

Technician Personnel Regulation 792

Alcoholism and Drug Abuse

Alcoholism and Drug Abuse Program

**National Guard Bureau
Arlington, VA 22202-3231
8 February 2011**

UNCLASSIFIED

SUMMARY of CHANGE

TPR 792
Alcoholism and Drug Abuse Program
Revision dated 8 February 2011

- o This publication supersedes TPS 792-2, has been substantially revised, and must be reviewed completely.
- o Change from Technician Assistance Program to bring it in line with the Federal Government Employee Assistance Program (EAP).
- o Adds an explanation of the responsibilities of the Chief, National Guard Bureau; Chief, Manpower and Personnel; Chief, Technician Personnel Division; and the Joint Force Headquarters-State.

Alcoholism and Drug Abuse

Alcoholism and Drug Abuse Program

By Order of the Secretary of Defense:

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General, USAF
Chief, National Guard Bureau

Official:

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History. This publication supersedes TPS 792-2, dated 5 September 1978.

Summary. This regulation prescribes the Human Resources Alcoholism and Drug Abuse Program for National Guard technicians and replaces the alcohol and drug abuse regulations that were used to supplement the Federal Personnel Manual. Changes reflected include replacing the term Technician Assistance Program with the term Employee Assistance Program.

Applicability. This regulation applies to the Army and Air National Guard Technician Program of the 50 States, Commonwealth of Puerto Rico, Territories of Guam and the Virgin Islands, and the District of Columbia, which are authorized a National Guard.

Proponent and exception authority. The proponent of this regulation is the NGB-J1-TN. The proponent has the authority to approve exceptions to this regulation when they are consistent with controlling law and regulation.

Management control process. This regulation is not subject to the management control requirement of AR 11-2 (Management Control) and does not contain management control provisions.

Supplementation. Supplementation of this regulation is authorized. One copy of any supplement will be provided to the NGB-J1-TN for coordination.

Suggested improvements: Users of this regulation are invited to submit comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to NGB-J1-TN, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231.

Distribution: B/F.

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Chapter 1

General Provisions

1-1. Purpose

a. This Technician Personnel Regulation (TPR) establishes responsibilities, policies and procedures for the Alcoholism and Drug Abuse Program for National Guard technicians. Title 5 Code of Federal Regulation (CFR), part 792 (Federal Employee's Health and Counseling Program), requires proper administration of the Alcoholism and Drug Abuse Program. This regulation meets those requirements and provides The Adjutants Generals' (TAG) regulatory guidance to administer the Alcoholism and Drug Abuse Program at the State level. It provides guidance on how to prevent, reduce, and control substance (alcohol and drug) abuse.

b. This TPR sets forth the National Guard Bureau's (NGB) Employee Assistance Program (EAP) for providing counseling, referral services, and other assistance (rehabilitative services) to all National Guard technicians employed under 32 U.S.C 709 and to aid them in solving personal problems having an impact on job performance. Although particular emphasis will be given to those technicians with health problems related to drug abuse and alcohol abuse that may affect a technician's work performance, nothing in this regulation shall prohibit a technician from receiving assistance under this program for other personal problems, such as financial difficulties, legal, family or other problems, that may affect job performance.

1-2. References

This regulation is not intended to stand alone and must be used in conjunction with the references in Appendix A.

1-3. Explanation of abbreviations and terms

Explanation of abbreviations and terms used in this regulation are in the Glossary.

1-4. Responsibilities

a. Chief, National Guard Bureau (CNGB) serves as the strategic focal point in developing, managing, and integrating employment of National Guard capabilities for the Office of the Secretary of Defense, the Joint Staff, and the Department of the Army and Air Force in support of the Combatant Commanders. Administers Department of Defense (DoD), Joint, Army and Air Force programs and acquires, distributes, and manages resources.

b. Director of Manpower and Personnel NGB-J1 serves as the primary advisor to the CNGB on all personnel and manpower issues in the National Guard. Provides oversight and has primary responsibility to the CNGB on the human resource technician program development, staffing, and execution of policy, plans, and programs.

c. The Chief, Technician Personnel Division, NGB-J1-TN serves as the primary advisor to NGB-J1, commanders, staff, and operating officials on all matters pertaining to military technicians assigned to the National Guard. In addition, NGB-J1-TN establishes responsibilities, policies, and requirements for the National Guard Alcoholism and Drug Abuse program that meets statutory and regulatory requirements cited in the reference section in Appendix A.

d. The Adjutant General (TAG) supplements and publishes management policies relating to the technician program and processes. The TAG will establish an Alcoholism and Drug Abuse Program for their State or Territory that meets the statutory and regulatory requirements cited in the references in Appendix A and this TPR. The TAG ensures State policies and standards are clearly understood and adhered to by all employees.

e. Joint Force Headquarters-State, JFHQ (St), J-1 provides oversight and has primary responsibility to TAG on the state's technician alcoholism and drug abuse program.

f. Human Resources Officers (HRO) develops and implements local plans and procedures. HRO issues regulatory guidance, administers and publicizes the State's Employee Assistance Program (EAP), ensures the EAP meets the regulatory requirements cited in the references in Appendix A. HRO provides training and support to supervisors and managers on substance abuse requirements and appoints an Employee Assistance Program Coordinator (EAPC).

g. Employee Assistance Program Coordinator implements and oversees the EAP and will also:

(1) Provide advice, assistance and training to commanders, managers, and supervisors on effective use and participation in the program; ensures their understanding of the procedures for dealing with technicians with alcohol or drug problems and the benefits derived from successful rehabilitation.

(2) Provide educational materials to prevent or discourage alcohol or drug abuse and in conjunction with the

HRO; provide information regarding the program during orientation of newly employed technicians to ensure all technicians are aware of services available.

- (3) Establish liaison with community education, counseling, treatment, and rehabilitation facilities; and
- (4) Provide a capability for counseling.

Chapter 2

Policy

2-1. National Guard Bureau

The NGB is concerned with the accomplishment of the National Guard's objectives and the need to maintain technician morale and productivity. In addition, the following also apply:

- a. NGB does not condone illegal drug activity. When there is good reason to believe criminal conduct is directed towards, or potentially harmful to the person or property of others, management's first obligation is to those persons or properties, and then to the technician(s) involved.
- b. Technicians having a drug abuse or alcoholism problem that does not affect their performance on the job conduct or bring discredit to the National Guard will be dealt with by use of non-disciplinary procedures.
- c. If a technician's performance or conduct is unacceptable, appropriate corrective action, which may include disciplinary action, will be taken as warranted solely on the basis of the conduct or unsatisfactory job performance.
- d. In cases where drug abuse or alcoholism problems are evident or reasonably suspected, the technician will be offered EAP. Offering EAP does not replace the need for corrective action as stated above, but is in addition to such action.

2-2. State

Each State must establish policy on the alcoholism and drug abuse program. Policy statements must include as a minimum the following:

- a. The agency recognizes alcoholism and drug abuse as treatable health problems.
- b. The purposes of the policy. Alcoholism and drug abuse are defined as illnesses in which the employee's job performance maybe impaired as a direct consequence of the abuse of alcohol and/or drugs.
- c. Those employees having these illnesses will receive the same careful consideration and offers of assistance that is presently extended to employees having any other illness or health problems.
- d. The agency is not concerned with the employee's use of alcohol and/or drug abuse except as it may affect his or her job performance, job conduct, or the efficiency of the service.
- e. No employee will have their job security or promotion opportunities jeopardized by their request for counseling or referral assistance, except as limited by Title II, section 201(c)(2) of Public Law 92-255, relating to sensitive positions.
- f. Conduct or performance issues that arise or occur as a result of alcohol and/or drug abuse will be dealt with as the conduct or performance requires.
- g. The confidential nature of medical records of employees with alcohol and/or drug abuse problems will be preserved in accordance with Section 333 of Public Law 91-616, as amended by Section 122 of Public Law 93-282, and implementing regulations.
- h. Sick leave will be granted for the purpose of treatment and/or rehabilitation as with any other illness or health problem.
- i. Employees who suspect they may have an alcoholism or drug abuse problem, even in the early stages, are encouraged to voluntarily seek counseling and information on an entirely confidential basis by contacting the persons designated to provide such services.

Chapter 3

Privacy and Confidentiality

3-1. Privacy act

Employees in the substance abuse program are protected by the restrictions contained in the Privacy Act (5 USC section 552a).

3-2. Confidentiality requirement

This requirement applies to disclosing information and records (oral or written) on clients who are or were receiving treatment under the substance abuse program. The two types of disclosures are with and without consent. The confidentiality requirements apply to information on a person's past or present involvement, or lack of involvement, in a substance abuse program.

3-3. Unauthorized disclosure

No one may intentionally or inadvertently disclose an employee's participation in a substance abuse prevention program. Persons making an unauthorized disclosure of records may be subject to criminal penalties.

3-4. Disclosing information

When disclosing information in response to a valid disclosure request, limit the disclosure to the minimum, specific, information necessary to respond to the request.

3-5. Disclosure with consent

Disclosure with consent can be accomplished in the following situations:

- a. Diagnosis, treatment, and rehabilitation: A determination must be made if the request is valid and that such disclosure will not harm the client.
- b. Employers and employment agencies: Allow disclosure that is reasonably necessary and appropriate to facilitate the employment of patients and former patients, while protecting employees against unnecessary or excessively broad disclosure.
- c. Criminal justice system: Where participation by an individual in a treatment program is a condition of their release from confinement.
- d. When requested by legal counsel for patient.

3-6. Discussion of illegal activities

Counseling persons who have alcohol or drug problems may involve discussion of their illegal activities.

- a. Personnel performing an alcohol abuse or drug abuse prevention function may disclose a patient's communication (defined at 42 CFR 2.11) relating to crimes which have been threatened or committed by patients, as long as such disclosure does not include any "patient identifying information," as defined at 42 CFR 2.11.
- b. A disclosure of "patient identifying information" for the purpose of investigating or prosecuting a patient in connection with disclosures of a patient's communications relating to crimes may be made only if an authorizing court order is obtained in accordance with 42 CFR Subpart E (2.61-2.67-1). Under 42 CFR 2.65, a court order authorizing the disclosure of patient identifying information for the purpose of investigating or prosecuting a patient may be obtained only if:
 - (1) The crime or threatened crime causes (or would cause) or directly threatens loss of life or serious bodily injury, (e.g., kidnapping, homicide, assault with a deadly weapon, armed robbery, and rape).
 - (2) It is believed the crime or threatened crime has been, or will be committed on the premises of the program or against personnel involved with the program.

3-7. Authorizing court order

An authorizing court order may be sought only: If the crime or threatened crime meets these criteria and is a violation of Title 18 USC, a court order authorizing the reporting required by 28 USC 535(b) must be sought. Authorizing court orders shall be sought in accordance with the procedures prescribed in paragraph 3-8.

3-8. Procedures for obtaining authorizing court orders

When personnel performing an alcohol abuse or drug abuse prevention function determine, in accordance with paragraph 3-6(b), that a court order authorizing the disclosure of patient identifying information will be sought, they should request their agency initiate appropriate action toward obtaining such an order. In requesting such action, the personnel performing an alcohol abuse or drug abuse prevention function shall not disclose any patient identifying information unless the employee consents to that disclosure and to the use of such information in the application of an authorizing court order voluntarily and intelligently. In the absence of such consent, the

application shall be instituted in the name of a fictitious person (such as John Doe). Any authorizing court order must identify the patient by reference to the fictitious name appearing on the application.

Chapter 4

Records and Reports (Administrative Considerations)

4-1. Maintenance of records

Supervisory documentation of technician job performance and actions taken to motivate correction of deficiencies will be filed in the supervisor's work folder. Supervisors will document issues of conduct or performance only and will not speculate as to the cause of such conduct or performance. Supervisor's notes are not subject to the requirement of confidentiality regulations since supervisors, as such, are not performing an alcohol or drug abuse prevention function. If a supervisor refers a technician to the EAPC for counseling and/or referral, the supervisor is not entitled to feedback on the technician's performance/progress unless the EAPC obtains written consent from the technician.

4-2. Documentation of referrals

Documentation of referrals for counseling will not be made in the supervisor's work folder nor maintained in the official personnel folders. When not in use, records on technicians who have been referred for counseling will be maintained by the EAPC in a secure room, a locked file cabinet, safe, or other similar container.

4-3. Fitness-for-duty and pre-employment examinations

Dual Status National Guard technicians must meet the military medical qualifications for membership in the Army or the Air National Guard as appropriate.

4-4. Use of sick leave

Employees who decide to undergo a prescribed program of treatment which will require absence from work should be granted sick leave for this purpose.

4-5. Expenses of rehabilitation

There is no provision in Public Law 91-616 or Public Law 92-255 for payment of Federal employee rehabilitation costs. An employee is responsible for the costs of treating his or her alcohol and/or drug problem as with any other health condition. The employee may receive some financial assistance, as with other illnesses, from his or her Federal Employees Health Benefits plan.

4-6. Employment considerations

When applicants who have a history of alcoholism and/or drug abuse are being considered for a technician position, the State Adjutant General will make a determination on the basis of whether or not the applicant is an acceptable risk.

Chapter 5

Relationship to Disciplinary Actions

5-1. Alcoholism and drug abuse

The alcoholism and drug abuse program supplements, but does not replace, existing procedures for dealing with problem employees. Its premise is one type of problem employee is the alcoholic and/or drug abuser and with this particular kind of problem employee, a special situation exists. The alcohol and/or drug abuse is either an illness or a symptom of an illness and, as with other types of illnesses; it must be the agency's policy to assist the person to recover his or her usefulness as an employee.

a. In practice, the alcoholic and/or drug abuser should be dealt with no differently from other problem employees. The supervisor identifies the aspects of job performance that are not satisfactory, consults with the medical or counseling staff, or both, about those cases that appear to be developing a trend, discusses aspects of below standard performance with the employee and advises him or her of availability of counseling assistance if the cause of poor performance stems from any personal problem. If there is no improvement or inadequate improvement in

performance, or both, performance based actions should be taken, as warranted, solely on the basis of unsatisfactory job performance. If conduct is involved, disciplinary action may be taken in accordance with the adverse action Technician Personnel Regulation (TPR 752).

b. In relating the alcoholism and/or drug abuse program to disciplinary policies and practices, it is most important that this program is carried out as a non-disciplinary procedure aimed at rehabilitation of employees who suffer from a health problem. There should be a clear understanding that shielding problem employees by tolerating poor performance or inappropriate conduct clearly contributes to the progression of the illness by delaying entry into a rehabilitative program. Failure on the part of the employee to accept the assistance offered through the program or to otherwise correct performance or conduct should be dealt with through performance or disciplinary procedures.

5-2. Disclosure of patient information

Title 42 CFR, Public Health must be adhered to. Specifically, section 2.13(a) provides patient information may be disclosed only as authorized, and may not otherwise be released in any civil, criminal, administrative or legislative proceeding conducted by any Federal, State, or local authority. Management may not require an alcohol or drug abuse prevention function to release patient information for use in a disciplinary situation. This regulation permits the release of such information in such proceedings, with the patient's prior written consent or when in the judgment of the alcohol or drug program director, the information will not be harmful to the patient, the program, or their relationship. The patient may have pertinent information released in a disciplinary proceeding where these criteria are met. Management must presume that where an employee does not present such a disclosure in a disciplinary situation, the criteria for release have not been met. In any case, disciplinary action or performance based action should always be based on job behavior or performance problems, not progress in a rehabilitative program.

**Appendix A
References**

**Section I
Required Publications**

Public Law 93-282

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act amendments of 1974, as implemented in the Code of Federal Regulations. (Cited in paragraph 2-2g)

Technician Personnel Regulation 752

Discipline and Adverse Action

Title 5, Code of Federal Regulation, Part 792

Federal Employees' Health and Counseling Program

Title 42, Code of Federal Regulation, Part 2

Confidentiality of Alcohol and Drug Abuse Patient Records

Title 5, United States Code, Section 552a

Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings

Title 18, United States Code

Crimes and Criminal Procedure

Title 28, United States Code, Section 535(b)

Investigation of Crimes Involving Government Officers and Employees Limitations

Title 32, United States Code, Section 709

Technicians: Employment, Use, Status

Title 42, United States Code,

The Public Health and Welfare

**Section II
Related Publications**

This section contains no entries.

**Section III
Prescribed Forms**

This section contains no entries.

**Section IV
Referenced Forms**

DA Form 2028

Recommended Changes to Publication and Blank Forms

Glossary

Section I Abbreviations

ANG

Air National Guard

CFR

Code of Federal Regulations

EAP

Employee Assistance Program

EAPC

Employee Assistance Program Coordinator

NGB

National Guard Bureau

TAG

The Adjutant General

TPR

Technician Personnel Regulation

USC

United States Code

Section II

Terms

Alcohol Abuse

Any substandard behavior or performance in which the consumption of alcohol is a primary contributing factor.

Alcoholism

A treatable condition or illness characterized by excessive consumption of alcohol to the extent that the individual's physical and mental health, personal relationships, social conduct or job performance is impaired.

Drug Abuse

The improper or illegal use of a controlled substance or the improper use of prescribed or over-the-counter drugs that are packaged with a recommended safe dosage. Also includes the use of a substance for other than its intended use such as glue, gasoline fume, sniffing or steroid use.

State or States

Reference to the 50 States, Commonwealth of Puerto Rico, Territories of Guam, the Virgin Islands, and the District of Columbia, which are authorized a National Guard.