

Policy: All Division of MHDS disciplinary actions shall comply with relevant federal and state statutes and departmental and divisional policies and procedures. They are to be issued within 30 days of the incident or conclusion of the investigation, and are to be equitable in relation to action taken in comparable situations within the Department of Health and Human Services (DHHS) and the Division of MHDS (MHDS).

NOTE: This policy and the following procedures are guidelines to assist appointing authorities in taking appropriate disciplinary action, and do not establish additional rights or requirements beyond those provided in relevant statute and regulations. The guidelines provided here may be deviated from for good cause.

Purpose: To ensure that disciplinary actions issued by the Division support the Division's mission, goals, and objectives.

Procedures:

- I. As part of their performance management responsibilities, agency directors, managers and personnel representatives shall ensure compliance with the following:
 - A. All employees, including those on initial probationary and trial periods, are to have current work performance standards and be evaluated on a regular basis in accordance with Department of Personnel regulations.
 - B. Each employee is to be given a copy of the current DHHS Prohibitions and Penalties (Attachment I) and sign a statement acknowledging receipt. This is to occur at the time of hire and again with any updates.
 - C. Supervisors are to participate in the required supervisory training courses within 12 months of appointment to a supervisory position, and again every three years thereafter. Per NAC 284.498, section 1, supervisors are to attend training on employee performance evaluation within 6 months of their appointment to a supervisory position. Per NAC 284.470, section 1, supervisors must complete this training prior to completing employee performance evaluations.
 - D. Dismissal of an employee on an initial probationary period or reversion of an employee in a trial period to their former position must have the prior approval of the Division Administrator or Deputy Administrator, and assigned Deputy Attorney General, and the Division Personnel Officer. Probationary periods are considered to be part of the employment exam, and dismissal may occur for any legal reason. There are no due process rights associated with probationary dismissals. Supervisors are expected not to address reasons for dismissal with the affected employee.

- E. If an employee's performance falls below standard, the supervisor is to inform the employee promptly and specifically of the deficiencies (NAC 284.638, section 1). This expectation is also present for conduct which comes under one of the causes for action listed in NAC 284.650 or the DHHS Prohibitions and Penalties; however, see sections 3 and 4 for times when the employee is to receive an NPD-32 prior to discussion of conduct which could result in an NPD-41.
- F. In cases of performance deficiencies, supervisors and managers are expected to take positive corrective efforts such as counseling, training, and documentation of deficiencies in performance evaluations, either annual or special as needed, before proceeding to disciplinary action. In cases of conduct which violates law, regulation, policy, or the Prohibitions and Penalties, the severity of the conduct must be evaluated to determine appropriate action, which may include disciplinary action on first offense.
- G. Disciplinary action is expected to be progressive in nature, except in egregious cases. Examples of conduct which have been found to warrant a suspension, demotion, or dismissal on first offense include but are not limited to: consumer neglect or abuse; positive drug or alcohol test while on duty; accessing pornographic websites or other material while on duty; falsification of timesheets, applications, or other work-related documents; and extended absences without authorization.
- H. Documentation of performance deficiencies and corrective efforts taken shall be maintained in the supervisory file and/or agency personnel file, and employees must be able to review such files upon request (maintenance of secret files regarding employees is prohibited by NAC 284.734). However, investigation files are confidential, do not become part of personnel files, and are not to be released to employees, per NRS 613.075(1).
- I. Supervisory files and agency personnel files should be treated as potential evidence for production in a court proceeding. They shall contain original documents stapled as originally stapled. Full original documents shall include attachments as referenced therein, even though those attachments may exist as original documents elsewhere in the file. If it is necessary for the creation of new documents to make notations on a document a copy of the document shall be made as a working document. No notations or writing will be made on an original document.
- J. The Division personnel office shall maintain a separate and complete file of what is forwarded to that office, following the same procedure as the supervisory file and the agency personnel file. The existence of another file shall not obviate this requirement. Should it be necessary to refer documents to the DHHS personnel office, those documents shall be

copies of the documents maintained in the Division file. The Division file shall not be forwarded or loaned to avoid the necessity of making copies.

- II. Causes for which disciplinary action may be taken are identified in the Rules for Personnel Administration (NAC 284.650 to 284.653 and NAC 284.738 to 284.771 inclusive) and the Department of Health and Human Services Prohibitions and Penalties.
- III. Appropriate fact-finding, which may include a full investigation, is to occur before disciplinary action is formally proposed. However, there is to be a preliminary evaluation of the potential consequences if allegations against an employee were to be substantiated in an investigation. If substantiation of the charges could result in issuance of an NPD-41 (suspension, demotion, or termination), the agency must comply with NRS 284.387, section 2, prior to discussing the charges with the employee. This is accomplished through issuance of the Department of Personnel's NPD-32 form. (Note: for POST-certified employees, a similar form is available which also reflects NRS 289 requirements.) The NPD-32 informs employees of the allegations against them, and gives them a minimum of two business days to secure representation during the investigation interview if they so choose.
- IV. It is expected that NPD-32's will be issued prior to recommending issuance of an NPD-41 on virtually all charges of conduct violations, including absence without leave, falsification (of timesheets, state application, other work-related documents), and discourteous treatment of others in addition to charges on which full investigations are regularly conducted (e.g., consumer abuse and neglect, illegal discrimination, sexual harassment, etc.)
- V. When it appears that ongoing performance deficiencies will result in an NPD-41, it is not typically expected that an NPD-32 will be issued. In these cases it is expected that there will have been a dialog between the supervisor and the employee addressing the deficiencies, usually including performance evaluations, and the employee will have had an opportunity to present his/her response to the supervisor.
- VI. When disciplinary action is being proposed, the supervisor, manager, and/or agency director and agency personnel representative shall consult with the Division personnel officer or designee. When proposal of a suspension, demotion, or termination is being considered, the agency will also consult with the assigned deputy attorney general.
- VII. The Division typically will not consider issuance of discipline to an employee who does not have a current performance evaluation and current Work Performance Standards on file. Exceptions require the Administrator's or Deputy Administrator's approval.

- VIII. To facilitate the issuance of discipline within the 30-day target:
- A. Agencies will submit the narrative (NPD-52 for written reprimands or NPD-41 for suspensions, demotions, and dismissals), and the Required Elements for COPE's Review (required only for NPD-41's) within one week of the incident or conclusion of the investigation, whichever is later.
 - B. The Division personnel office is to complete its review, obtain the reviews of COPE, Division administration, and the assigned Deputy Attorney General, and forward proposed NPD-41's to DHHS within two business weeks of receipt from the agency unless there has been a decision to withdraw the action.
 - C. Proposed written reprimands require Division-level approval only. The Division personnel officer or delegate is to review these for consistency with actions taken for related offenses in the Division and/or Department of DHHS as relevant. Authorization of written reprimands by the Division personnel office is expected within one week of receipt unless there is a decision to convert the discipline to an NPD-41.
- IX. A permanent employee who disagrees with a written reprimand may file a grievance within 20 working days of receipt of the written reprimand (NAC 284.678).
- X. The Division personnel officer will present all pertinent information on proposed NPD-41's for COPE's review. COPE members will point out comparisons within their own divisions, and may suggest alternative courses of action. The Committee will recommend or withhold approval in concept based on the information presented.
- XI. Approval by the Deputy Division Administrator and assigned Deputy Attorney General, and review by the DHHS Deputy Director for Administration are required before issuance of an NPD-41.
- XII. Per NAC 284.656(1.b and c), the cover sheet of the NPD-41 must specify the date, time and place of the predisciplinary hearing, which must be scheduled on a regular working day for the employee, and may not be scheduled sooner than seven working days following the delivery or deemed receipt of the NPD-41. The proposed action may not be scheduled to take place earlier than ten working days from the date of delivery or deemed receipt of the document. Accompanying the NPD-41 shall be a waiver letter for use by an employee wishing to waive his/her right to a pre-disciplinary hearing. An employee's waiver of the predisciplinary hearing has no effect on his/her right to appeal the action to the Hearing Officer.
- XIII. Pre-disciplinary hearings are informal proceedings with no witnesses permitted, although the appointing authority or his/her delegate and the employee may each be accompanied by one person of their choosing, per NAC 284.656(2).

- XIV. Following the pre-disciplinary hearing, and prior to the proposed effective date of the action, the employee is to be given written notice from the agency director as to whether the proposed action will be upheld or changed. A copy of this written notice, as well as the NPD-41, must be sent to the agency personnel office for distribution and preparation of required payroll documents. Thereafter, the agency personnel office will submit a copy of all documents to the deputy attorney general and the Division personnel office. The Division personnel office will forward a copy to the DHHS Deputy Director for Administration.
- XV. During the ten working days following the effective date of a suspension, demotion, or dismissal, employees may request a formal hearing with a Hearing Officer by submitting a written request to the Department of Personnel on the NPD-54 form.
- XVI. Any question regarding the policy and procedures to be followed in any disciplinary action is to be directed to the agency personnel representative, the Division personnel officer, and/or the Deputy Administrator. **DO NOT PROCEED WITHOUT APPROVAL TO DO SO.**
- XVII. All employees involved in the incident or incidents leading to a disciplinary action are potential witnesses in the appeal process. They may be required to testify. They shall cooperate with the DAG related to preparation for any hearing.
- XVIII. Once forwarded to central records, it is expected that disciplinary actions will only be removed from that file when there is an order or settlement agreement from a court, hearing officer, NERC, EEOC, or the statewide EMC (applicable only to written reprimands) directing removal from the official file.
- XIX. Each agency shall formulate policies and procedures to implement the provisions in this policy or shall incorporate this policy into its policy and procedure manual.



Administrator

Attachment A – Incompatible Activities-Prohibitions and Penalties

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DEPARTMENT OF HUMAN RESOURCES

INCOMPATIBLE ACTIVITIES - PROHIBITIONS AND PENALTIES

The following is a guide for employees of the Department of Human Resources identifying those activities which will be considered inconsistent, incompatible or in conflict with their duties as employees and will be cause for disciplinary action. In compliance with the Nevada Administrative Code 284.742, it is meant as a supplement and does not attempt to cover all possible violations of the existing rules nor does it preclude other prohibitions and penalties as contained in the Nevada Administrative Code. It is to be used to assist the supervisor in taking appropriate corrective disciplinary action. The extent of progressive discipline will be at the discretion of the appointing authority and should be in proportion to the seriousness of the offense.

CODE DESCRIPTION

- 1. Warning - may be oral or written.
- 2. Reprimand - written, use Form NPD-52.
- 3. Suspension - may be for a period of from one (1) working day to thirty (30) calendar days. NPD-41
- 4. Demotion - reduction in the class level the employee currently occupies. NPD-41
- 5. Dismissal - termination. NPD-41

If a supervisor recommends disciplinary action of a permanent classified employee to codes 3, 4 or 5 above, the pre-disciplinary hearing guidelines must be followed.

A. FRAUD IN SECURING APPOINTMENT

	<u>1st</u> <u>OFFENSE</u>	<u>2nd</u> <u>OFFENSE</u>	<u>3rd</u> <u>OFFENSE</u>
1. Willful falsification of application for employment or other personal records with respect to a material point which would have adversely affected selection for appointment.	5. . . . .	. . . . .	. . . . .
2. Permitting another person to take a portion of a State Civil Service examination for him/her, except when approved due to disability such as blindness.	5. . . . .	. . . . .	. . . . .

B. PERFORMANCE ON THE JOB

		<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1.	Failure of an employee, who is designated as a supervisor to fulfill their supervisory responsibilities, including but not limited to taking corrective disciplinary action where such action is needed, preparing timely reports of performance and accounting for employees' time.	1,2	2, 3	4, 5
2.	Misconduct of supervisor because of prejudice, anger or other unjustifiable reason.	1, 2, 3, 4	2, 3, 4, 5	4, 5
3.	Failure of employee to maintain performance standards after reasonable period of instruction.	1, 2, 3 . .	2, 3	4, 5
4.	Failure to maintain prescribed records.	1, 2, 3 . .	2, 3, 4, 5	5
5.	Willfully withholding or concealing information regarding their job from official records or from supervisors or other persons having necessity for said information.	2, 3, 4, 5	3, 4, 5 . .	5
6.	Negligent failure to disclose information related to job duties from official records or from supervisors or other persons having necessity for said information.	1, 2, 3 . .	3, 4, 5 . .	5
7.	Endangering self, fellow employees, clients or public through careless or willful violation of agency policy as contained in performance standards, procedures and various federal and state laws, regulations and guidelines.	2, 3, 4, 5	3, 4, 5 . .	5
8.	Failure to cooperate with other employees and/or supervisors.	1, 2, 3 . .	2, 3, 4, 5	5
9.	Failure to properly account for state or federal funds where it is a known requirement of the position.	2, 3, 4, 5	3, 4, 5 . .	5
10.	Negligent waste or loss of material, property or equipment.	1, 2, 3 . .	2, 3, 4, 5	4, 5

		<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
11.	Willful destruction of or damage to state property.	2, 3, 4, 5	3, 4, 5 ..	5
12.	Negligent destruction of or damage to state property.	1, 2, 3 ..	3, 4, 5 ..	5
13.	Negligent destruction of state records.	1, 2, 3, 4	3, 4, 5 ..	5
14.	Willful and unauthorized destruction of state records.	2, 3, 4, 5	3, 4, 5 ..	5
15.	Soliciting or accepting a bribe for activities related to the employee's state employment.	5 .....	.....	.....
16.	Embezzlement or misappropriation of state funds or of other funds for personal gain which come into the employee's possession by reason of his/her official position.	5 .....	.....	.....
17.	Willful falsification of any public record, including time sheets, travel vouchers and/or information in client or agency files.	2, 3, 4, 5	5 .....	.....
18.	Negligent falsification of any public record, including time sheets, travel vouchers and/or information in client or agency files.	1, 2, 3, 4	3, 4, 5 ..	5
19.	Willful falsification of any public record that involves misuse of state or federal funds.	2, 3, 4, 5	5 .....	.....
20.	Unauthorized taking or using property belonging to the state/federal government or other employees.	2, 3, 4, 5	5 .....	.....
21.	Making personal profit from state transactions.	2, 3, 4, 5	5 .....	.....
22.	Deliberate failure to enforce or comply with laws and/or agency policies and regulations which directly relate to the employee's work activities.	2, 3, 4, 5	5 .....	.....

C. NEGLECT OF, OR INEXCUSABLE ABSENCE FROM THE JOB

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. Negligence in performing official duties including failure to follow instructions or regulations.	1, 2, 3 ..	2, 3, 4, 5	3, 4, 5 ..
2. "Loafing" on the job; wasting time; failure to put in a full days work.	1, 2, 3 ..	2, 3, 4, 5	3, 4, 5 ..
3. Failure to notify supervisor promptly when unable to report for work.	1, 2, 3 ..	2, 3, 4, 5	3, 4, 5 ..
4. Failure to report to work at specified times and in the prescribed manner.	1, 2, 3 ..	2, 3, 4, 5	3, 4, 5 ..
5. Carrying on personal business during working hours.	1, 2, 3 ..	2, 3, 4, 5	3, 4, 5 ..
6. Continual or frequent tardiness.	1, 2, 3 ..	2, 3, 4, 5	3, 4, 5 ..
7. Absence from duty without permission or without adequate justification.	1, 2, 3 ..	3, 4, 5 ..	5
8. Willful absence from duty without permission after having been denied permission to take such leave.	3, 4, 5 ..	5 .....	.....
9. Use of sick leave for a reason not authorized by NAC 284.554.	2, 3, 4 ..	5 .....	.....
10. Failure to call in or report to work for three or more consecutive work days without permission and without justification.	5 .....	.....	.....

D. RELATIONS WITH CLIENTS

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. Willfully abridging or denying the rights of a client as specified in NRS or agency policy.	2, 3, 4, 5	3, 4, 5 ..	5
2. Negligently abridging or denying the rights of a client as specified in NRS or agency policy.	1, 2, 3, 4	3, 4, 5 ..	5

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
3. Borrowing items from a client, selling to or trading items with a client or entering into a transaction with a client involving the transfer of a client's property for personal use or gain.	2, 3, 4, 5	3, 4, 5 ..	5
4. Entering into a romantic or sexual relationship with any client of the employee's agency, facility or program when said employee is involved in the care, treatment or delivery of service to the client.	2, 3, 4, 5	3, 4, 5 ..	. . . . .
5. Using insulting, intimidating or abusive language to clients, neglecting clients, threatening or causing bodily harm to clients.	3, 4, 5 ..	5 . . . . .	. . . . .
6. Having personal or business relationships with program participants, grantees or licensees for the purpose of, or which results in, any departmental program advantages, considerations or benefits to either party which exceeds normal entitlement.	2, 3, 4, 5	3, 4, 5 ..	5
7. Soliciting clients and/or agency contacts for the establishment or maintenance of a private professional practice similar to their work activities.	2, 3, 4, 5	3, 4, 5 ..	5
8. Any willful or reckless act of aggression directed towards a client, including, but not limited to, sexual exploitation of a client; grabbing, pushing, tripping, hitting or striking a client in any manner; or willful misuse of physical or chemical restraints not in accordance with an approved treatment plan or in violation of state or federal law.			5
9. Any act or omission to act which causes mental or physical injury to a client or which places the client at risk of injury, including but not limited to the failure to: establish or carry out an appropriate plan of treatment for the client; provide the client required health care; provide a safe environment.	3,4,5 ..	5	

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
10. Failure to report suspected denial of client rights, client abuse or neglect.	2, 3, 4, 5	5	
11. Failure of an employee as mandated by law in their professional or occupational capacity to report child or elder abuse.	3, 4, 5 . .	5	

E. RELATIONS WITH SUPERVISORS, FELLOW EMPLOYEES OR THE PUBLIC

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. Refusal to comply with a reasonable and proper order or instruction from a supervisor.	2, 3, 4, 5	3, 4, 5 . .	5
2. Threatening, stalking, intimidating, attempting, or doing bodily harm to supervisor, public or fellow employee; or using insulting, intimidating or abusive language or conduct to supervisor, public or fellow employee.	2, 3, 4, 5	3, 4, 5 . .	5
3. Discourteous treatment of the public or a fellow employee.	1, 2, 3, 4, 5	2, 3, 4, 5	3, 4, 5 . .

F. USE OF ALCOHOLIC BEVERAGES, NARCOTICS OR HABIT FORMING DRUGS

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. While on duty, consuming or being under the influence of alcohol, narcotics, drugs or other controlled substances unless prescribed by a physician.	3, 4, 5 . .	4, 5	5

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
2. Convicted of driving under the influence as enumerated in NRS 484.379 or an offense where driving under the influence is an element, while driving a state vehicle at anytime or a privately owned vehicle on state business.	3, 4, 5 ..	5 .....	.....
3. Drinking alcohol or taking any controlled substance during working hours unless in accordance with a prescription issued by a physician, podiatrist or dentist.	2, 3, 4, 5	3, 4, 5 ..	5
4. Bringing alcohol or controlled substances onto any agency grounds or any buildings occupied by clients (except employee's locked vehicle parked in a parking lot).	3, 4, 5 ..	5 .....	.....
5. Selling, giving or otherwise providing clients or staff with intoxicating beverages, drugs or any controlled substances during working hours unless specifically authorized to do so.	3, 4, 5 ..	5 .....	.....
6. Refusal to submit to a screening test for alcohol or drugs when the appointing authority has a reasonable belief, based on objective facts, the employee is under the influence of alcohol and/or a controlled substance while on duty.		5	

G. MISUSE OF STATE PROPERTY

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. Unauthorized use of state-owned or leased equipment.	1, 2, 3, 4, 5	3, 4, 5 ..	5
2. Operating state vehicle in negligent manner resulting in damage to the state equipment or other property.	1, 2, 3, 4, 5	2, 3, 4, 5	5

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
3. Failure to have state equipment which is used as part of the employee's activities properly serviced, resulting in damage to the equipment.	1, 2, 3 ..	2, 3, 4, 5	5
4. Operating state equipment without proper authorization or credentials.	2, 3, 4, 5	5 .....	.....
5. Negligently leaving state equipment or machinery which results in damage to the equipment or other property.	1, 2, 3, 4, 5	3, 4, 5 ..	5

H. MISUSE OF INFORMATION TECHNOLOGY

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. Accessing or communicating data not pertaining to official job duties without authorization.	1, 2, 3, 4	2, 3, 4, 5	5
2. Revealing passwords or using another person's user identification and/or password to allow access to confidential information for unauthorized purposes.	2, 3, 4 ..	3, 4	5
3. Installing or using personal or unauthorized software on state information technology resources without proper authorization and approval.	2, 3, 4 ..	3, 4	5
4. Making unauthorized copies such as books, manuals and computer software in violation of copyright laws or vendor licensing agreement.	2, 3, 4, 5	3, 4, 5 ..	5
5. Using state information technology resources, including but not limited to computing and communications equipment, services or facilities for soliciting business, selling products or otherwise engaging in commercial activities.	2, 3, 4, 5	3, 4, 5 ..	5

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
6. Using state information technology resources to gain access and/or download from the Internet information not pertaining to official job duties without authorization, including, but not limited to, games, pornography or unauthorized software.	1, 2, 3, 4	2, 3, 4, 5	5
7. Knowing and willful sabotage of information technology resources, including but not limited to the introduction of computer viruses, system monitoring devices or devices that can cause damage or limit access to the equipment, operating systems, software or data.	5 . . . . .	. . . . .	. . . . .
8. Negligent use of information technology that results in the introduction of computer viruses, system monitoring devices or devices that can cause damage or limit access to the equipment, operating systems, software or data.	1, 2, 3 . .	3, 4, 5 . .	5

I. OTHER ACTS OF MISCONDUCT OR INCOMPATIBILITY

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
1. Unauthorized bringing to agency grounds or buildings a firearm or other implement generally construed to be a weapon; unauthorized carrying a gun or weapon at any time while performing state duties.	2, 3, 4, 5	3, 4, 5 . .	. . . . .
2. Failure to report an accident involving state equipment assigned to an employee.	2, 3, 4, 5	3, 4, 5 . .	5
3. Improper disclosure of confidential information or theft of confidential written matter.	2, 3, 4, 5	3, 4, 5 . .	5

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
4. Conviction of any criminal act related to their work activity or conviction of any criminal act involving moral turpitude when it is related to the employee's work activity.	5 . . . . .	. . . . .	. . . . .
5. Accepting gifts from any individual, firm or organization connected with department business when the employee is responsible for decisions or making recommendations for decisions affecting the activities of the individual, firm or organization. Exceptions would be, e.g., advertising samples, normal lunches, etc., which do not exceed \$10 in value.	2, 3, 4, 5	3, 4, 5 . .	. . . . .
6. Releasing a paycheck before the appropriate time.	2	3	5
7. Requesting, receiving and cashing a paycheck before the state's designated payday.	2	3	5
8. Rendering of services or goods to recipients that is not in accordance with departmental or divisional policies.	2, 3, 4, 5	3, 4, 5 . .	5
9. Refusal to undergo a criminal background check when it is required by law, regulation or agency policy.	5		
10. Failure to disclose a criminal conviction when disclosure is required by law, regulation or agency policy.	2, 3, 4, 5	3, 4, 5 . .	5
11. Failure to maintain a current occupational license or certification when possession of the occupational license or certification is a requirement of the job.	2, 3, 4, 5	3, 4, 5 . .	5
12. Failure to maintain a valid driver's license when possession of a valid driver's license is a requirement of the job.	2, 3, 4, 5	3, 4, 5 . .	5
13. Driving a state vehicle with an expired or revoked driver's license.	3, 4, 5 . .	5	