

<p>U.S. DEPARTMENT OF EDUCATION</p> <p>PERSONNEL MANUAL INSTRUCTION</p>	<p>PMI <u>792-1</u></p> <p>DATE <u>APR 25, 1983</u></p> <p>APPROVED:</p> <p><i>Marsha Scialdo</i> for Director of Personnel 05-01-02</p>
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SUBJECT: THE U.S. DEPARTMENT OF EDUCATION ALCOHOLISM AND DRUG ABUSE PROGRAM

I. AUTHORITY

- A.** Public Laws 91-616 (42 U.S.C. 4551) and 92-255 (21 U.S.C.1180) mandate that Federal agencies develop and maintain appropriate prevention, treatment and rehabilitation programs and services for Federal civilian employees with alcohol or drug problems.
- B.** Public Law 79-658 (5 U.S.C. 7901) authorizes Federal agencies to establish health services programs to promote and maintain the physical and mental fitness of employees of the Federal Government.
- C.** FPM Chapter 792 and FPM Supplement 792-2 provide the authority and guidance to management for developing and maintaining appropriate prevention, treatment, and rehabilitation programs and services for alcoholism and drug abuse among Federal civilian employees.
- D.** On January 2, 1980, Public Laws 96-180 and 96-181, authorized agencies to extend program services, where feasible, to:
 - 1. Families of employees with alcohol or drug problems; and
 - 2. Employees with family member (s) with alcohol or drug problems.

II. POLICY

The Department of Education (ED) recognizes alcoholism and drug abuse as treatable health problems.

- For the purposes of this policy, alcoholism and drug abuse are defined as illnesses in which the employee's job performance is impaired as a direct consequence of the abuse of alcohol or drugs.
- Employees having these illnesses will receive the same careful consideration and offer of assistance that is presently extended to employees having any other illness or health problems.
- The Department is not concerned with the employee's use of alcohol except as it may affect his or her job performance or the efficiency of the service. However, the Department does not condone employee drug activity which is contrary to law.
- When there is good reason to believe criminal conduct is directed toward or is potentially harmful to the person or property of others, management's first obligation is to those persons or properties, and then to the employee involved.
- No employee will have his or her job security or promotion opportunities jeopardized by his or her request for counseling or referral assistance, except as limited by Title II, Section 201(c) (2) of Public Law 91-616, and Section 413 (c)(2) of Public Law 91-255, relating to sensitive positions.
- The confidential nature of medical records of employees with drinking 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 the implementing regulations. Records of employees with drug abuse problems will be maintained in accordance with Section 408 of Public Law 92-255, as amended by Section 303 of Public Law 93-282, and the implementing regulations.
- Earned sick leave will be granted for the purpose of treatment or rehabilitation as in any other illness or health problem. Annual leave, advanced sick leave or leave without pay may be granted at the discretion of the leave approving official.
- Employees who suspect they may have an alcoholism or drug abuse problem, even in the early stages, are encouraged to seek counseling and information voluntarily on an entirely confidential basis by contacting the persons designated to provide such services.

III. APPLICABILITY

- A. This Instruction states the Department's policy concerning employee alcoholism and drug abuse since these problems affect the physical and mental health of employees and impair work performance. It states requirements and guidelines with respect to establishment and implementation of programs for prevention, treatment and rehabilitation, and supplements FPM Chapter 792 and FM Supplement 792-2.
- B. When a negotiated agreement exists for bargaining unit employees, this Instruction will be applied in conjunction with such negotiated agreement.

IV. DEFINITIONS

For the purpose of administering the Federal Civilian Employee Alcoholism and Drug Abuse Program, the following definitions are applicable.

- A. Alcoholism: A chronic disease characterized by repeated excessive drinking which interferes with the person's health, interpersonal relations, or economic functioning. If untreated, alcoholism becomes more severe and may be fatal. It may take several years to reach the chronic phase.
- B. Alcoholic: A person who has the illness of alcoholism. His or her drinking is out of control and is self-destructive in many different ways. The term "recovered alcoholic" also describes the person who has undergone rehabilitation and whose disease has been arrested through abstinence.
- C. Problem drinker: To management, a problem drinker is any employee whose use of alcohol frequently affects adversely his or her work.
- D. Drug abuse: A health problem characterized by the use of a drug in a manner or to a degree which interferes with the person's health, interpersonal relations, economic functioning, or social standing.
- E. Sensitive positions: Those which are designated as critical-sensitive and noncritical sensitive in the Federal Personnel Manual Chapter 732.

V. RESPONSIBILITY

- A. The Director of Personnel is responsible for program development and implementation, review and evaluation of ED's Alcohol and Drug Abuse Program.
- B. The Director, Personnel Policy and Program Division (PPPD) is responsible for policy development, general program oversight, and coordination throughout the Department. The Director will designate a Program Administrator.
- C. Servicing Personnel Officers (SPOs) are responsible for establishing employee alcoholism and drug abuse programs in accordance with legal requirements and prescribed criteria for employees serviced by their offices, giving particular attention to the development of counseling capability, supervisory training, liaison with treatment on rehabilitation facilities, and program review and evaluation.
- D. Supervisors are responsible for providing support for employee alcoholism and drug abuse programs by careful and consistent attention to evaluation of the performance of those they supervise, seeking the guidance of qualified counselors in problem situations, providing employees with information on available health and counseling services, and cooperating with personnel specialists when employees refuse help and continue to perform unsatisfactorily. Supervisors do not diagnose the difficulties of troubled employees.

VI. PROGRAM GUIDELINES

To be effective, support of the program by all levels of management and employees must be obtained. Top level interest and the specific provisions of the program should be communicated to all levels of management and employees. This should be done in a manner to stimulate recognition of the positive aspects of the program and availability of assistance to employees with alcohol and drug abuse problems.

Cooperation of personnel, medical and other appropriate operating officials must be sought in the development and implementation of programs to insure that they are realistic in terms of organization capability and employee needs.

A. Role of the Supervisor

Supervisors have an important role in insuring the Department's commitment to alcoholism and drug abuse rehabilitation. They should be able to identify deteriorating performance in employees and have a responsibility to make referrals of employees that have alcoholism or drug abuse work related difficulties to Departmental staff who can provide appropriate guidance to such employees.

More specifically, supervisors should:

1. Be alert to changes in the work behavior of assigned employees:
2. Document specific instances in which the employee's work performance, behavior, or attendance fails to meet acceptable standards or where the employee's pattern of performance appears to be deteriorating;
3. Advise the Department's medical or counseling staff of the employee's problem and the possibility of a referral to them. Supervisors should be able to describe the behavior to the counseling staff but should not attempt to diagnose or draw conclusions;
4. Conduct an interview with the employee, focusing on poor work performance (not on the possibility of a drug or alcohol problem) and advise the employee of the availability of health and counseling services if problems appear to be related to health. Supervisors should discuss the possibility of drug or alcohol problems only when employees do not appear to be in full control of their faculties, and, in such cases, only to the extent necessary to provide referral to medical sources through counseling channels. Supervisory action when an employee appears to be involved in illegal activities related to drugs is discussed in VI. C.;
5. Encourage and support any employee's attempt at rehabilitation, including the granting of leave for the purpose of undergoing rehabilitative treatment;
6. Inform an employee who refuses to accept assistance and treatment (if indicated) and whose performance continues to be unsatisfactory that alternative action, based on the employee's unsatisfactory performance, will be necessary.

The appropriate alternative action will be determined and taken in accordance with the specific provisions of the Federal Personnel Manual and the Department's Personnel Manual Instructions.

B. Role of Counselors

1. Counseling must be available to provide consultation to supervisors in connection with their dealings with problem employees as well as to provide direct counseling to employees. Such counseling may be provided by medical personnel, persons with assigned responsibilities for carrying out an operating alcohol and drug abuse program, or community resources. Counselors are expected to maintain close working relationships with community resources which offer treatment and rehabilitative assistance to individuals with alcohol and drug problems. Counselors should receive the level of training required to insure they possess the skills which permit them to determine through interviewing whether factors affecting performance may be attributable to alcoholism or drug abuse, and to make referrals to professional rehabilitation programs.
2. Specific requirements for maintaining the confidentiality of patient information are discussed in VI. D. Counselors should be fully informed of their responsibilities in this connection and of the penalties under the law for violation.
3. Counselors should also be informed of their right to terminate counseling services to employees who persist in discussing illegal activities, as provided in VI. C.

C. Illegal Activities

1. The Department does not condone drug activity which is contrary to law. Operating officials should be made aware that treatment and rehabilitation programs are required by law. The law does not charge agencies or their personnel with any responsibility for seeking out information on illegal employee activities for the purpose of reporting to law enforcement authorities. Neither, however, does the statute justify supervisory failure or, indeed, failure of any Federal employee to report such activity to responsible authorities, when it is directed against or potentially harmful to the person or property of others.

Therefore, the following steps are appropriate:

- a. When a supervisor has good reason to believe an employee as engaged in criminal conduct directed exclusively toward the employee, the supervisor shall inform the employee of the facts known, similarly apprise the counselor, and refer the employee for counseling. The supervisor should be careful not to elicit or entertain from the employee any specificity or detail as to the nature of any illegal activity or conduct involved.
 - b. When a supervisor has good reason to believe an employee is involved in criminal conduct directed toward or potentially harmful to the person or property of others (such as selling drugs or stealing to support a drug habit), the supervisor has an obligation first to these persons or properties, and then to the employee. The supervisor may, therefore, depending on circumstances, first report the facts known to the Executive Protective Service when such activity occurs on Federal Property. Such reports should be made through the Department's Office of Inspector General. Subsequently, the supervisor should take the action indicated in VI. C. 1. a., first insuring that this action will not interfere with the efforts of the Executive Protective Service.
2. Counseling with employees who have drug problems may sometimes involve discussion of their illegal activities. Counselors or other persons performing a drug abuse prevention function, shall not disclose such information to law enforcement authorities, and should not seek to elicit information relating to crimes or criminal conduct from their clients. However, no counselor is bound to accept as a client an individual who persists in discussing illegal activities. Therefore, if information is disclosed on planned illegal activity against others, or specificity and detail of past illegal activity against others, the counselors should consult the Department's Office of General Counsel regarding their duty/responsibility, and should advise the employee that continued disclosure will result in termination of counseling services.

D. Confidentiality of Records

1. The confidentiality of records involving patient information relating to alcohol or drug abuse problems is governed by the provisions of 42 CFR 1A2. These regulations are outlined in subchapter S4 of FPM Supplement 792-2.
2. All persons performing a drug abuse or alcoholism prevention function are subject to these provisions and to the stated penalties for violating them. In addition, counselors in any other program area, if advised by an employee of an alcohol or drug problem, should refer the employee to the proper source for counseling, adhere to the confidentiality requirements set forth by law and regulation, and release related information on the employee only with the employee's prior written permission and only in accordance with the provisions of the regulations.
3. The regulations impose strict requirements on making disclosures of information about an employee, and Appendix C and D of FPM Supplement 792-2 contain sample formats which may be used in obtaining an employee's consent and in prohibiting further disclosure.

E. Employment Considerations

1. Except for limitations for sensitive positions as provided by Section 201 (c) (2) of P. L. 91-616 and Section 413 (c) (2) of P. L. 92-255:
 - a. No employee's job security or promotion opportunity will be jeopardized by a request for counseling or referral assistance in connection with alcoholism or drug abuse.
 - b. No person will be denied Federal civilian employment solely on the grounds of prior alcoholism or drug abuse.
2. An employee's right to disability retirement, if the condition warrants such action, shall not be jeopardized by the employee's participation in an employee alcoholism or drug abuse program or other rehabilitation program.

3. Employees who decide to undergo a prescribed program of treatment which will require absence from work should be granted leave as outlined in Section II of this PMI.
4. There is no provision in Public Laws 91-616 or 92-255 for payment of Federal employee rehabilitation costs. An employee is responsible for the cost of treating his or her drinking or drug problem as with any other health condition. The employee may receive some financial help, as with other illnesses, from his or her Federal Employees Health Benefits Plan.

F. Relationship to Disciplinary Actions

1. The alcoholism and drug abuse program supplements, but does not replace, existing procedures for dealing with problem employees. Its premise is that one type of problem employee is the alcoholic or drug abuser and that a special situation exists with this particular kind of problem. The drinking 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 try to assist the person to recover his or her usefulness as an employee.
2. In practice, the alcoholic or drug abuser should be dealt with a little differently from other problem employees. The supervisor identifies the aspect 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 the employee refuses to seek counseling, or if there is no improvement or inadequate improvement in performance, or both, disciplinary actions should be taken, as warranted, solely on the basis of unsatisfactory job performance.
3. Employees participating in a rehabilitation program must be given a reasonable opportunity to show significant and continuing improvement in addressing their conduct and performance problems that are attributable to alcohol or drug abuse. However, after a reasonable period of time, mere attendance in a rehabilitation program alone is not a sufficient basis for excusing substandard job performance and conduct. This is particularly so when there has not

been a substantial, positive effort by the employee to rehabilitate him or herself.

4. In relating the alcoholism and drug abuse program to disciplinary policies and practices, it is most important that the program be carried out as a nondisciplinary procedure aimed at rehabilitation of persons who suffer from a health problem. There needs to be a clear understanding that shielding problem employees or tolerating poor performance 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 is not a basis for disciplinary measures. However, failure to correct performance or conduct problems should be dealt with through appropriate disciplinary procedures.
5. The regulations in Appendix A of FPM Supplement 792-2 must be adhered to; specifically, section 2.13(a) provides that patient information may be disclosed only as authorized, and may not otherwise be divulged in any civil, criminal, administrative or legislative proceeding conducted by any Federal, State, or local authority. Thus, management may not require an alcohol or drug abuse prevention function to release patient information for use in a disciplinary situation. However, section 2.40 of the proceeding, with the patient's prior written consent, when in the judgment of the alcohol or drug program director the consent was voluntarily given, and the disclosure will not be harmful to the patient, the program, or their relationship. Thus, the patient may have pertinent information released in a disciplinary proceeding where these criteria are met. Conversely, 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 should always be based on job behavior or performance problems, not progress in a rehabilitative program.

G. Records and Reports

1. Records are to be maintained by the Servicing Personnel Officer in compliance with Subchapter S6 of FPM Supplement 792-2.

2. Servicing personnel offices will compile sufficient statistical data to provide the basis for evaluating the extent of alcoholism and drug abuse problems and the effectiveness of the counseling program. Care should be taken that these records are purely statistical and do not identify individual employees.
3. Office of Personnel Management (OPM) reporting requirements will be established in an annual FPM Bulletin. These reports will be submitted to the Personnel Policy and Program Division, Personnel Resource Management Service, for submission to OPM.