
  - 3. Protect employees, students, visitors, and College property.
- B. A medical examination is defined as a procedure or test that seeks information about an individual's physical or mental impairments or health related to the employee's essential job functions.
- C. These procedures apply to all applicants and current employees.
- D. If the College requires a medical examination under these procedures, the College will pay for the medical examination.
- E. Nothing in these procedures supersedes or alters the procedures set forth in 32106CP-Employment of Individuals with Disabilities or 35004CP-Leave Program.

II. Requirements for Applicants

- A. The College may not ask disability-related questions or require medical examinations before offering a job to an applicant. The College may, however, ask about an applicant's ability to perform specific job functions, state the physical requirements of a job, ask if an applicant can satisfy the job's physical requirements, ask about an applicant's non-medical qualifications and skills; and ask applicants to describe or demonstrate how they would perform job tasks.
- B. An applicant for employment to whom a conditional job offer has been made, may be required to take a medical examination to establish the applicant's fitness to perform the job(s) for which the applicant has been extended an offer without endangering the health and safety of the applicant or others. If management

determines that an examination is appropriate to a particular position, all applicants for the job to whom a conditional offer of employment has been made must be examined.

- C. If an applicant refuses or fails to participate in a required medical examination that is given under established standards and guidelines, refuses or fails to provide medical records, or submits inaccurate or falsified medical forms or records, the College may withdraw the conditional job offer and not consider the applicant for employment for that job.

**III. Requirements for Current Employees**

- A. An employee may be required to have a medical examination when the examination is job-related and consistent with business necessity (i.e., successful operational functioning), as determined by the chief human resources officer.
- B. If a supervisor believes an employee has a medical condition that is affecting employee performance, the supervisor should inform the Chief Human Resources Officer or designee, and the Chief Human Resources Officer or designee may recommend that the employee undergo a medical examination.
  - 1. The referring supervisor may request a medical examination that is job related and consistent with business necessity, such as when:
    - a. an employee's conduct creates a reasonable belief that a threat to the health or safety of the employee or others, or to College property, exists; or
    - b. there is objective evidence that the employee cannot perform the essential job functions.
  - 2. The grounds for seeking a medical examination may become evident from a supervisor's observations and/or receipt of a reliable report of an employee's possible lack of fitness for duty. Observations or employee self-reports may include, but are not limited to difficulties with manual dexterity, memory, coordination, alertness, speech, vision acuity, concentration, response to criticism, interactions with co-workers and supervisors, outbursts, hostility, violent behavior, suicidal or threatening statements, change in personal hygiene, and/or reasonable suspicion (via odor or observation) of drug or alcohol use.
  - 3. The supervisor should consult in advance with the Chief Human Resources Officer or designee about how and whether to speak with the employee about requiring a medical examination.
- C. The Chief Human Resources Officer or designee may require an employee to discontinue work and undergo a medical examination when the Chief Human Resources Officer or designee has a reasonable belief, based on objective evidence that:

1. the employee's ability to perform essential job functions is impaired, or
  2. an employee poses a direct threat to the employee or others.
- D. If an employee refuses or fails to participate in a medical examination or a fitness-for-duty evaluation, refuses or fails to provide medical records, or submits inaccurate or falsified medical forms or records, the College may take appropriate disciplinary action against the employee up to and including termination of employment.

IV. Medical Examination Procedures

- A. The College will select a licensed physician or mental health provider to perform the examination and report the findings to the Chief Human Resources Officer or designee. The medical provider conducting the examination shall have a clear understanding of the essential functions of the applicant's or employee's position and the working conditions for that position. The medical examination under this Procedure, and the information the College obtains as a result, should be limited in scope based on the reason for the examination. For example, if the medical examination is being required because of concerns that an employee will pose a direct threat, the examination should be limited to determining whether the employee can perform the employee's job without posing a direct threat.
1. The College will cover the evaluation costs of any mandated referrals the College makes to a licensed physician or mental health provider. If the applicant or employee selects their own provider, the applicant or employee will be responsible for the cost of the evaluation. The physician or mental healthcare professional selected to conduct the evaluation must be qualified to provide an effective assessment relevant to the evaluation questions at hand. The applicant or employee should consult with the Chief Human Resources Officer, or designee before selecting their own mental healthcare professional to clarify qualifications. The applicant or employee will be asked to sign a release authorizing the healthcare professional to discuss the evaluation with the Chief Human Resources Officer, or designee.
  2. The Chief Human Resources Officer, or designee shall review the report and recommendations submitted by the applicant's or employee's provider and may seek a secondary evaluation from an independent healthcare professional of the College's choice if it is determined that the professional selected by the applicant or employee does not have the expertise to give an opinion about the questions at hand, the information submitted does not specifically address the referral provided by the College, or there are other factors that indicate the information submitted is not credible or is fraudulent. This evaluation will be at no cost to the applicant or employee.
  3. The Chief Human Resources Officer, or designee shall provide the applicant or employee with a specified period in which to be evaluated. If an applicant or employee refuses to undergo an evaluation, does not attend the evaluation at the time it is scheduled, or refuses to provide a

release authorizing the healthcare professional to discuss the evaluation with the Chief Human Resources Officer, or designee, any conditional job offer to the applicant may be withdrawn and the current employee may be subject to disciplinary action for failure to comply with the directive of a College official.

- B. The professional making the evaluation shall make an individualized and objective assessment of the applicant's and employee's ability to safely perform the essential job functions without endangering the health and safety of themselves or others, based on a reasonable professional judgment relying on the most current professional knowledge and/or the best available objective evidence.
  - 1. This assessment shall include a determination of the nature, duration and severity of the risk posed by the applicant or employee to the health or safety of others, the probability that the potentially threatening injury will actually occur, and whether reasonable modifications of policies, practices or procedures will sufficiently mitigate the risk.
  - 2. The professional will, with appropriate authorization, share their recommendation with the Chief Human Resources Officer, or designee, who will consider this recommendation in making an employment decision. A copy of the professional's recommendation will be provided to the applicant or employee.
  - 3. If the evaluation results in a determination that the applicant's or employee's condition presents no significant risk to the health or safety of others, and no significant threat to property, to the lawful activities of others, or to the educational processes and orderly operations of the College, no further action shall be taken except as a result of sanctions resulting from a violation College Policies and Procedures.
- C. Upon receipt of the evaluating physician's or mental health provider's evaluation that the applicant or employee is a qualified individual with a disability under the Americans with Disabilities Act, the College should follow the procedures set forth in 32106-Employment of Individuals with Disabilities, as applicable, with respect to reasonable accommodations.
- D. The Chief Human Resources Officer may withdraw the conditional job offer if the physician or mental health provider determines the applicant is not a qualified individual under the ADA and cannot perform the essential duties of the job or would be a direct threat to the health or safety of the applicant or others.
- E. If the evaluation finds that an employee is not a qualified individual under the ADA and cannot perform the essential duties of the job or would be a direct threat to the health and safety of the employee or others, then the Chief Human Resources Officer may initiate the appropriate termination process.
- F. An employee who is adversely affected by a determination under the Medical Examination Procedure may file a complaint under 31006-Equal Employment Opportunity and Non-Discrimination (for appeals of reasonable accommodations)

or initiate a grievance under the appropriate College Policy and Procedure or collective bargaining agreement.

V. Confidentiality and Use of Records

- A. Medical examinations paid for by the College and the examination records will be treated as confidential and kept in separate medical files, not in an employee's personnel file.
- B. When mandating a medical examination, the College will require the employee to sign appropriate consent forms that permit appropriate reporting as to the employee's fitness, recommendations with respect to fitness, and any limitations and restrictions placed on the employee arising from the employee's health condition. The College will not disclose medical or psychological information without the consent of the employee or except as may be required by law.
- C. The results of a medical examination shall not be used to discriminate against an applicant or employee.
- D. When the College requires a pre-employment medical examination or other medical examination under this Procedure, it shall not request genetic information, including family medical history, of the applicant or employee.
- E. The College shall include the following language from 29 C.F.R. § 1635.8(b)(1)(i)(B) when requiring medical examinations:

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

V. Evidence of Freedom from Communicable Disease

A. Requirements.

It is required as a condition of employment that:

- 1. Every person connected with a food service facility whose work brings them in contact with the production, handling, displaying, serving, or storing of food, drink, or utensils, must furnish all information, permit any physical examination and submit any laboratory specimens or test results that the College may require for the purpose of determining their freedom from a communicable disease in accordance with the Montgomery County Code.

2. Center for Early Education workers are governed by the State laws and therefore must obtain appropriate testing and provide certification as required by law.

B. Procedures

1. The evidence of freedom from communicable disease, as defined by county or state law, may be in the form of a signed physician's statement or other official health certificate indicating that, by means of a medically recognized method, the person concerned has been found to be free of communicable disease at the time of employment at Montgomery College. This evidence must be submitted prior to reporting for work, and no prospective employee will be considered as employed until this requirement has been satisfied.
2. All food service employees employed by the College, as well as faculty, staff, or students participating or enrolled in programs or courses which involve the handling of food, or the supervision of its preparation or serving, will submit evidence of freedom from communicable disease as determined by the College.
3. The Montgomery County Code also requires that such persons be free of all communicable diseases and infected wounds, sores, or lesions on exposed parts of the body. Although no initial or periodic certificate is required, supervisors are held responsible for reporting suspected carriers and reporting them to the proper authorities for proper verification of their health condition.
4. The Montgomery County Code defines a food service employee as "Any person, including owner or manager, who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served."

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Administrative Approval: September 21, 1987; September 27, 1990; August 24, 2010; February 13, 2018.