

**Consideration of Proposed Repeal of 22 Tex. Admin. Code §217.16, relating to Reporting of Minor Incidents and Proposed New 22 Tex. Admin. Code §217.16, relating to *Minor Incidents***

**Background:** At its July 2014 meeting, the Board charged the Nursing Practice Advisory Committee (Committee) with reviewing and making recommendations for changes to Board Rule 217.16. Board Rule 217.16 is commonly referred to as the Board's *minor incident* rule and 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.

During the Committee's May 2014 meeting, members discussed the meaning of the phrase "contributed to", as referred to in the Nursing Practice Act and Board rule, in an effort to clarify when a nurse's actions or omissions contribute to the serious harm or death of a patient. This discussion arose because participants in the Texas Taxonomy of Error Root Cause Analysis of Practice Responsibility (TERCAP) pilot were unclear regarding when a nursing practice error was a *minor incident* and should be entered into the Texas TERCAP online database and when a nursing practice error contributed to the serious harm or death of a patient and should, therefore, be reported to the Board instead. As a result of the Committee's discussions, the Board charged the Committee with reviewing Board Rule 217.16 further and making recommendations for any necessary modifications.

The Committee met on September 21, 2017, and November 13, 2017, to review the rule and discuss potential revisions. During its meetings, the Committee participated in a survey generated by Staff to determine how stakeholders were using and applying the current rule. Following discussion of proposed modifications to the rule, the Committee also reviewed scenarios of nursing practice errors using the proposed revised rule text. The Committee was satisfied with the proposed revised rule text and the determinations made during the practice scenarios using the proposed revised rule.

In addition to the revised rule text recommended and approved by the Committee, the Committee also agreed that Staff should make further modifications to the rule text to address the following: (1) remove language from the rule concerning nursing peer review and relocate it to Board Rule 217.19, as appropriate; (2) incorporate introductory language into subsection (h) of the rule; and (3) add language to subsection (g) of the rule to incorporate additional job titles that may encompass supervisory responsibilities.

Due to the breadth of changes to the rule, both structurally and substantively, Staff is recommending a repeal of the current rule text and a simultaneous proposal of new rule text. Attachment "A" contains the proposed new rule text approved by the Committee, with the additional modifications from Staff.

**Board Action:** Move to approve the proposed repeal of 22 Texas Administrative Code

§217.16, relating to *Reporting of Minor Incidents*, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt the proposed repeal of 22 Texas Administrative Code §217.16, relating to *Reporting of Minor Incidents*, as proposed.

Further, move to approve proposed new 22 Texas Administrative Code §217.16, relating to *Minor Incidents*, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt proposed new 22 Texas Administrative Code §217.16, relating to *Minor Incidents*, as proposed.

## Attachment "A" - New Text

### §217.16. Minor Incidents.

(a) Definition. A "minor incident", as defined under the Texas Nursing Practice Act, Texas Occupations Code §301.401(2), means conduct by a nurse that may be a violation of the Texas 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. This term is synonymous with "minor error" or 'minor violation of the Texas Nursing Practice Act or Board rule.'

(b) 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. The Board also believes it may not be necessary to report directly to the Board 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 knowledge, skill, judgment, training, professional responsibility, or patient advocacy. This rule is intended to provide guidance in evaluating whether nursing practice breakdown is subject to mandatory reporting requirements. Additionally, this rule is not intended to apply to 'employment issues that are unrelated to the practice of nursing, such as time, attendance, dress code, etc.

(c) A Right to Report. Nurses and other persons are encouraged not to report minor incidents to the Board unless required to be reported as outlined in subsection(h) of this section. However, nothing in this rule is intended to prevent reporting of a potential violation directly to the Board or to a nursing peer review committee.

(d) In evaluating whether conduct is a minor incident, a combination of factors must be reviewed, including the nurse's conduct, those factors viewed to be beyond the nurse's control, and the relationship between the two that influenced or impacted the nursing practice breakdown.

(1) Initially, the nurse's conduct shall be evaluated to determine whether deficit(s) in knowledge, judgment, skills, professional responsibility, or patient advocacy contributed to the incident.

(A) If it is determined there is no contribution by the nurse, the incident may not reach the level of a minor incident.

(B) If it is determined that the nurse's conduct contributed to the error, then a determination of whether remediation will address any identified deficit(s) is required.

(i) If remediation will address the deficit(s), a remediation plan shall be developed to address the deficit(s).

(ii) If remediation will not address the deficit(s), then the conduct cannot be considered a minor incident and must be reported to the nursing peer review committee or, in practice settings with no nursing peer review, to the Board.

(iii) If the determination is that the nurse could be remediated and the nurse does not complete the required remediation, then the nurse must be reported to a nursing peer review committee or the Board.

(2) Additionally, the presence of factors beyond the nurse's control shall also be evaluated for contribution to the incident, and if found, reported to the patient safety

committee, or if the facility does not have a patient safety committee, to the chief nursing officer.

(3) When there are factors beyond the nurse's control, the relationship between the nurse's contribution to the incident and the factors beyond the nurse's control shall be evaluated.

(A) If factors beyond the nurse's control are identified, the incident should be evaluated to determine if the error would have occurred in the absence of such factors.

(B) If the error would not have occurred but for the factors beyond the nurse's control, the incident may not be reviewable under this rule.

(C) The presence of factors beyond the nurse's control does not automatically exclude the possibility that the nurse's conduct also contributed to the error. Any identified deficits by the nurse must be addressed in accordance with subsection (d)(1)(B) of this section, even if factors beyond the nurse's control are also identified.

(4) Mis-classifying to Avoid Reporting. Intentionally mis-classifying an incident to avoid reporting may result in a violation of the mandatory reporting statute (see subsection (h) of this section).

(e) Multiple Incidents.

(1) Evaluation of Conduct. In determining whether multiple minor incidents constitute grounds for reporting, an evaluation must be conducted to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice

poses a risk of harm and should be reported to the nursing peer review committee or the Board.

(2) Frequency of Incidents. In practice settings with nursing peer review, the nurse must be reported to the nursing peer review committee 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.

(f) Required Documentation of Minor Incidents. A minor incident should be documented as follows: a report must be prepared, monitored, and maintained for a minimum of 12 months that contains:

(1) a complete, detailed description of the incident(s), including patient(s) medical record number(s), nurse(s) involved, witnesses and, if applicable, a summary of witness statements, and any additional relevant information;

(2) an evaluation of the incident(s);

(3) the action taken to correct or remedy the situation; and

(4) evidence of completed remediation.

(g) Responsibilities.

(1) The Chief Nursing Officer, Nurse Administrator, or registered nurse by any title who is responsible for nursing services shall develop and implement a policy to assure that minor incidents are handled in compliance with this rule and any other applicable law.

(2) The Nurse Manager, Nurse Supervisor, or registered nurse by any title who is responsible for managing and/or supervising nurses , regardless of the time frame or number of minor incidents, must report a nurse to a nursing peer review committee or, in practice settings with no nursing peer review, to the Board if he/she believes the minor incidents indicate a pattern of practice that poses a risk of harm that cannot be remediated.

(3) If a report is made to the nursing peer review committee, the committee must investigate and conduct incident-based nursing peer review in compliance with Texas Occupations Code Chapter 303 and §217.19 of this title.

(h) Some conduct falls outside the definition of a minor incident and must be reported to a nursing peer review committee or to the Board. This includes:

(1) conduct that ignores a substantial risk that exposed a patient or other person to significant physical, emotional or financial harm or the potential for such harm;

(2) conduct that violates the Texas Nursing Practice Act or a Board rule and contributed to the death or serious injury of a patient;

(3) 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;

(4) a violation of Board Rule 217.12 with actions that constitute abuse, exploitation, fraud, or a violation of professional boundaries; or

(5) actions which indicate that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could

reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.