

REPLACEMENT REPORT
Guidelines Pertaining to Third Party Referrals
for Nurses with Suspected Chemical Dependency Issues
Who Commit Practice Related Violations

The Texas Board of Nursing (Board), in keeping with its mission to protect public health, safety, and welfare, believes it is important to have a clear position on how it deals with nurses who commit practice related violations of the Nursing Practice Act (NPA) and are also suspected of having substance use/abuse issues. The NPA imposes a duty that the Board be notified when a nurse suspected of impaired behavior is alleged to have also committed a nursing practice violation. These “practice violations” include, but are not limited to, the following:

- Directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing [Sec. 301.452 (b)(7)];
- Intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient [Sec. 301.452 (b)(9)];
- Adjudication of mental incompetence [Sec. 301.452(b)(11)];
- Lack of fitness to practice nursing because of mental or physical health condition that could result in injury to a patient or the public [Sec. 301.452(b)(12)];
- Unprofessional or dishonorable conduct that, in the board’s opinion, is likely to deceive, defraud, or injure a patient or the public [301.452 (b)(10)], as follows:
 - Unsafe practice [Rule 217.12(1)(A)-(G)];
 - Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a coded license or any stipulated agreement with the Board [Rule 217.12(3)];
 - Careless or repetitive conduct that may endanger a client’s life, health, or safety. Actual injury to a client need not be established [Rule 217.12(4)];
 - Inability to Practice Safely—demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness, use of alcohol, drugs, chemicals, or any other mood altering substances, or as a result of mental or physical condition [Rule 217.12 (5)];
 - Falsifying reports, client documentation, agency records or other documents [Rule 217.12 (6)(A)];
 - Failing to cooperate with a lawful investigation by the Board [Rule 217.12(6)(B)];
 - Causing or permitting physical, emotional, or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board [Rule 217.12(6)(C)];
 - Violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional, or financial exploitation of the client or the client’s significant other(s) [Rule 217.12(6)(D)];

- Engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same [Rule 217.12(6)(E)];
- Threatening or violent behavior in the workplace [Rule 217.12(6)(F)];
- Misappropriation, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation [Rule 217.12(6)(G)];
- Providing information which was false, deceptive or misleading in connection with the practice of nursing [Rule 217.12(6)(H)];
- Failing to answer specific questions or providing false or misleading answers that would have affected the decision to license, employ, certify or otherwise utilize a nurse [Rule 217.12(6)(I)];
- Offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services [Rule 217.12(6)(J)];
- Drug diversion – diversion or attempt to divert drugs or controlled substances [Rule 217.12(8)];
- Dismissal from a board approved peer assistance program for noncompliance and referral by that program to the Board [Rule 217.12(9)];
- Use of any controlled substance or any drug, prescribed or unprescribed, or device or alcoholic beverages while on duty or on call and to the extent that such use may impair the nurse’s ability to safely practice nursing [217.12(10)(A)];
- Falsification of or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances [Rule 217.12(10)(B)];
- Failing to follow the policy and procedure in place for the wastage of medications at the facility where the nurse was employed or working at the time of the incident(s) [Rule 217.12(10)(C)];
- Positive drug screen for which there is no valid prescription [Rule 217.12(10)(D)];
- Obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception and/or subterfuge [Rule 217.12(10)(E)];
- Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of vocational, registered or advanced practice nursing [Rule 217.12(11)(A)];
- Violating an order of the board, or carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered, or advanced practice nursing, or violating a state or federal narcotics or controlled substance law [Rule 217.12(11)(B)];

- Knowingly aiding, assisting, advising, or allowing a nurse under Board Order to violate the conditions set forth in the Order [Rule 217.12(11)(C)];
 - Failing to report violations of the Nursing Practice Act and/or the Board's rules and regulations [Rule 217.12(11)(D)];
 - Leaving a nursing assignment, including a supervisory assignment, without notifying the appropriate personnel [Rule 217.12(12)]; and
 - Criminal conduct [Rule 217.12(13)];
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- Failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm [Sec. 301.452(b)(13)], including the failure to:
 - Implement measures to promote a safe environment for clients and others [Rule 217.11(1)(B)];
 - Know the rationale for and effects of medications and treatments and shall correctly administer the same [Rule 217.11(1) (C)];
 - Accurately and completely report and document [Rule 217.11(1)(D)];
 - respect the client's right to privacy by protecting confidential information [Rule 217.11(1)(E)];
 - Promote and participate in education and counseling to a client(s) and, where applicable, the family/significant other(s) based on health needs [Rule 217.11(1)(F)];
 - Obtain instruction and supervision as necessary when implementing nursing procedures or practices [Rule 217.11(1)(G)];
 - Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations [Rule 217.11(1)(H)];
 - Notify the appropriate supervisor when leaving a nursing assignment [Rule 217.11(1)(I)];
 - Know, recognize, and maintain professional boundaries of the nurse/client relationship [217.11(1)(J)];
 - Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served [Rule 217.11(1)(L)];
 - Institute appropriate nursing interventions that might be required to stabilize a client's condition and/or prevent complications [Rule 217.11(1)(M)];
 - Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious, or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the nurse makes the decision not to administer the medication or treatment [Rule 217.11(1)(N)];

- Implement measures to prevent exposure to infectious pathogens and communicable conditions [Rule 217.11(1)(O)];
- Collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care [Rule 217.11(1)(P)];
- Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care [Rule 217.11(1)(Q)];
- Be responsible for one's own continuing competency in nursing practice and individual professional growth [Rule 217.11(1)(R)];
- Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made [Rule 217.11(1)(S)];
- Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability [Rule 217.11(1)(T)];
- Supervise nursing care provided by others for whom the nurse is professionally responsible [Rule 217.11(1)(U)];
- Vocational Nurses shall utilize a systematic approach to provide individualized, goal directed nursing care by collecting data and performing focused assessments; participating in the planning of nursing care needs for clients; participating in the development and modification of the comprehensive nursing care plan for assigned clients; implementing appropriate aspects of care within the LVN scope of practice; and assisting in the evaluation of the client's responses to nursing interventions and the identification of client's needs [Rule 217.11(2)(A)(i)-(v)]
- Vocational Nurses shall assign specific tasks, activities and functions to unlicensed personnel commensurate with the educational preparation, experience, knowledge, physical and emotional stability of the person to whom the assignments are made and shall maintain appropriate supervision of unlicensed personnel [Rule 217.11(2)(B)]
- Vocational Nurses may perform other acts that require education and training as prescribed by board rules and policies, commensurate with the licensed vocational nurse's experience, continuing education, and demonstrated licensed vocational nurse competencies [Rule 217.11(2)(C)];

- Registered Nurses shall utilize a systematic approach to provide individualized, goal-directed, nursing care by performing comprehensive assessments regarding the health status of the client; making nursing diagnoses that serve as the basis for the strategy of care; developing a plan of care based on the assessment and nursing diagnosis; implementing nursing care; and evaluating the client's responses to nursing interventions [Rule 217.11(3)(A)(i)-(v)];
- Registered Nurses delegate tasks to unlicensed personnel in compliance with 22 Tex. Admin. Code chapter 224, relating to clients with acute conditions or in acute care environments, and chapter 225, relating to independent living environments for clients with stable and predictable conditions [Rule 217.11(3)(B)];
- Registered Nurses with authorization to practice as an Advanced Practice Nurse (APN) shall practice in an advanced nursing practice role and specialty in accordance with authorization granted under Board Rule 221 and standards set out in that Rule [Rule 217.11(3)(A)]; and
- Registered Nurse with authorization to practice as an Advanced Practice Nurse (APN) shall prescribe medications in accordance with prescriptive authority under Board Rule 222 and standards set out in that Rule and in compliance with state and federal laws and regulations relating to prescription of dangerous drugs and controlled substances [Rule 217.11(3)(B)]

Rule 217.13(b)(2)[Proposed October 2007] states that the peer assistance program shall report to the Board, in accordance with policies adopted by the Board, a nurse reported to the program who is impaired or suspected of being impaired by chemical dependency, mental illness, or diminished mental capacity if the nurse was reported to the program by third party. A third party report is a report concerning a nurse suspected of chemical dependency, mental illness, or diminished mental capacity that comes to the attention of the program through any source other than a self report.

With regard to all third party reports, the Board must determine whether to take disciplinary action against the nurse for a violation of the Nurse Practice Act, or the Board rules and must balance the need to protect the public and the need to ensure the impaired nurse seeks treatment.

In order to meet this directive, and to avoid any unnecessary delays in providing service to those individual nurses deemed appropriate for the Texas Peer Assistance Program for Nurses (TPAPN) intervention (or other Peer Assistance Program approved under Sec. 301.4106), on at least a weekly basis, the Director of Enforcement (or his/her designee) and the Program Director (or his/her designee) for TPAPN shall meet to discuss each third party referral made to TPAPN where the reported nurse is alleged to have committed one or more of the aforementioned violations of the NPA.

Factors that will be taken into consideration when determining whether or not the reported nurse is an appropriate candidate for TPAPN include, but are not limited to:

- actual risk to patients/public (i.e. patient harm vs. no patient harm, or whether the suspected nurse is believed to be an imminent threat to the public or self);
- the severity of the alleged violations of the NPA (i.e. documentation discrepancies pertaining to medication administration vs. documentation discrepancies pertaining to false patient assessments which could lead to inadequate/improper intervention);
- the reported nurse's present licensing status with the Board (i.e. is the suspected nurse currently under investigation by the Board for an unrelated matter; does the suspected nurse have prior Board action?); and
- the reported nurse's history with chemical dependency

Any reported nurse who is alleged to have committed a violation of the NPA that results in actual harm to the patient will not be eligible for TPAPN. Also, any nurse who has committed a crime will be dealt with according to the Board's Disciplinary Guidelines for Criminal Conduct.

Additionally, the reported nurse shall not be eligible for TPAPN if he/she meets any of the ineligibility definitions identified in Sec. 217.13 (g)(2)(A) through (G).

In each weekly meeting, TPAPN will be responsible for preparing a document identifying each third party referral received within the preceding week's activity. This document shall contain the name and license number of each third party referral received during this time period along with a synopsis of the conduct identified in the referral. This document will be reviewed by the Director of Enforcement, who will make a determination (based on the factors identified above), as to whether the reported nurse is an appropriate candidate for TPAPN or Board investigation.

Staff Recommendation: Move to adopt the guidelines pertaining to third party referrals for nurses with suspected chemical dependency issues who commit practice related violations as proposed by staff.