

**PROPOSED REGULATION OF THE DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH OF
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R181-18

August 6, 2018

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

AUTHORITY: §§1- 7, NRS 178.417.

A REGULATION relating to criminal procedure; clarifying that certain advanced practice registered nurses are authorized to conduct competency examinations of a defendant accused of a misdemeanor; prescribing the actions that may be taken in response to certain violations by certificate holders; increasing the application fee for a certificate to perform competency evaluations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes an advanced practice registered nurse who has certain psychiatric training and experience to examine a defendant accused of a misdemeanor to determine whether the defendant is competent. (NRS 178.415) **Section 2** of this regulation defines the term “psychiatric advanced practice registered nurse” to mean a nurse who has completed such training. **Section 4** of this regulation makes a conforming change. **Sections 5 and 6** of this regulation add references to a psychiatric advanced practice registered nurse where necessary to conform to existing law authorizing such a nurse to conduct a competency examination of such a defendant.

Existing law requires the Division of Public and Behavioral Health of the Department of Health and Human Services to adopt regulations to establish requirements for certification of a person who provides reports and evaluations concerning the competency of a criminal defendant. (NRS 178.417) If the Division determines that the holder of a certificate has submitted a report that does not adequately explain the stated conclusions or violated applicable ethical standards, **section 3** of this regulation authorizes the Division to: (1) require the holder to complete additional training; and (2) review the reports of the holder on an ongoing basis to ensure that the violation has been corrected. If the violation has not been corrected, **section 3** authorizes the

Division to suspend or revoke the certificate. **Section 5** increases the application fee for a certificate from \$25 to \$250 for a psychiatrist or psychologist and from \$25 to \$125 for a clinical social worker. **Section 5** also prescribes an application fee of \$125 for an advanced practice registered nurse. **Section 6** increases the renewal fee for a certificate from \$25 to \$150 for a psychiatrist or psychologist and from \$25 to \$75 for a clinical social worker. **Section 6** also prescribes a renewal fee of \$75 for an advanced practice registered nurse. **Section 7** of this regulation removes an unnecessary definition.

Section 1. Chapter 178 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Psychiatric advanced practice registered nurse” means an advanced practice registered nurse, as that term is defined in NRS 632.012, who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120.*

Sec. 3. 1. *The holder of a certificate shall:*

(a) Ensure that the report of an examination submitted pursuant to NRS 178.415 contains an explanation of the stated conclusions and adequate data to reasonably support those conclusions; and

(b) Comply with the applicable ethical standards prescribed by the American Academy of Psychiatry and the Law, the American Psychological Association or the National Association of Forensic Social Workers or their successor organizations.

2. If the Division determines that a holder of a certificate has failed to comply with the requirements of subsection 1, the Division may:

(a) Require the holder to complete additional training; and

(b) Review reports submitted by the holder pursuant to NRS 178.415 on an ongoing basis to determine whether the holder is in compliance with the requirements of subsection 1 and, if

the Division concludes that the holder is not complying with those requirements, suspend or revoke the certificate in accordance with NAC 439.300 to 439.395, inclusive.

3. A holder of a certificate that is suspended or revoked pursuant to this section may appeal to the Division pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.

Sec. 4. NAC 178.010 is hereby amended to read as follows:

178.010 As used in ~~NAC 178.010 to 178.130, inclusive,~~ *this chapter*, unless the context otherwise requires, the words and terms defined in NAC 178.020 to 178.080, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 178.100 is hereby amended to read as follows:

178.100 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, *psychiatric advanced practice registered nurse*, psychiatrist or psychologist;

(2) Attended and completed the course of training established pursuant to NAC 178.110; 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.]~~ *\$250 for psychiatrists and psychologists and \$125 for clinical social workers and psychiatric advanced practice registered nurses.*

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. 6. NAC 178.130 is hereby amended to read as follows:

178.130 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 NAC 178.120; and

(b) A renewal fee of ~~178.130 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.~~ ***\$150 for psychiatrists and psychologists and \$75 for clinical social workers and psychiatric advanced practice registered nurses.***

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 NAC 178.120; 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.~~ *pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.*

Sec. 7. NAC 178.050 is hereby repealed.

TEXT OF REPEALED SECTION

178.050 “Division” defined. (NRS 178.417) “Division” means the Division of Mental Health and Developmental Services of the Department of Health and Human Services.