

Attorney Randy Means and Dr. Tom Collingwood Response to URMMA issues/questions regarding physical readiness standards implementation

The issues that were brought up need to be put into context with one another as well as be dealt with individually.

Context

The URMMA standards were defined for all the agencies and for all their officers. Each agency and all ranks from Chief down were represented in the validation test sample. All agencies accepted the premise in the beginning that all officers would eventually be required to meet the standards after a phase-in period (which has lasted several years). Part of the validity of any standard is that it must be applied uniformly and with continuity. Once different applications or exceptions are made, the defensibility of that standard is compromised logically and legally, the extent depending on the differing applications and exceptions.

Question 1: Administrator or “desk job” exceptions

One of the implications of 9/11 has been the recognition that first responders regardless of job title are expected to be physically ready to respond to an emergency/public safety situation.

We do not recall or have quick access to all the various job descriptions used by the multiple agencies involved in the study but our experience is that almost all agencies utilize the paradigm that any sworn officer position above that of patrolman is still expected to be able to perform the essential functions of a patrol position. While an essential physical task such as pursuing may be more frequent for a patrol officer it is nonetheless still a critical essential physical task for an administrator. Physical readiness standards are and were based on criticality as well as frequency in the URMMA study and URMMA member agency supervisors concurred in that position.

In this regard, physical readiness standards are not any different than firearm standards. If an administrator or desk officer must meet those standards to remain in a sworn position then the same requirement should be applied to physical readiness. By analogy, to the best of my knowledge the U.S. Army does not exempt field or general grade officers or soldiers in administrative duties from having to meet the Army Physical Readiness standards.

The mission expectation for all sworn officers is identical regardless of rank. Physical readiness is part of that expectation both by fellow officers and the public that is served. If one is going to carry a gun, have and potentially utilize powers of arrest, and be expected to act proficiently in emergencies, they should be required to meet the corresponding physical standards.

Question 2: Individual agency exemptions for administrative positions

The defense of test validity benefits from uniformity of standards in all participating agencies . but this problem is not as large as the one discussed in the preceding section. Ultimately, this is an employment issue. If one agency opts not to require that physical standards be met by some officers, that position does not logically or legally invalidate the application of universal standards in another employing agency. If anything, it might point to negligence on the part of the agency opting not to apply the standard. Still, where as here there are no individual agency standards but only those of the URMMA association of agencies, for some agencies to opt in and others opt out in various regards tends to weaken the rationale for having the standards.

Question 3: Termination for non-compliance to standards

There are two issues here. The first is similar to the preceding in having individual agencies apply mandatory standards differently. Defensibility of standards benefits from all participating agencies applying the same approach . whichever it may be. The reason goes back to the nature of the study. It was not feasible to get a large enough sample from each agency for standards to be individually defined; combining agency populations was necessary. Consequently, the most valid use of the standards is within that group context. Still, as discussed in the preceding section, because this is an employment issue, one agency opting not to apply the standard mandatorily does not necessarily logically or legally invalidate the standard as applied by another employer . but the greater the non-use of standards or use of exceptions by other agencies, the harder is the defensibility of standards in the agency using them universally. Non-termination of those failing to meet the standard is the ultimate admission that the standards do not represent a business necessity.

Again, firearms qualification is a useful analogy. Many agencies require mandatory qualifications yearly and suspend failing officers until they meet those requirements . eventually terminating them for persistent failure. Physical readiness should be the same. If standards were based on just frequency of task performance, there would be little demonstrated need for any physical readiness or firearms standards. But where the need does arise, and it does periodically, it is extremely critical . in both cases.

We recognize that officer termination is a big concern, especially in the case of valued, veteran officers. However, the nature of public safety work dictates that mission readiness be the priority. Since Thomas & Means conducted the URMMA study, more than 40 more validation studies have been performed with additional data analysis supporting this priority. In those studies, officers being tested were asked what would be the consequences of not being able to perform the essential physical tasks measured in the job task scenarios such as those used in the URMMA study. A summary of those findings are presented in Table 1 below:

Table 1
Percentage of officers who rated each consequence

1. Roadway clearance	76%	Failure to provide required service
	76%	Potential for property loss
	5%	Failure to apprehend suspect
	90%	Potential for injury to self or others
	48%	Potential for loss of life to self or others
2. Victim extraction	81%	Failure to provide required service
	19%	Potential for property loss
	43%	Failure to apprehend suspect
	90%	Potential for injury to self or others
	86%	Potential for loss of life to self or others
3. Pursuit and arrest	80%	Failure to provide required service
	57%	Potential for property loss
	95%	Failure to apprehend suspect
	90%	Potential for injury to self or others
	81%	Potential for loss of life to self or others

It is logical to assume that if the officers tested in the URMMA study were asked to rate the same consequences they would be very similar. The consequences of not being able to perform the essential physical tasks and functions reinforces the need for standards to ensure the necessary physical readiness.

In our Final Report we recommended a gradual, evolutionary, multi-year, phase-in of mandatory standards for incumbents because varying medical issues, fitness levels and age of officers suggests it takes time to train individuals to reach physical readiness standards. Standards were not applied immediately; what was needed was a plan for eventual incumbent adherence to those standards. Apparently, that has not happened. An individual agency has the authority to impose or not impose mandatory compliance to the standards or have officers face termination. However, if some do and some don't the following scenario would appear very probable.

Agency A fires an officer who does not meet the standards. That officer then sues the agency for wrongful termination. The department's defense is that the standards are job-related and consistent with business necessity in order to have officers capable of performing essential physical tasks and functions. The plaintiff's attorney could then point to other URMMA agencies who do not require compliance to the standards arguing that their position, and non-disastrous experience, negates the business necessity defense for the agency applying the standard mandatorily.

This is why it is important that all departments apply the physical readiness standards in a uniform fashion.

Recommendations

1. From a standards validity as well as a legal defensibility perspective, all participating agencies ideally would apply the standards in the same way.
2. All personnel from patrol officer to chief should be held accountable to department readiness requirements, as they are for firearms qualification. An option in regard to senior administrators would be to define them by job description and departmental orders as ~~not~~ permitted to take law enforcement action+. thus logically exempting them from the need to demonstrate associated physical readiness requirements. (This suggestion is counter-cultural in terms of law enforcement history and is particularly unlikely in the case of small agencies - but is nonetheless logical.)
3. Persistent failure to meet standards should lead to termination.
4. Associated with all of this should be detailed procedures for assisting officers to meet the standards, remedial programming and a reasonable timeline per the Final Report recommendations.
5. This ensures the validity and defensibility of the standards application and does so in a caring, ethically responsible way.
6. In support of these goals, we recommend that URMMA apply this approach as a condition of department insurability.
7. If, ultimately, mandatory adherence to standards is not required by URMMA agencies, hopefully they would continue to show some commitment to the standards by requiring that all personnel participate in regular testing. This will cause some improvement and/or maintenance of fitness levels and associated readiness for some employees. It is certainly not the best choice but something is better than nothing.