

State of Nevada
Risk Management Division

Employee Fitness for Duty Exams
Policy/Procedures
Revised May 2016

In accordance with State Administrative Manual Section 0521(8), the Risk Management Division can coordinate a Fitness for Duty Exam, upon request and approval, with a qualified Occupational Medicine Physician, Psychologist or Psychiatrist, in the event that an appointing authority determines that an employee is displaying behavior that indicates: the employee may have a medical or psychological condition that could result in a direct physical threat or other liability to themselves, a co-worker or the public.

NAC 284.568 presents circumstances in which an appointing authority can place an employee on sick leave. Often, when this type of situation occurs, the appointing authority requests that the employee go to their personal physician or physicians to obtain appropriate clearances to return to work. However, in the event that the employee cannot obtain an appointment in a timely fashion, or if there are multiple physicians involved, or if such a determination has been obtained and the agency has reason to believe that a 2nd opinion is needed to prevent potential liability to the State, a fitness for duty exam may be indicated.

These exams can usually be set up within 2 to 5 days of a request and can often help resolve all issues in a relatively short time frame. This is a benefit for the employee, as it prevents the need for any out of pocket expense or extended use of sick leave while an employee waits for an appointment or multiple appointments with their physician(s) or a 2nd opinion physician. It also benefits the appointing authority as it allows a physician who is familiar with occupational settings to determine issues related to employment. If the Occupational Medicine Physician determines that there may be psychological issues that need to be evaluated, the physician will coordinate an appropriate appointment with a psychologist or psychiatrist as deemed necessary. If the employee is already under the care of a psychologist or psychiatrist, with permission of the employee, this physician can contact these professionals and solicit input and information that will help to make the appropriate determination in regard to the issues at hand.

Some circumstances may indicate the need for an immediate referral to a psychologist or psychiatrist prior to, or in lieu of, an Occupational Health Physician.

Upon approval of an agency request, the Risk Management Division will pay for the cost of the exam and any subsequent psychological or psychiatric exams deemed necessary by the Occupational Health Physician. All direct contact with the Occupational Health Physician will be made by the appropriate representative from the Risk Management Division. The results of the exams (verbal and written) will be forwarded to this representative and shared with the appointing authority only as necessary. All records will be maintained in confidential locked files at the Risk Management Office or in the employee's confidential medical file in the Personnel Office of the appointing authority.

The Risk Management Division will provide the employee with a copy of the Fitness for Duty Report upon receipt of a written request. If the employee feels that the reporting is incorrect, he/she can have it reviewed by their personal physician or psychologist for evaluation and/or rebuttal. If a rebuttal is received from a personal physician, a 3rd opinion may need to be obtained. This would most likely need to be with a physician/psychologist mutually agreed upon by the employee and appointing authority.

Agencies who would like to take advantage of this service must submit a request, in writing, from the agency or institute head that specifically requests a Fitness for Duty Exam. This request must include the following:

- Employee name, address and date of birth
- Detailed explanation of the facts and circumstances precipitating the request.
- Completion of the Risk Assessment/Warning Signs checklist will help to determine the work related aspects of the referral.
- Copies of all documents that support the request.
- Copy of employee's job description, essential job functions and work performance standards.

Upon receipt and review of the information, a concurrence of opinion may be requested from the agency Personnel Officer and Deputy Attorney General in regard to the need for the exam vs. referral to the EAP program or the employee's personal physician, prior to approval of the exam.

Upon approval of the request, an appointment will be set up with the appropriate Occupational Health Physician, psychologist or psychiatrist. Copies of all information will be forwarded to the Physician prior to the appointment.

The agency representative will be notified of the time and date of the appointment.

At that time the agency representative should notify the employee, in writing, of the time, date and purpose of the appointment and obtain the employee's signature for an appropriate release of information. The benefits to the employee should be explained. The employee should be placed on administrative leave to attend the appointment. If the employee indicates that he/she does not wish to submit to this exam, but prefers to obtain a medical report from his/her own physician (subject to a 2nd opinion), the employee should be placed on sick leave as per NAC 284.568 until appropriate clearances can be obtained. (ATTACHED IS A SAMPLE MEMORANDUM)

If the employee chooses to go to his/her own physician (s), in lieu of the Occupational Physician, the same information that was documented in preparation for the Occupational Physician should be provided to the employee with written instructions to provide it to their physician (s) or psychologist for review. In some cases the employee can be provided an outline of the documentation that is needed from their physician. (See Attached Sample Letter to Physician)

All requests for Fitness for Duty Exams should be forwarded to the attention of Mandy Hagler, Deputy Risk Manager; telephone (775) 687-1754; fax 687-3196 - email address: mhagler@admin.nv.gov.

SAMPLE MEMORANDUM REGARDING FITNESS FOR DUTY EXAM.

EACH MEMO MUST BE CUSTOMIZED TO THE SPECIFIC CIRCUMSTANCES LEADING TO THIS REQUEST.

Date:

MEMORANDUM

TO: Employee

FROM: Agency Representative

RE: Employee Notification of Fitness for Duty Exam

As a result of: (describe circumstances leading up to this request-identify the reasons for concern, their impact on job performance-be detailed in regard to each circumstance), we are concerned that you may have a medical or psychological condition that is affecting your ability to effectively perform the essential functions of your position or that may cause you to pose a direct threat to yourself, a co-worker, or the public (or clients). This concern, combined with the nature of your position presents a significant safety and liability risk to this agency. At this time, we find that we must take appropriate action to resolve and diffuse this situation.

We are requesting your cooperation in attending a "Fitness for Duty Evaluation". If you agree to attend a "Fitness for Duty Evaluation" you will be placed on administrative leave status, until such time as the report of results is received from the physician, recommendations are reviewed and work or leave status is re-evaluated. **There will be no cost to you for the evaluation or any other evaluations or tests that the physician or psychologist may recommend.** This exam will be coordinated by the Risk Management Division and the results will be forwarded to their office for review and communication with this agency only as necessary. The information received will be treated with the highest degree of confidentiality. A copy of this 'Fitness for Duty' Evaluation will be made available to you upon request from the Risk Management Division. You will have the option to present this report to your personal physician/s for review and rebuttal, if you do not agree with the opinion. This report will remain in a confidential locked file at the Risk Management Office and, if appropriate, a confidential medical file within this agency's Personnel Office. An appointment will be scheduled with a physician immediately upon your agreement to attend an evaluation and can generally be completed within 2 weeks.

If you choose not to attend this evaluation you will be placed on sick leave, pursuant to NAC 284.568 (if applicable) or leave without pay status until you provide medical documentation from your personal physician/psychiatrist at your own expense, **that clearly states that the concerns noted above have been reviewed, the essential functions of your position have been reviewed. In addition this communication must document whether or not you have a medical condition that prevents you from effectively performing your job duties. The documentation will need to clarify if you need medical treatment prior to returning to work**

or if you are medically released to return to work. We may request a 2nd opinion prior to allowing you to return to work.

Please indicate below your choice between the two options presented in this letter. You must return this letter not later than _____.

_____ I agree to attend a 'Fitness for Duty' evaluation coordinated by the Risk Management Division and authorize the physician to forward a report and to review and discuss pertinent information regarding my 'fitness for duty' with the Deputy Risk Manager. I will not be responsible for any costs associated with this evaluation and will remain on administrative leave pending a determination.

_____ I choose not to attend this evaluation and will obtain a medical statement from my own physician that will be based on the conditions noted in this letter. I understand that all costs associated with obtaining this statement will be at my own expense and that I will remain on sick leave or leave without pay status pending presentation of appropriate documentation. I further understand that additional information may be forwarded to my physician for his review in making a determination. Also, I understand that I may be required to submit to a 2nd opinion.

Employee's Signature

Date

SAMPLE LETTER TO PHYSICIAN.

EACH LETTER MUST BE CUSTOMIZED TO THE SPECIFIC CIRCUMSTANCES LEADING TO THIS REQUEST.

Date:

To:

From:

Re: Health and Safety Concerns-Fitness for Duty Status

As a result of: (describe circumstances leading up to this request-identify the reasons for concern, their impact on job performance-be detailed in regard to each circumstance), we are concerned that you may have a medical or psychological condition that is affecting your ability to effectively perform the essential functions of your position or that may cause you to pose a direct threat to yourself, a co-worker, or the public (or clients). This concern, combined with the nature of your position presents a significant safety and liability risk to this agency. At this time, we find that we must take appropriate action to resolve and diffuse this situation.

Effective _____ you are being placed on sick leave in accordance with NAC 284.568. You are instructed to take a copy of this letter, the attached Essential Functions Questionnaire and your Work Performance Standards (also attached) to your physician for review. Please complete this task within two weeks from the date on this letter (or by _____).

Please have your physician document if you are currently capable of performing full job duties at this time or if you need to either be placed on sick leave for appropriate medical treatment or some form of restricted duty until you have obtained appropriate medical treatment. We may require a 2nd opinion prior to allowing your return to work.

The work status documentation from your physician must include an acknowledgement and response to each of the following:

- 1. The concerns noted above have been reviewed and the essential functions of your position have been reviewed.**
- 2. Whether or not your medical condition is currently stable.**
- 3. Whether or not you are currently fit for duty at this time.**
- 4. If you are not currently fit for duty, what period of time is expected before you can achieve a fitness for duty status.**
- 5. Identify and document any work accommodations that this agency can consider to assist you in performing the full scope of your job duties. .**

Your health and safety is of utmost concern and we need you to provide this information as soon as possible. You will remain on sick leave until we receive this documentation from your physician.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.