

CHAPTER 29

TECHNICIAN ASSISTANCE PROGRAM (TAP)

Section 1 - General

1-1. **Purpose.** The purpose of this program is to help technicians deal with personal problems that affect their job performance and well-being. Personal problems include substance abuse, emotional, financial, marriage and family, health management, and other personal issues.

1-2. **Scope.** This program applies to all technicians in the Alabama National Guard Technician Program.

1-3. **Authority.** Public Law 91-616 and Public Law 92-255 mandated technician assistance programs. TPR 792-2 governs the Technician Assistance Program (TAP).

1-4. **Policy.** This program is designed and operated on the premise that technicians having mental or addictive problems will be considered as having an illness and receive that same type of careful consideration and offer of assistance that is presently extended to technicians having any other illness or health problems.

a. As an employer, The Adjutant General of Alabama is not officially concerned with the technician's personal problems until they affect his or her job performance or the efficiency of the service.

b. The Adjutant General of Alabama is concerned with the accomplishment of the mission and the need to maintain technician productivity.

c. The Adjutant General also has a valid interest in preventing loss of work time and work efficiency resulting from ill health of National Guard technicians.

d. A personal problem is of concern to management only when it results either directly or indirectly in a job-related problem.

e. A problem exists when a technician's personal problem interferes with the efficient and safe performance of his or her assigned duties, reduces his/her dependability or reflects discredit.

f. In such cases, management will take action in the form of:

(1) Non disciplinary procedures under which a technician with a personal problem is offered rehabilitative assistance.

(2) Should the technician fail to respond to rehabilitative assistance with acceptable work performance, management will invoke regular disciplinary procedures for dealing with problem technicians.

(3) If a technician fails to accept the assistance offered, normal disciplinary actions will be taken solely on the basis of poor job performance or behavior.

1-5. **Policy Statements.**

a. Management recognizes alcoholism as a treatable illness and drug abuse as a treatable health problem.

b. Technicians having an alcohol or drug abuse problem will receive the same careful consideration and offer of assistance that is extended to technicians having any other illness.

c. The use of sick leave by technicians is authorized for treatment of rehabilitation. (The confidential nature of medical records of technicians with alcohol or drug abuse problems will be preserved, and such technicians will be afforded the opportunity to receive counseling and information on an entirely confidential basis.)

d. No technicians will have his or her job security or promotion opportunities jeopardized by his/her request for counseling or referral assistance, except as limited by Title 2, Section 201 (2) of Public Law 91-616 relating to sensitive positions.

e. Technicians who suspect they may have a personal problem, especially in the early stages, are encouraged to voluntarily seek counseling and information on an entirely confidential basis by contacting their immediate supervisor or TAP Coordinator.

f. Participation in this program does not jeopardize the technician's right to disability retirement should he/she develop other health problems which would otherwise entitle the technician to disability retirement.

g. This program shall not be constructed to prohibit the dismissal from employment of a technician who cannot function in employment.

h. Supervisors should become familiar with the signs of problem drinking or drug abuse. At no time will a supervisor diagnose alcoholism; this is a decision for qualified medical authorities. If at any time poor job performance is connected with drinking or drug problems, supervisors should contact the TAP Coordinator for advice on the proper procedures to follow.

Section II – Responsibilities

2-1. **Technicians.** Technicians are expected to discharge their assigned duties with diligence and efficiency, to give a full day's work for a full day's pay, to cooperate with those who are vested with administrative and military authority to direct their work and to observe the spirit and the letter of laws and regulations governing their conduct.

- a. Health maintenance is primarily the responsibility of the individual technician.
- b. A technician is responsible to seek help when he/she suspects that he/she may have a personal problem.
- c. A technician is responsible for acceptance of counseling or referral services. (Failure to accept counseling or referral services which results in unsatisfactory job performance could result in normal disciplinary actions.)
- d. A technician is responsible for reporting to work as directed and to be ready, willing, and able to work. (In a non-disciplinary situation, when a technician is not "ready, willing and able to work" he/she may be placed on annual or sick leave or in a non-duty non-pay status, as the circumstances and the status of his/her leave amount requires and this action will not be considered a suspension.)

2-2. **Supervisor.** Legitimately, supervisors have fairly explicit expectations of their technicians in terms of job performance and behavior. When technicians fail to fulfill these expectations, supervisors have both the right and the duty to confront them with the deficiencies, and to provide them with opportunities to correct the problem, regardless of their genesis. Dealing with poor performance is a basic supervisory responsibility. Early intervention will generally be most helpful in returning technicians to productivity. When alcohol or drug problems are underlying factors in poor performance, timely intervention may also lead to early, even life-saving identification and treatment of the health problem. In summary, supervisors should:

- a. Be alert, through continuing observation, to changes in the work and/or behavior of assigned technicians.
- b. Document specific instances where a technician's work performance, behavior or attendance fail to meet minimum standards or where the technician's pattern of performance appears to be deteriorating.
- c. Advise TAP Coordinator of the technician's problem and the possibility of a referral to them. Supervisors must be able to describe behavior to the TAP Coordinator but should not attempt to diagnose or draw conclusions. This is a medical and/or counseling responsibility.
- d. Conduct an interview with the technicians focusing on poor work performance and inform the technician of available assistance services in the event poor performance is caused by personal or health problems.

e. If the technician refuses help, and performance continues to be unsatisfactory, provide a firm choice between accepting agency assistance through the TAP referral for counseling or professional diagnosis of his/her problem, and cooperation in treatment if indicated, or accepting consequences provided for unsatisfactory performance. Supervisors should not discuss the possibility of a drug or alcohol problem with a technician, except:

(1) When a Technician is apparently involved in illegal activities related to drugs. Consistent with the policy expressed in this chapter, the following steps are appropriate:

(a) When management has a good reason to believe a technician has engaged in criminal conduct directed exclusively toward himself/herself, supervisors will inform the technician of the facts known, similarly apprise the TAP Coordinator, and refer the technician for counseling. Supervisors should be careful not to elicit or entertain from the technician any specificity or detail as to the nature of any illegal activity or conduct involved.

(b) When management has a good reason to believe a technician is involved in criminal conduct directed toward or potentially harmful to the person or property of others – such as selling of drugs or stealing to support a drug habit – supervisors have an obligation first to these persons or properties, and then to the technician. They may therefore first report the facts known to law enforcement authorities; such reports should be made through a management level at which the exercise of discretion is normally expected, and through which reports of other types of criminal activity are generally made. Subsequently, supervisors should take the action indicated 1(a) above, first ensuring this action will not interfere with efforts of law enforcement authorities.

f. In summary, managers should be made aware that Public Law 92-255 requires agencies to maintain treatment and rehabilitation programs; it does not charge agencies or their personnel with any responsibility for seeking out information on illegal technician activities for the purpose of reporting it to law enforcement authorities. Neither, however, does the statute justify supervisory failure or failure of any Federal technician to report such activity to responsible authorities, when it is directed against or potentially harmful to the person or property of others.

2-3. **Program Administration.** The Equal Employment Opportunity Manager in the Human Resources Office is appointed as the TAP Coordinator to oversee the activities of this program.

2-4. **Procedures to be followed by Supervisors.**

a. Be alert, through continuing observation, to changes in the work and/or behavior of assigned technicians.

b. Document on NGB Form 904-1 specific instances where technician's work performance, behavior or attendance fails to meet minimum standards or where the technician's pattern of performance appears to be deteriorating.

c. In order to afford reasonable accommodation to a technician who is handicapped by alcoholism or drugs, the State must offer the technician rehabilitative assistance before initiating any adverse action for continuing misconduct/performance problems related to alcoholism or drug use.

d. In offering rehabilitative assistance, the manager or supervisor need not confront the technician with the belief that the technician has an alcohol or drug problem; but he/she must do more than simply suggest participation in a rehabilitative program. He/she must make the technician aware in general terms that he/she suspects the technician has a problem affecting his conduct, and recommend that the technician participate in a rehabilitative or counseling program available to him under the State Technician Assistance Program.

e. When a technician refuses to seek counseling, or if there is no improvement after affording rehabilitative opportunity, management may proceed with the action deemed appropriate.

f. Advise the TAP Coordinator of the possibility of referral. The supervisor should be able to discuss behavior and work performance, but will not attempt to diagnose or draw conclusions as to the cause of the problem. This is a counseling or medical responsibility.

g. **Relationships to the disciplinary actions.** This program supplements, but does not replace, existing procedures for dealing with problem technicians. The program is to be carried out as a non-disciplinary procedure aimed at the rehabilitation of problem technicians; it is not to be used as a means of tolerating inefficiency, absenteeism, or poor performance when a technician fails to accept or seek assistance. In such cases, disciplinary action is fully warranted if job performance is not raised to an acceptable level.

h. **Referral Expenses.** If a technician is referred to an outside resource for treatment, it will be at the technician's own expense. The Federal Employees Health Program may provide partial payment of some costs.

i. **Referral to TAP Coordinator.** Technicians are referred to the TAP Coordinator through self-referral or through a technician's supervisor. Technician's supervisor will use the supervisor's Technician Assistance Program Referral Form at Appendix 29A for referral.

j. **TAP Coordinator Refers to Resources.** The technician having accepted help from the TAP Coordinator indicates the technician is concerned about his/her welfare and expects referral to the proper resources. Among the many resources available will be local chapters of Alcoholics Anonymous, local chapter of American Medical Association, County Health Department, Mental Health Clinic, and Social Welfare Office. After the appropriate diagnosis and therapy have been received, the technician's performance may result in satisfactory performance, or his/her performance may continue to decrease.

k. **Job performance continues to decrease.** If job performance continues to decrease it may be necessary for the resource to re-evaluate, diagnose, and administer necessary therapy.

l. **Resource re-evaluates.** After resource has reevaluated, diagnosed and therapy has been rendered, his/her performance may again be satisfactory, or his/her performance may not increase to satisfactory.

m. **Recommend termination.** After re-evaluation, should his/her performance still continue to decrease, the supervisor may submit to the appointing official a properly documented recommendation for termination of the technician's employment based on performance and/or conduct. The procedures outlined in TPM 430 must be adhered to when termination is based on performance, and procedures outlined in TPR 752 must be adhered to when termination is based on conduct.

n. In counseling and referral phases, supervisors should maintain a record of Technician assistance (See Appendix 29B) for his/her or the TAP Coordinator's use as may be required.

Section III – General Information

3-1. **Records and Reports.**

a. General supervisor documentation of technician job performance and actions taken to motivate correction of job deficiencies should be maintained, as all technician records, in a strictly confidential manner. The responsibility for developing a responsive and useful job performance documentation system rests with agency officials.

b. Records on technicians who have been referred for counseling, whether by medical, personnel or other counseling specialists, should be maintained in the strictest confidence and accorded the same security and accessibility restrictions provided for medical records.

c. Records containing medical information and reports must be maintained according to requirements prescribed in 5CFR 293.

d. Official Personnel Folders shall not include information concerning a technician's alcohol problems or efforts to rehabilitate him except as they apply to specific charges leading to disciplinary or separation actions.

3-2. **Use of Sick Leave.** A critical and necessary step is recognition by an individual with a personal problem that his/her problem is treatable. Technicians who have made the decision to undergo a prescribed program of treatment which will require absence from work should be granted sick leave for this purpose.

3-3. **Expenses of Rehabilitation.**

a. There is no provision in P.L. 91-616 for payment of Federal technician rehabilitation costs. A technician is responsible for the costs of treating his/her drinking problem just as he/she is for any other health condition. He/she may receive some financial help, as with other illnesses, from his/her Federal Employees Health Benefits Plan.

b. Various types of rehabilitation programs require different financial capabilities. Alcoholics Anonymous, for example, solicits only voluntary contributions, hence is freely available; technicians who are veterans may be eligible for some assistance from the facilities of the Veterans Administration. Eligibility requirements and costs of rehabilitation agencies in the community should be explored by the TAP Coordinator in order to have available complete information for counseling and technician referral purposes.

3-4. **Eligibility for Disability Retirement.** This program does not jeopardize the technician's right to disability retirement if his/her condition warrants. Eligibility requirements and filing procedures are in 5CFR 831 Subpart L. Either the Technician or the agency may submit an application for disability retirement.

3-5. **Confidentiality.**

a. Section 408 of Public Law 92-255 and the attached implementing regulations provide specific requirements for maintaining the confidentiality of patient information. All persons performing a drug abuse prevention function (as defined in Section 408 of P.L. 92-255) are subject to these provisions, and subject to the stated penalties for violating them. All personnel designated or expected to perform a drug abuse prevention function should be thoroughly familiar with Section 408 and the regulations, and the importance of adhering to them should be impressed upon them.

b. In addition, any other agency-appointed counselor, regardless of his program responsibility, who provides counseling to the technician in regard to drug abuse is performing a drug abuse prevention function. Such persons, who are not designated by their agencies to perform drug abuse prevention functions, should not continue such drug counseling; they are nevertheless bound by the above referenced confidentiality requirement.

c. Thus, if a counselor in another program – such as Equal Employment Opportunity or Selective Placement – is advised by a technician of his/her drug problem, that counselor should:

(1) Immediately refer the Technician to designated personnel for counseling regarding his drug problem.

(2) Adhere to the above referenced confidentiality requirements, which include protection of even the technician's identity.

(3) Release drug-related information of the technician only with his or her written permission and only in accordance with the provisions of the law and regulations.

d. Agencies should impress upon all counseling personnel their responsibilities under this section, and inform them of the penalties under law for violation.

3-6. **Discussion of Illegal Activities.**

a. Counseling persons who have drug problems may sometimes involve discussion of their illegal activities. Personnel performing a drug 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.

b. However, no counselor is bound to accept as a client an individual who persists in discussing illegal activities. Therefore, if information is disclosed on:

(1) Planned illegal activity against others, or

(2) Specificity and detail of past illegal activity against others the counselor should consult legal counsel, where available, regarding his or her duties and responsibilities, and should advise the technician that continued disclosure will result in termination of counseling services. Should termination of services occur, the counselor shall, if the technician was referred by management, advise management of the termination of services.

3-7. **Section 408, Public Law 92-255.** Section 408 of P.L. 92-255 is an integral part of the Federal Civilian Technician Drug Abuse Program and is quoted for guidance:

“(a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function authorized or assisted under any provision of this Act or any Act amended by this Act shall be confidential and may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

“(b) (1) If the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained gives his written consent, the content of such record may be disclosed (a) to medical personnel for the purpose of treatment of the patient, and (b) to governmental personnel for the purpose of obtaining benefits to which the patient is entitled.

(2) If the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, does not give his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona-fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Except as authorized by a court order granted under subsection (b) (2) (C) of this section, no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) The prohibitions of this section continue to apply in records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Except as authorized under subsection (b) of this section, any person who discloses the contents of any record referred to in subsection (a) shall be fined not more than \$500 in the case of a first offence, and not more than \$5,000 in the case of each subsequent offense.”