

**ADOPTED REGULATION OF THE DIVISION OF MENTAL  
HEALTH AND DEVELOPMENTAL SERVICES OF THE  
DEPARTMENT OF HUMAN RESOURCES**

**LCB File No. R228-03**

Effective April 5, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-13, NRS 178.417.

A REGULATION relating to evaluation of competency of criminal defendants; establishing the requirements for the initial issuance of a certificate to provide reports or evaluations to the court concerning the competency of a defendant to stand trial or receive pronouncement of judgment; establishing the requirements for the renewal or such a certificate; and providing other matters properly relating thereto.

**Section 1.** Chapter 178 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 13, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Administrator” means the Administrator of the Division.*

**Sec. 4.** *“Certificate” means a certificate issued by the Division to provide a report or an evaluation concerning the competency of a defendant to stand trial.*

**Sec. 5.** *“Clinical social worker” means a person who is licensed to engage in social work as a clinical social worker pursuant to the provisions of chapter 641B of NRS.*

**Sec. 6.** *“Division” means the Division of Mental Health and Developmental Services of the Department of Human Resources.*

**Sec. 7.** *“Evaluator of competency” means a person who has been issued a certificate.*

**Sec. 8.** *“Psychiatrist” means a person who is:*

*1. Licensed to practice medicine in this state pursuant to the provisions of chapter 630 of NRS and has completed residency training in psychiatry; or*

*2. Certified by the American Board of Psychiatry and Neurology, Inc.*

**Sec. 9.** *“Psychologist” means a person who is licensed to engage in the practice of psychology pursuant to the provisions of chapter 641 of NRS.*

**Sec. 10.** *1. Each person desiring a certificate must make application to the Division upon a form, and in a manner, prescribed by the Division.*

*2. The application must be accompanied by:*

*(a) Evidence satisfactory to the Division that the applicant:*

*(1) Is a clinical social worker, psychiatrist or psychologist;*

*(2) Attended and completed the course of training established pursuant to section 11*

*of this regulation; and*

*(3) Passed the examination administered by the Division pursuant to the provisions of subsection 4 of NRS 178.417; and*

*(b) An application fee of \$25.*

*3. After receiving an application and the accompanying evidence from an applicant, the Division will:*

*(a) Evaluate the application and accompanying evidence and determine whether the applicant is qualified pursuant to this section to be issued a certificate; and*

*(b) Issue a written statement to the applicant of its determination.*

*4. If the Division determines that the applicant is not qualified to be issued a certificate pursuant to subsection 3, the applicant may appeal the decision of the Division to the Administrator.*

*5. A certificate issued pursuant to the provisions of this section must be renewed every 2 years.*

**Sec. 11. 1.** *The Division will establish a course of training for persons desiring the initial issuance of a certificate.*

*2. The course of training must include instruction on:*

*(a) The statutes and case law relevant to providing a report or an evaluation concerning the competency of a defendant to stand trial;*

*(b) The elements of conducting a clinical interview or clinical testing relating to providing a report or an evaluation concerning the competency of a defendant to stand trial;*

*(c) The elements of preparing an evaluation report relating to providing a report or an evaluation concerning the competency of a defendant to stand trial;*

*(d) The ethical standards and considerations relevant to providing a report or an evaluation concerning the competency of a defendant to stand trial; and*

*(e) The potential impact on the defendant, the court and the treatment system of a recommendation concerning the competency of a defendant to stand trial.*

**Sec. 12. 1.** *To renew a certificate, an evaluator of competency shall submit an application for the renewal of a certificate to the Division upon a form, and in a manner, prescribed by the Division.*

**2.** *The application for the renewal of a certificate must be accompanied by:*

**(a)** *Evidence satisfactory to the Division that the evaluator of competency completed the requirements for the renewal of a certificate established pursuant to section 13 of this regulation; and*

**(b)** *A renewal fee of \$25.*

**3.** *After receiving an application for the renewal of a certificate and the accompanying evidence from an evaluator of competency, the Division will:*

**(a)** *Evaluate the application for the renewal of a certificate and accompanying evidence and determine whether the evaluator of competency has met the requirements for the renewal of a certificate established pursuant to section 13 of this regulation; and*

**(b)** *Issue a written statement to the applicant of its determination.*

**4.** *If the Division determines that the evaluator of competency has not met the requirements for the renewal of a certificate, the evaluator of competency may appeal the decision of the Division to the Administrator.*

**Sec. 13. 1.** *On or before December 31 of each year, the Division will establish the requirements for the renewal of a certificate for the following year.*

**2.** *The requirements for renewal of a certificate may include:*

**(a)** *Attending and completing a course of instruction relating to providing a report or an evaluation concerning the competency of a defendant to stand trial;*

**(b)** *Attending courses of continuing education;*

*(c) Conducting a review of sample evaluations concerning the competency of a defendant to stand trial; or*

*(d) Passing an examination relating to providing a report or an evaluation concerning the competency of a defendant to stand trial.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R228-03**

The Division of Mental Health and Developmental Services of the Department of Human Resources adopted regulations assigned LCB File No. R228-03 which pertain to chapter 178 of the Nevada Administrative Code on \_\_\_\_\_.

**Notice date:**  
**Hearing date:**

**Date of adoption by agency:**  
**Filing date:**

**INFORMATIONAL STATEMENT**

The following statement is a summary of the steps taken by Lake's Crossing Center to establish the regulations for completing certification of forensic examiners by the Division of Mental Health and Developmental Services (MHDS) as required by Nevada Revised Statute Chapter 178.400. It is requested that the regulations that resulted through this process be codified in the Nevada Administrative Code for Chapter 178 of Nevada Revised Statute. The process was initiated after the legislature adjourned in June of this year and the staff at Lake's Crossing Center (LCC) was tasked by MHDS with overseeing the establishment of these regulations and the provision of training and examination to complete the process.

A committee of forensic providers from LCC reviewed procedures and developed a plan for meeting those requirements. Two hearings North and South were held in October to solicit information from interested persons and individuals whose profession would be potentially impacted by these regulations. The Northern hearings were held at Northern Nevada Adult Mental Health Services in the Main Conference Room at 400 Galletti Way in Sparks, Nevada. The Southern hearings were held at Southern Nevada Adult Mental Health Services in the Multipurpose Room at 6161 West Charleston Avenue.

Public comment was solicited by sending out an announcement that a hearing would take place to solicit comments regarding the substance of the proposed regulation. Those hearings were held on October 3, and October 4<sup>th</sup>, 2003, in Reno and Las Vegas respectively. At the same time notification was sent for solicitation of comment, notification was sent for a second hearing regarding adoption of regulation on October 17<sup>th</sup> and 18<sup>th</sup>. Notifications were sent to all psychiatrists, psychologists, and social workers who had previously been known to complete these evaluations for the court. In addition notifications were sent to members of all of these three disciplines who are known to practice in the area of forensic mental health. All of the licensure boards for these three disciplines were also notified. Notifications were also sent for posting at state mental health office sites throughout the state as well as at all public libraries. Lake's Crossing also provided information through email list-servs for the state's professional organizations. Copies of the notification letters may be acquired by contacting Elsa Trujillo at 688-1900 x 225 or writing to her attention at LCC.

No interested persons attended the hearing held in Reno/Sparks at Northern Nevada Mental Health Services either at the October 3 hearing or at the October 17<sup>th</sup> hearing. Consequently no record of comment was gathered beyond documentation that no individuals appeared. Robert Woodard, LCSW and Elizabeth Neighbors, Ph.D., ABPP, were available to receive comment at the first hearing and Mr. Woodard and Edward Varra, Ph.D. were available to receive comment at the second hearing in Reno/Sparks. In Las Vegas seven individuals attended the October 4<sup>th</sup> meeting and one attended the October 18<sup>th</sup> meeting. Of those individuals, six at the first meeting were psychologists and one was a psychiatrist. They all testified at the hearing. LCC had also been contacted by at least three social workers prior to the workshops who indicated their interest in training, and who wanted to know dates for potential attendance. No social workers, however, attended the workshops.

The comments at the southern hearings dealt with a number of issues. Two of the participants were opposed to most aspects of the concept of certification for competency examiners and expressed their concern about the state increasingly regulating private enterprise. They did not see any need for additional oversight if the courts appeared to be content with reports received. The remaining attendees were in varying degrees of support and acknowledged the large variation in quality of reports and conformance with national standard around the state. The participants questioned the impetus for introduction of the legislation. They also wanted to know if current practitioners couldn't be "grandfathered in."

Recertification was another issue and half of the respondents expressed concern about a potential requirement that examiners return periodically to demonstrate that they have kept current with standard practice to perform competency evaluations. Some expressed the belief that once educated to perform such evaluations no further update of case law or new methods for assessment were necessary. A request for simplified methods for recertification was verbalized such as completing updates online or video tape continuing education. A copy of the written comments may be obtained by writing Elsa Trujillo at Lake's Crossing Center, 500 Galletti Way, Sparks, Nevada, 89341.

Lake's Crossing Center has adopted the regulation as reviewed by the Legislative Counsel Bureau with minimal changes. The changes only involved a minor change in wording that more realistically addressed the credentials of individuals available to complete these evaluations and made the requirements for psychiatrists consistent with other disciplines.

No significant economic effects should be felt by the individuals required to meet this regulation. Training requires the submission of a minimal fee that will result in continuing education at virtually no cost for most disciplines involved. Should examiners opt to not complete the training the impact is obvious in that they would not be included on the list of potential examiners that go to the court. It is possible that the number of referrals to any one examiner may diminish if training provides a larger number of examiners in the pool that the court may access. For most new examiners the economic impact should be positive.

The agency will provide lists of certified examiners to the court. No significant cost should be involved as long as the courts appoint examiners included on the list. The regulation does not

overlap with any other regulation in the state, nor is it in any conflict with federal laws or regulations.

A fee of twenty-five dollars will be charged to off-set the costs of paper, documents and clerical costs to carry out these tasks.