

Consideration of Proposed Amendments to 22 Texas Administrative Code § 217.16 Reporting of Minor Incidents.

Summary of Request:

This report includes revisions to Rule 217.16 Minor Incidents proposed by the Nursing Practice Advisory Committee with editorial and clarification changes by staff. This agenda item is for review, discussion, and action by the board.

Historical Perspective:

The minor incident rule was last amended in May of 2006 and has been in existence since 1994. The original intent of the minor incident rule was to promote the identification of a potential pattern of poor practice by a given nurse, to establish when a nurse's practice should be reviewed by a group of peers to determine appropriate actions, and to encourage peer review committees to make recommendations for both the nurse's individual practice and systems issues found within the nurse's practice setting. The rule also established that not every violation of the Nursing Practice Act or board rules need be reported to the board when certain criteria concerning a nurse's conduct or nursing error are met.

During the 80th Legislative Session, Senate Bill 993 (Nelson) was passed, amending the Texas Occupations Code Chapters 301, related to conduct subject to reporting, and 303, related to nursing peer review. As a result of these amendments to statutes the board rules on incident-based and safe harbor nursing peer review [rules 217.19 and 217.20, respectively] were revised. The statute changes became effective 9/1/2007. The changes to the nursing peer review rules became effective May 11, 2008.

As the incident-based nursing peer review process can involve the evaluation of minor incidents the Board charged the Nursing Practice Advisory Committee (NPAC) to review and make recommendations regarding revisions to board rule 217.16, Minor Incidents. The January 2008 board charge to NPAC was delayed until after adoption of the peer review rules in May 2008. NPAC considered revisions to the Minor Incident rule at a public meeting held in Austin, Texas on September 5, 2008.

Attached with this report are the proposed rule language revisions [Attachment 1] that require board approval. Attachment 2 is a table that details the changes and is for informational purposes and reference only.

Pros and Cons:

- Pros:** Proposed revisions will make the Minor Incident rule congruent with the current statutes and the newest incident-based peer review rule. The proposed rule language also clarifies issues that have been the subject of questions since the last revisions to this rule in 2006.
- Cons:** Failure to propose revisions to the Minor Incident rule could result in lack of rule guidance that is congruent with current statute for nurses, peer review committees, and employers required to have incident-based nursing peer review.

Staff Recommendations:

Move to propose the revisions to rule 217.16, Reporting of Minor Incidents as recommended by NPAC with staff input. Also move to publish the rule with revisions in the Texas Register for a 30-day comment period. If no negative comments are received, move to adopt the amendments to section 217.16 as proposed. The board authorizes staff legal counsel to make minor editorial corrections in the proposed rule language if necessary for grammatical purposes.

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Rule 217.16 Reporting of Minor Incidents
Proposed Rule Language
CLEAN COPY
October 1st, 2008

Legend
Black = Current Language; Blue = NPAC Language; Green = BON Recommended Language

- (a) Purpose. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act or a board rule. This is particularly true when there are mechanisms in place in the nurse's practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse's judgment, knowledge, training, or skill. This rule is intended to provide guidance to nurses, nursing peer review committees and others in determining whether a nurse has engaged in conduct that indicates the nurse's continued practice would pose a risk of harm to patients or others and should be reported to the board.
- (b) Definition. A "minor incident" as defined under Nursing Practice Act section 301.401(2) means conduct by a nurse that may be a violation of the Nursing Practice Act or a Board rule but does not indicate the Nurse's continued practice poses a risk of harm to a patient or another person."
- (c) Factors to be Considered in Evaluating if Conduct Must Be Reported to the Board.
- (1) A nurse involved in a minor incident need not be reported to the Board unless the conduct:
- (A) indicates the nurse ignored a substantial risk that exposed a patient or other person to significant physical, emotional or financial harm or the potential for such harm;
- (B) indicates the nurse lacked a conscientious approach to or accountability for his/her practice;
- (C) indicates the nurse lacked the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or
- (D) indicates the nurse has engaged in a pattern of multiple minor incidents that demonstrate the nurse's continued practice would pose a risk of harm to patients or others.
- (2) Evaluation of Multiple Incidents.
- (A) Evaluation of Conduct. In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk that cannot be remediated.
- (B) Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse must be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period must be reported to the Board.

1 (C) Nurse Manager and Nurse Supervisor Responsibilities. Regardless of the time frame
2 or number of minor incidents, if a nurse manager or supervisor believes the minor
3 incidents indicate a pattern of practice that poses a risk of harm, the nurse should be
4 reported to the Board or Peer Review Committee.
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6 (3) Other factors that may be considered in determining whether a minor incident should be
7 reported to the Board are:
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9 (A) the significance of the nurse's conduct in the particular practice setting; and

10 (B) the presence of contributing or mitigating circumstances, including systems issues or
11 factors beyond the nurse's control, in relation to the nurse's conduct.
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13 (d) Conduct Required to be Reported.
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15 (1) A nurse must be reported to the board or to a nursing peer review committee for the following
16 conduct:
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18 (A) An error that contributed to a patient's death or serious harm.

19 (B) Criminal Conduct defined in Texas Occupations Code §301.4535.

20 (C) A serious violation of the board's Unprofessional Conduct rule 217.12 involving
21 intentional or unethical conduct including but not limited to fraud, theft, patient abuse
22 or patient exploitation.
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24 (D) A practice-related violation involving impairment or suspected impairment by reason
25 of chemical dependency, intemperate use, misuse or abuse of drugs or alcohol, mental
26 illness, or diminished mental capacity required to be reported in accordance with
27 section 301.410(b) of the Nursing Practice Act and rule 217.19(g).
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29 (2) If a nursing peer review committee determines that a nurse engaged in the conduct listed in
30 Subdivision (1) (A) through (1)(D) the committee must report the nurse to the board.
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32 For errors involving the death or serious injury of a patient, if a nursing peer review
33 committee makes a determination that a nurse has not engaged in conduct subject to reporting
34 to the board, the committee must maintain documentation of the rationale for their belief that
35 the nurse's conduct failed to meet each of the factors in subdivision (c)(1)(A) through (D).
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38 (e) Conduct Normally Not Required to Be Reported to the Board.
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40 (1) An incident should be evaluated to determine if:
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42 (A) the incident is primarily the result of factors beyond the nurse's control and addressing
43 those factors is more likely to prevent the incident from reoccurring; or

44 (B) the incident was a medication error caused primarily by factors beyond the nurse's
45 control rather than failure of the nurse to exercise proper clinical judgment Board
46 Position Statement 15.17 (Texas Board of Nursing/Board of Pharmacy Joint Position
47 Statement/Medication Errors) provides guidelines for evaluating medication errors
48 <http://www.bon.state.tx.us/practice/position.html#15.17>.
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50 (2) If either of the conditions listed in Subdivision (1) are present, a presumption should exist that
51 the nurse's conduct does not indicate the nurse's continued practice poses a risk of harm to a
52 patient or another person and does not need to be reported to the board.
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2 (f) Documentation of Minor Incidents. A minor incident should be documented as follows:
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4 (1) A report must be prepared and maintained for a minimum of 12 months that contains a
5 complete description of the incident, patient record number, witnesses, nurse involved and the
6 action taken to correct or remedy the problem.
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8 (2) If a medication error is attributable or assigned to the nurse as a minor incident, the record of
9 that incident should indicate why the error is being attributed or assigned to the nurse.
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11 (g) Nursing Peer Review Committee.
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13 (1) Review of a nurse's conduct or practice may be accomplished by either an informal work
14 group of the nursing peer review committee as provided under rule 217.19(e) or the full
15 nursing peer review committee prior to a report being made to the board.
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18 (2) If the a report is made to the peer review committee, the committee must investigate and
19 conduct incident-based nursing peer review in compliance with Nursing Peer Review Law in
20 Texas Occupations Code §303 and rule 217.19.
21
22 (3) A nursing peer review committee receiving a report involving a minor incident or incidents
23 must review the incident(s) and other conduct of the nurse during the previous 12 months to
24 determine if the nurse's continuing to practice poses a risk of harm to patients or other persons
25 and whether remediation would be reasonably expected to adequately mitigate such risk if it
26 exists. The committee must consider the special considerations set out in subsection(c) of this
27 section.
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29 (4) The nursing peer review committee need not report the nurse to the Board if the peer review
30 committee determines that either:
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32 (A) the nurse's continuing to practice does not pose a risk of harm to patients or other
33 persons; or
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35 (B) remediation could reasonably be expected to adequately mitigate any such risk and the
36 nurse successfully completes the remediation.
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38 (5) If a nurse terminates employment while undergoing remediation activities as directed by a peer
39 review committee under subdivision (3) the peer review committee may either:
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41 (A) report the nurse to the BON;
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43 (B) report to the peer review committee of the new employer, if known, with the nurses
44 written consent;
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46 (C) re-evaluate the nurse's current conduct to determine if the nurse did complete sufficient
47 remediation and is deemed safe to practice.
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50 (h) A Right to Report. Nurses and other persons are encouraged not to report minor incidents to the Board
51 unless required to do so by this rule, but nothing in this rule is intended to prevent reporting of a
52 potential violation directly to the Board or to a nursing peer review committee.
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- 1 (i) Mis-classifying to Avoid Reporting. Intentionally mis-classifying an incident to avoid reporting may
2 result in violation of the mandatory reporting statute.
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- 4 (j) Chief Nursing Officer's or Nurse Administrator Responsibility. The Chief Nursing Officer, Nurse
5 Administrator or registered nurse by any title who is responsible for nursing services shall be
6 responsible for taking reasonable steps to assure that minor incidents are handled in compliance with
7 this rule and any other applicable law.
8
- 9 (k) Nurses Reported to the Board. If a nurse is reported to the board, the board shall review the nurse's
10 conduct to determine if it indicates the nurse's continued practice poses a risk of harm to a patient or
11 another person, If it does not, the board may elect not to proceed with filing formal charges.

Rule 217.16 Reporting of Minor Incidents
DRAFT TABLE COMPARISON OF LANGUAGE
OCTOBER 1st, 2008

Black = Current language; Blue = NPAC New Language; Green = BON Staff New Language; **Highlight = for orientation w/in Rule
~~Red Strikcout~~ = NPAC Deletion; ~~Blue Strikcout~~ = Deletion of NPAC Language; ~~Orange Strikcout~~ = BON Staff Deletion**

Current Rule Language	NPAC Language	BON Staff Suggested Edits	Rationale for Edits
<p>(a) Purpose. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act. This is particularly true when there are mechanisms in place in the nurse’s practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse’s judgment, knowledge, training, or skill. This rule is intended to clarify what constitutes a minor incident and when a minor incident need not be reported to the board.</p>	<p>(a) Purpose. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act. This is particularly true when there are mechanisms in place in the nurse's practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse's judgment, knowledge, training, or skill. This rule is intended to clarify what constitutes a minor incident and when a minor incident need not <u>provide guidance to nurses, and others in determining whether a nurse has engaged in conduct that indicates the nurse’s continued practice would pose risk of harm to patients or others and should</u> be reported to the board.</p>	<p>(a) Purpose. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act <u>or a board rule</u>. This is particularly true when there are mechanisms in place in the nurse's practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse's judgment, knowledge, training, or skill. This rule is intended to clarify what constitutes a minor incident and when a minor incident need not <u>provide guidance to nurses, nursing peer review committees and others in determining whether a nurse has engaged in conduct that indicates the nurse’s continued practice would pose a risk of harm to patients or others and should</u> be reported to the board.</p>	<p>Editorial for consistency.</p> <p>Editorial since rule has always provided guidance to peer review committee.</p> <p>Editorial.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(b) Definition and Scope. A “minor incident” is defined by Texas Occupations Code §301.419(a) as “conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client or other person.”</p>	<p>(b)Definition and Scope. A "minor incident" is defined by Texas Occupations Code §301.419(a) as "conduct <u>by a nurse that may be a violation of the Nursing Practice Act or a Board rule but does not indicate the Nurse’s continued</u> that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client <u>a patient</u> or other <u>another</u> person."</p>	<p>(b)Definition and Scope. A "minor incident" is defined by Texas Occupations Code §301.419(a) as "<u>as defined under Nursing Practice Act section 301.401(2) means</u> conduct <u>by a nurse that may be a violation of the Nursing Practice Act or a Board rule but does not indicate the Nurse’s continued</u> that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client <u>a patient</u> or other <u>another</u> person."</p>	<p>Citation moved from previous location in statute (SB993, 80th Tx Legis, 2007). Staff believe value added to include new statute citation.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>NOTE: Out of sequence for comparison with proposed language and section in rule.</p> <p>(d) Criteria for Determining If Minor Incident Is Board-Reportable.</p> <p>(1) A nurse involved in a minor incident need not be reported to the Board unless the conduct:</p>	<p>[NOTE: Moved down from original location as section (d)]</p> <p>(d e) Criteria for Determining if Minor Incident is Board-Reportable <u>Factors to be Considered in Evaluating if Conduct Is Required to be Reported.</u></p> <p>(1) A nurse involved in a minor incident need not be reported to the Board <u>or a nursing peer review committee</u> unless the conduct:</p>	<p>[NOTE: Moved up from original location as section (d)]</p> <p>(d e) (c) Criteria for Determining if Minor Incident is Board-Reportable <u>Factors to be Considered in Evaluating if Conduct Must Be Is Required to be Reported to the Board.</u></p> <p>(1) A nurse involved in a minor incident need not be reported to the Board <u>or a nursing peer review committee</u> unless the conduct <u>indicates the nurse:</u></p>	<p>Staff believe guidance in this section makes rule flow more logical to place before section (d) rather than after as proposed by NPAC.</p> <p>Editorial for clarification.</p> <p>Staff disagree with adding PRC here as reporting requirement in this section relates to a report to the board. Would also place burden of analyzing conduct violates (1)(A)-(D) on individual nurse only versus direction provided in (c)(2)(A) of also permitting a peer review committee to make this determination. Makes rule consistent with 301.402(e) regarding PRC determination if reportable to board. Flows with remainder of rule in consideration of all factors in rule. Added “indicates the nurse” to the stem and deleted same from (A)-(D).</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(A) creates a significant risk of physical, emotional or financial harm to the client,</p>	<p>(A) <u>indicates the nurse creates ignored a substantial risk that exposed a patient or other person to a</u> significant risk of physical, emotional or financial harm <u>to the client or the potential for such harm;</u></p>	<p>(A) <u>indicates the nurse</u> [remainder unchanged]</p>	<p>Editorial: Phrase moved to stem in (1).</p>
<p>(B) indicates the nurse lacks a conscientious approach to or accountability for his/her practice;</p>	<p>(B) indicates the nurse lacks <u>lacked</u> a conscientious approach to or accountability for his/her practice;</p>	<p>(B) <u>indicates the nurse</u> [remainder unchanged]</p>	<p>Editorial: Phrase moved to stem in (1).</p>
<p>(C) indicates the nurse lacks the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or</p>	<p>(C) indicates the nurse lacks <u>lacked</u> the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or</p>	<p>(C) <u>indicates the nurse</u> [remainder unchanged]</p>	<p>Editorial: Phrase moved to stem in (1).</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(D) indicates a pattern of multiple minor incidents demonstrating that the nurse’s continued practice would pose a risk of harm to clients or others.</p>	<p>(D) indicates <u>has engaged in</u> a pattern of multiple minor incidents demonstrating ing <u>that</u> the nurse's continued practice would pose a risk of harm to <u>patients</u> clients or others</p>	<p>(D) indicates <u>has engaged in</u> a pattern of multiple minor incidents <u>that</u> demonstrating ing <u>that</u> the nurse's continued practice would pose a risk of harm to <u>patients</u> clients or others</p>	<p>Editorial.</p>
<p>(2) Evaluation of Multiple Incidents.</p> <p>(A) Evaluation of Conduct. In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported.</p>	<p>(2) Evaluation of Multiple Incidents</p> <p>[No Change]</p>	<p>(2) Evaluation of Multiple Incidents</p> <p>if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported <u>that cannot be remediated.</u></p>	<p>Clarification that not every minor incident must go to peer review or the BON and that, assuming conduct or errors meet other criteria to be minor incidents, it is also permissible to attempt remediation of the nurse.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(B) Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse shall be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period shall be reported to the Board..</p>	<p>[No Change]</p>	<p>(B) Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse shall <u>must</u> be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period shall <u>must</u> be reported to the Board..</p>	<p>Editorial for consistency in rule language; term “must” used as being clearer language for all nurses and persons to understand.</p>
<p>(C) Nurse Manager and Nurse Supervisor Responsibilities. Regardless of the time frame or number of minor incidents, if a nurse manager or supervisor believes the minor incidents indicate a pattern of practice that poses a risk of harm, the nurse should be reported to the Board or Peer Review Committee.</p>	<p>[No Change]</p>	<p>[No Change]</p>	

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
	<p><u>(3) Other factors which may be considered in determining whether a minor incident should be reported to the Board are:</u></p> <p><u>(A) the significance of the nurse’s conduct in the particular practice setting; and</u></p> <p><u>(B) the presence of contributing or mitigating circumstances, including systems issues or factors beyond the nurse’s control, in relation to the nurse’s conduct.</u></p>	<p><u>(3) Other factors which <ins>that</ins> may be considered in determining whether a minor incident should be reported to the Board are:</u></p> <p>[No Change]</p> <p>[No Change]</p>	<p>Editorial.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>NOTE: Out of sequence for comparison with proposed language and section in rule.</p> <p>(c) Exclusions. The following conduct shall not be deemed a minor incident under any circumstance:</p>	<p>(c) Exclusions. The following conduct shall not be deemed a minor incident under any circumstance: <u>Conduct Required to be Reported.</u></p> <p><u>(1) A nurse should always be reported to the board or a nursing peer review committee for the following conduct:</u></p>	<p>[NOTE: Moved down from original location as section (c)]</p> <p>(c) (d) Exclusions. The following conduct shall not be deemed a minor incident under any circumstance: <u>Conduct Required to be Reported.</u></p> <p><u>(1) A nurse should always must be reported to the board or to a nursing peer review committee for the following conduct</u></p>	<p>Editorial. Necessary for rule sequencing when re-arranged rules sections for flow.</p> <p>Editorial for consistency in rule language; term “must” used as being clearer language for all nurses and persons to understand. Word “to” editorial.</p>
<p>(1) An error that contributed to a patient’s death or serious harm.</p> <p>(2) Criminal Conduct defined in Texas Occupations Code §301.4535.</p>	<p>(A)(1) An error that contributed to a patient's death or serious harm.</p> <p>(B)(2) Criminal Conduct defined in Texas Occupations Code §301.4535.</p>	<p>[No Change]</p>	

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(3) A serious violation of the board's Unprofessional Conduct Rule (22 TAC §217.12) involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.</p>	<p>(C)(3) A serious violation of the board's Unprofessional Conduct Rule (22 TAC § rule 217.12) involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.</p>	<p>(C)(3) A serious violation of the board's Unprofessional Conduct Rule (22 TAC § rule 217.12) involving intentional or unethical conduct such as <u>including but not limited to</u> fraud, theft, patient abuse or patient exploitation.</p>	<p>Editorial. Simplification of language for readability. Phrase added d/t FAQs to BON staff regarding is it limited to only unprofessional conduct listed.</p>
		<p><u>(D) A practice-related violation involving impairment or suspected impairment by reason of chemical dependency, intemperate use, misuse or abuse of drugs or alcohol, mental illness, or diminished mental capacity required to be reported to the board or to a peer assistance program as provided in rule 217.19(g)</u></p>	<p>Added for clarification and consistency with reporting requirements in NPA and peer review rules related to impaired practice.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
	<p><u>(2) If the report is made to the nursing peer review committee, the peer review committee must investigate. If the committee determines that a nurse engaged in the conduct listed in Subdivision (1) (A) through (1)(C), it shall report the nurse to the board.</u></p>	<p><u>(2) If the report is made to the nursing peer review committee, the peer review committee must investigate. If the a nursing peer review committee determines that a nurse engaged in the conduct listed in Subdivision (1) (A) through (1)(C) (D), it shall the committee must report the nurse to the board.</u></p> <p><u>For errors involving the death or serious injury of a patient, if a nursing peer review committee makes a determination that a nurse has not engaged in conduct subject to reporting to the board, the committee must maintain documentation of the rationale for their belief that the nurse's conduct failed to meet each of the factors in subdivision (c)(1)(A) through (D).</u></p>	<p>Content moved to section (g).</p> <p>Editorial for clarity.</p> <p>Staff feel all 4 subsections are relevant in determining a required report to the board.</p> <p>Clarification of documentation required if a peer review committee determines that factors in (c)(1)(A)-(D) did not exist in relation to an error associated with a patient death under (d)(1)(A).</p> <p>Relates to good faith requirement in peer review.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(e) Special Considerations in Evaluating Incidents.</p> <p>In evaluating whether a nurse’s conduct constitutes a minor incident or should be reported to the Board, the following should be considered:</p> <p>(1) If an incident is primarily the result of factors beyond the nurse’s control and addressing those factors is more likely to prevent the incident from reoccurring, a presumption should exist that the incident is a non-reportable minor incident.</p>	<p>(e)<u>(d)</u> <u>Special Considerations in Evaluating Incidents</u> <u>Conduct Normally Not Required to Be Reported</u></p> <p><u>(1) An incident should be</u> In <u>evaluating</u> whether a nurse's conduct constitutes a minor incident or should be reported to <u>determine if the Board, the following should be considered:</u></p> <p><u>(A) the</u> (1) If an <u>incident is</u> primarily the result of factors beyond the nurse's control and addressing those factors is more likely to prevent the incident from reoccurring; or, a presumption should exist that the incident is a non-reportable minor incident.</p>	<p>(e)<u>(d)</u> (e)<u>Special Considerations in Evaluating Incidents</u> <u>Conduct Normally Not Required to Be Reported to the Board.</u></p> <p><u>(1)</u> [no change]</p> <p><u>(A)</u> [no change]</p>	<p>With reordering of other sections, this one remains unchanged.</p> <p>Clarification that section details what is normally not reported to the board but would be appropriate for peer review to evaluate [such as under 301.402(e)(1)]</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(2) Multiple factors may contribute to medication errors. For the purposes of this rule, a medication error should be evaluated to determine whether the error resulted from failure of the nurse to exercise proper clinical judgment or if there were other extraneous factors that were the primary cause of the error. Board Position Statement 15.17 provides guidelines for evaluating medication errors.</p>	<p>(B)(2)Multiple factors may contribute to medication errors. For the purposes of this rule, the incident was a medication error caused primarily by factors beyond the nurse’s control rather than should be evaluated to determine whether the error resulted from failure of the nurse to exercise proper clinical judgment or if there were other extraneous factors that were the primary cause of the error. Board Position Statement 15.17 provides guidelines for evaluating medication errors.</p>	<p>(B) [no change except as below]</p> <p>Board Position Statement 15.17 (Texas Board of Nursing/Board of Pharmacy Joint Position Statement/Medication Errors) provides guidelines for evaluating medication errors http://www.bon.state.tx.us/practice/position.html#15.17.</p>	<p>Clarification.</p>
	<p><u>(2) If either of the conditions listed in Subdivision (1) are present, a presumption should exist that the nurse’s conduct does not indicate the nurse’s continued practice poses a risk of harm to a patient or another person and does not need to be reported to the board or nursing peer review committee.</u></p>	<p><u>(2) If either of the conditions listed in Subdivision (1) are present, a presumption should exist that the nurse’s conduct does not indicate the nurse’s continued practice poses a risk of harm to a patient or another person and does not need to be reported to the board or nursing peer review committee.</u></p>	<p>Staff disagree with adding PRC here as would place burden of analyzing conduct on individual nurse only versus direction provided in (c)(2)(A) of also permitting a peer review committee to make this determination. Makes rule consistent with 301.402(e) regarding PRC determination if conduct reportable to board.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(f) Documentation of Minor Incidents. A minor incident should be documented as follows:</p> <p>(1) a report shall be prepared and maintained for 12 months that contains a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remedy the problem;</p> <p>(2) if a medication error is attributable or assigned to the nurse as a minor incident, the record of that incident should indicate why the error is being attributed or assigned to the nurse.</p>	<p>[No Change]</p>	<p>(1) A report shall must be prepared and maintained for 12 months that contains a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remedy the problem.</p>	<p>Editorial for consistency in rule language; term “must” used as being clearer language for all nurses and persons to understand.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(g) Nursing Peer Review Committee.</p>	<p>Moved from NPAC proposed language section (c)(2):</p> <p><u>If the report is made to the nursing peer review committee, the peer review committee must investigate. If the committee determines that a nurse engaged in the conduct listed in Subdivision (1) (A) through (1)(C), it shall report the nurse to the board.</u></p>	<p><u>(1) If the a report is made to the peer review committee, the committee must investigate and conduct incident-based nursing peer review in compliance with Nursing Peer Review Law in Texas Occupations Code §303 and rule 217.19.</u></p> <p><u>(2) Review of a nurse’s conduct or practice may be accomplished by either an informal work group of the nursing peer review committee as provided under rule 217.19(e).</u></p>	<p>Editorial and to place information specific to peer review process in section so named. NPAC language from (c)(2) incorporated in (g)(1) and (2) and word-smithed to clarify use of informal work group of the PRC.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(1) A peer review committee receiving a report involving a minor incident or incidents shall review the incident(s) and other conduct of the nurse during the previous 12 months to determine if the nurse's continuing to practice poses a risk of harm to clients or other persons and whether remediation would be reasonably expected to adequately mitigate such risk if it exists. The committee shall consider the special considerations set out in subsection (d) of this section.</p>	<p>(1) (3) A peer review committee receiving a report involving a minor incident or incidents shall review the incident(s) and other conduct of the nurse during the previous 12 months to determine if the nurse's continuing to practice poses a risk of harm to clients <u>patients</u> or other persons and whether remediation would be reasonably expected to adequately mitigate such risk if it exists. The committee shall consider the special considerations set out in subsection (d)<u>(e)</u> of this section.</p>	<p>(3) A <u>nursing</u> peer review committee receiving a report involving a minor incident or incidents shall <u>must</u> review the incident(s) and other conduct of the nurse during the previous 12 months to determine if the nurse's continuing to practice poses a risk of harm to clients <u>patients</u> or other persons and whether remediation would be reasonably expected to adequately mitigate such risk if it exists. The committee shall <u>must</u> consider the special considerations set out in subsection (d)<u>(e)</u>(c) of this section.</p>	<p>. Editorial for clarification and consistency with Nursing Peer Review statute and rules. Editorial for consistency in rule language; term “must” used as being clearer language for all nurses and persons to understand Section reference change necessary for accuracy.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(2) Regardless of the number of incidents, the facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee. Peer review of minor incidents under this Rule may be conducted by a special workgroup of the nursing peer review committee. The workgroup may conduct its review using an informal process as long as the nurse has opportunity to meet with the workgroup and provided the nurse is given an opportunity to be peer reviewed in accordance with Rule 217.19 of this title (relating to Incident-based Nursing Peer Review) prior to any report being made to the Board.</p>	<p>(2) Regardless of the number of incidents, the facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee under Rule 217.19 (e) related to Incident-Based Peer Review. Peer review of minor incidents under this Rule may be conducted by a special workgroup of the nursing peer review committee. The workgroup may conduct its review using an informal process as long as the nurse has opportunity to meet with the workgroup and provided the nurse is given an opportunity to be peer reviewed in accordance with §217.19 of this title (relating to Incident-Based Nursing Peer Review) prior to any report being made to the Board..</p>	<p>[Delete entire section]</p>	<p>Same content moved to (g)(1) above.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(3) If the peer review committee determines either that the nurse’s continuing to practice does not pose a risk of harm to clients or other persons or that remediation could reasonably be expected to adequately mitigate any such risk, the committee need not report the nurse to the Board provided any remediation is successfully completed.</p>	<p>(3) <u>If</u> The peer review committee determines either that the nurse’s continuing to practice does not pose a risk of harm to clients or other persons or that remediation could reasonably be expected to adequately mitigate any such risk, the committee need not report the nurse to the Board <u>if the peer review committee determines that either:</u></p> <p><u>(A) the nurse’s continuing to practice does not pose a risk of harm to patients or other persons;</u> <u>or</u> <u>(B) provided any remediation could reasonably be expected to adequately mitigate any such risk and the nurse is successfully completed the remediation.</u></p>	<p>(3) (4) <u>If</u> The peer review committee...</p> <p>[remainder of language unchanged]</p>	<p>Re-numbering for correct sequence.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
	<p><u>(4) If a nurse terminates employment while undergoing remediation actions from activities as directed by a peer review committee under subdivision (3) the peer review committee may either:</u></p> <p><u>(A) report the nurse to the BON;</u></p> <p><u>(B) report to the peer review committee of the new employer, if known, with the nurses written consent; or</u></p> <p><u>(C) re-evaluate to determine if the nurse did complete sufficient remediation and is deemed safe to practice.</u></p>	<p>(4) <u>(5) If a nurse terminates employment while undergoing remediation actions from activities as directed by a peer review committee under subdivision (3) the peer review committee may either:</u></p> <p><u>(A) [No Change]</u></p> <p><u>(B) [No Change]</u></p> <p><u>(C) re-evaluate the nurse's current conduct to determine if the nurse did complete sufficient remediation and is deemed safe to practice.</u></p>	<p>Re-numbering for correct sequence.</p> <p>Editorial for clarification.</p> <p>Editorial.</p> <p>Editorial for clarity.</p>

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(h) A Right To Report. Nurses and other persons are encouraged not to report minor incidents to the Board unless required to do so by this rule, but nothing in this rule is intended to prevent reporting of a potential violation directly to the Board.</p>	<p>(h) A Right to Report. Nurses and other persons are encouraged not to report minor incidents to the Board unless required to do so by this rule, but nothing in this rule is intended to prevent reporting of a potential violation directly to the Board <u>or nursing peer review committee.</u></p>	<p>...a potential violation directly to the Board <u>or to a nursing peer review committee.</u></p>	<p>Editorial for clarity</p>
<p>(i) Bad Faith Determination. Intentionally misclassifying an incident in bad faith to avoid reporting may result in violation of the mandatory reporting statute.</p>	<p>(i) Bad Faith Determination <u>Mis-classifying to Avoid Reporting.</u> Intentionally mis-classifying an incident in bad faith to avoid reporting may result in violation of the mandatory reporting statute.</p>	<p>[No Change]</p>	

Current Rule Language	NPAC Proposed Language	BON Staff Suggested Edits	Rationale for Edits
<p>(j) Chief Nursing Officer’s Responsibility. The chief nursing officer shall be responsible for taking reasonable steps to assure that minor incidents are handled in compliance with this rule.</p>	<p>[No Change]</p>	<p>(j) Chief Nursing Officer’s <u>or Nurse Administrator</u> Responsibility. The Chief Nursing Officer, <u>Nurse Administrator or registered nurse by any title who is responsible for nursing services</u> shall be responsible for taking reasonable steps to assure that minor incidents are handled in compliance with this rule <u>and any other applicable law.</u></p>	<p>Editorial for consistency with current peer review rule definitions and language.</p> <p>The term “shall” is intentionally left in this section.</p> <p>Editorial for clarification. Statutes in Chs. 301 and 303 of Tex. Occ. Code also apply.</p>
	<p><u>(k) Nurses Reported to the Board.</u> <u>If a nurse is reported to the board, the board shall review the nurse’s conduct to determine if it indicates the nurse’s continued practice poses a risk of harm to a patient or another person. If it does not, the board may elect not to proceed with an investigation or to file formal charges.</u></p>	<p><u>(k) Nurses Reported to the Board.</u> <u>If a nurse is reported to the board, the board shall review the nurse’s conduct to determine if it indicates the nurse’s continued practice poses a risk of harm to a patient or another person. If it does not, the board may elect not to proceed with an investigation or to file filing formal charges.</u></p>	<p>The term “shall” is intentionally left in this section.</p> <p>Already policy for board enforcement; investigation may be necessary before making determination regarding nurse’s conduct.</p>