

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R069-19

November 25, 2019

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

AUTHORITY: §§1-2, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to state personnel; revising provisions concerning employees who test positive for the presence of alcohol or a controlled substance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, with certain exceptions, an employee who consumes or is under the influence of alcohol or drugs while on duty or possesses a controlled substance while on duty is subject to disciplinary action by an appointing authority. Except in certain circumstances, existing law requires a state agency to refer to an employee assistance program an employee who: (1) tests positive for the first time in a screening test; and (2) has committed no other acts for which the employee is subject to termination during the course of conduct giving rise to the screening test. (NRS 284.4062) Existing regulations require an employee who is referred to an employee assistance program to provide certain evidence and recommendations to the appointing authority and provides that an employee who fails to provide such evidence is subject to disciplinary action. (NAC 284.892) **Section 1** of this regulation authorizes an employee assistance program to provide the required evidence and recommendations to the appointing authority instead of the employee. **Section 1** further provides that an employee is only subject to disciplinary action for failure to provide the required evidence if the appointing authority determines that the failure to provide the required evidence is the fault of the employee. Existing regulations require an employee who is subject to disciplinary action but is not terminated to provide to the appointing authority certain documentation from a counselor which verifies that the employee is able to return to work. (NAC 284.893) **Section 2** of this regulation authorizes an employee assistance program to provide this documentation instead of the employee.

Section 1. NAC 284.892 is hereby amended to read as follows:

284.892 1. If an employee is referred to an employee assistance program as a result of a positive result on a screening test or pursuant to NAC 284.653, ~~he~~ *the employee* or ~~she~~ *the*

employee assistance program to which the employee was referred shall provide to the appointing authority:

(a) Evidence of ~~his or her~~ *the employee's* consultation with a counselor employed by ~~an~~ *the* employee assistance program; and

(b) Any recommendation of the counselor with respect to ~~his or her~~ *the employee's* rehabilitation,

↳ within 5 working days after the date of the initial consultation.

2. The employee *or the employee assistance program to which the employee was referred* shall provide to the appointing authority on a monthly basis all recommendations of the counselor with respect to ~~his or her~~ *the employee's* rehabilitation.

3. The employee *or the employee assistance program to which the employee was referred* shall provide to the appointing authority evidence of ~~his or her~~ *the employee's* completion of any rehabilitation program recommended by the counselor within 5 working days after completing the program.

4. An employee ~~who fails to provide evidence~~ *is subject to disciplinary action if:*

(a) *Evidence* of ~~his or her~~ *the employee's* consultation with a counselor or successful completion of a rehabilitation program is ~~subject to disciplinary action.~~ *not provided to the appointing authority in accordance with this section; and*

(b) *The appointing authority determines that the failure to provide the evidence is the fault of the employee.*

Sec. 2. NAC 284.893 is hereby amended to read as follows:

284.893 1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary

action pursuant to NAC 284.646 or 284.650 but is not terminated shall, before allowing the employee to return to work, require ~~the~~ :

(a) *The employee or the employee assistance program to which the employee was referred* to ~~the~~

~~(a) Provide~~ *provide* to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has training or experience in counseling persons with an alcohol or other substance use disorder which verifies that the employee is able to return to duty and perform the essential functions of his or her job.

(b) ~~Submit~~ *The employee to submit* to a screening test.

2. The employee is responsible for the cost of any:

(a) Counseling services the employee receives to verify that the employee is able to return to duty and perform the essential functions of his or her job and any documentation of those services; and

(b) Screening test,

↪ required pursuant to subsection 1.

3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.