

CONSIDERATION OF AMENDMENT TO BOARD POLICIES CONCERNING REFERRALS TO TPAPN

Summary:

Staff is requesting that the Board consider adopting a new policy to allow Staff to refer nurses to TPAPN for a year of drug screens based on violations of improper drug use but no finding of chemical dependency or history regarding same. Often the Staff investigates isolated incidents involving drug use which raise suspicions of impairment and risk, but there is no other professional diagnosis or finding of chemical dependency. Currently, referrals to TPAPN of this nature are returned to the Board for investigation and formal disciplinary action since the nurse is not considered a candidate for participation in its program. These violations are normally handled through a Warning, 1b, 1h, 4, 5, 6a, 10, 11 and 12 X 1yr.

Staff would like to refer isolated violations related to drug use to TPAPN for one year of monitoring through an agreement by the nurse to abstain from drug use and submit to random urine screens. The candidate must not have a diagnosis for chemical dependency. In lieu of discipline, the participant would have to sign a year agreement with the following conditions:

1. An isolated incident of improper drug use is documented with no other history or other practice violation. (examples: preemployment screens for marijuana or cocaine, positive screen at work with valid prescription and unanticipated reaction, criminal misdemeanor drug offense with positive work history).
2. A professional evaluation must be presented that concludes that the candidate has a low probability of chemical dependency (no history of employment or board issues)
3. agree to abstain from mood-altering substances
4. 18 clean screens
5. report back to board for action when 2 no shows
6. report back to board for action when 2 adulterated specimens
7. report back to board for action if there is positive drug screen

If the nurse is reported back, the Board would reopen the investigation and likely seek to take formal action. Which potentially could result in a board order to TPAPN for full participation in the program.

The monitoring assures no risk to public based on chemical dependency. Staff would track these types of referrals consistent with Sunset Commission Recommendations.

Background:

The Texas Peer Assistance Program for Nurses provides services to Nurses whose practice may be impaired by chemical dependency, chemical abuse, or mental illness. The Board of Nurse Examiners contracts with the TPAPN through a biannual contract to provide an alternative to discipline.

Staff has begun exploring a new type of TPAPN referral when an isolated incident suggests a suspicion of improper drug use, or impairment but with no other history. Under the current procedures, a report comes to the Board or third party referrals are made to TPAPN involving a nurse who tested positive for an unauthorized drug (either pre-employment or for cause) for participation. Sometimes Respondents show a valid prescription for narcotic pain medicine or sleeping aid, yet they have a "for cause" screen at work that tests positive. They are evaluated during TPAPN's screening process and found for whatever reason to not qualify for the program because they are not deemed chemically dependent based on SASSI. When TPAPN sends the nurse back to the Board, it is not uncommon to place the individual under a Board order of Warning with indirect supervision and random drug screens for a year.

Frequently, the Respondent understands the violation alleged by Staff and the basis for the Board's concerns. The Respondents even are willing to do random drug screens to show that they are not a risk or at risk. However, the fact that a disciplinary order is recommended is disagreeable. The violation of drug use and work is something the Board will not let go of and we have gone to expensive hearings repeatedly to establish the violation.

Drug violations which raise suspicions cannot go unaddressed nor can such cases be justifiably closed as minor incidents. However, Staff believes that public policy should not support a more serious disciplinary order for a less serious drug violation than a diagnosis of chemical dependency which indisputably puts patients at risk.

The only non disciplinary alternative to drug violations is referral to TPAPN. TPAPN, however, is a specialized program that has never accepted a participant that was not deemed chemically dependant.

The Occupations Code allows referrals to TPAPN when "suspected of being impaired by chemical dependency. . . ." See Section 301.410. However, the Health and Safety Code seems to limit the type of "participant" for TPAPN. For example, Section 467.001 defines "Approved peer assistance program" as a program that is designed to help an "impaired professional." Additionally, an "Impaired professional" means "impaired by chemical dependency on drugs or alcohol."

TPAPN is studying the issue of accepting these types of referrals. Staff would like to refer isolated violations related to drug use to TPAPN for one year of monitoring when they do not have a diagnosis for chemical dependency. These participants, in lieu of discipline, would have to sign a year agreement with the following conditions:

1. An isolated incident of improper drug use is documented with no other history or other practice violation. (examples: preemployment screens for marijuana or cocaine, positive screen at work with valid prescription and unanticipated reaction, criminal misdemeanor drug offense with positive work history).
2. A professional evaluation must be presented that concludes that the candidate has a low probability of chemical dependency (no history of employment or board issues)
3. agree to abstain from mood altering substances
4. 18 clean screens
5. report back to board for action when 2 no shows
6. report back to board for action when 2 adulterated specimens
7. report back to board for action if there is positive drug screen

If the nurse is reported back, the Board would reopen the investigation and likely seek to take formal action. The monitoring assures no risk to public based on chemical dependency.

Recommendation:

- 1) The Board move to approve modifications to the TPAPN referral policies to allow referral for one year of monitoring for isolated incidents which suggests a suspicion of improper drug use, but with no other history consistent with the recommendations outlined above.