

MEMORANDUM

Department of Aging and Disability Services Regulatory Services Policy * Survey and Certification Clarification

TO: Regulatory Services
Regional Directors and State Office Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: **S&CC 13-02** – Referrals to an Incident-based Nursing Peer Review Committee (NPRC) or the Texas Board of Nursing (BON) (**Replaces S&CC 02-17**)

APPLIES TO: Adult Day Care Facilities (ADCs), Assisted Living Facilities (ALFs), Home and Community Support Services Agencies (HCSSAs), Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICFs/IID), Nursing Facilities (NFs) and Skilled Nursing Facilities (SNFs)

DATE: March 27, 2013

The Nursing Practice Act (NPA), Texas Occupations Code (TOC), [Chapter 301](#) provides in [§301.407](#), “Duty of State Agency to Report,” that if a state agency licenses, registers or certifies a nursing home, a home and community support services agency, or another health care facility or agency or surveys regarding the quality of nursing care provided and has reason to believe that a nurse has engaged in *conduct subject to reporting*, the state agency must report the nurse in writing to the BON or NPRC, as established by TOC [Chapter 303](#) “Nursing Peer Review,” unless expressly prohibited by state or federal law.

Nursing Peer Review Requirements

Section [301.401 of the NPA](#) defines “conduct subject to reporting” as conduct by a nurse that:

- violates TOC Chapter 301 or a BON rule and contributed to the death or serious injury of a patient;
- causes a person to suspect that the nurse’s practice is impaired by chemical dependency or drug or alcohol abuse;
- constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or
- indicates 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.

BON Requirements

The BON's rule at Texas Administrative Code (TAC), Title 22, Part 11, Chapter 217, §217.16(d)(1) states that a nurse must be reported to the NPRC or BON for the following conduct:

- an error that contributed to a patient's death or serious harm;
- criminal conduct defined in NPA §301.4535;
- a serious violation of the BON's unprofessional conduct rule §217.12 involving intentional or unethical conduct (including but not limited to fraud, theft, patient abuse or patient exploitation); and
- 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 in accordance with §301.410(b) of the NPA and §217.19(g).

A Texas Department of Aging and Disability Services (DADS) surveyor may decide whether to report a nurse to an NPRC or to the BON.

Requirements to Establish an NPRC

According to TOC §303.0015 and the BON's rule at 22 TAC §217.19(c), a person is required to establish an NPRC to conduct nursing peer review:

- for licensed vocational nurses, if the person regularly employs, hires or contracts for the services of 10 or more nurses; and
- for registered nurses (RNs), if the person regularly employs, hires or contracts for the services of 10 or more nurses, at least five of whom are RNs.

A person, agency or facility required to establish an NPRC under this section may contract with another entity to conduct the peer review (TOC §303.0015(b)).

22 TAC §217.19(a)(7) states that an incident-based NPRC focuses on "determining if a nurse's actions, be it a single event or multiple events (such as in reviewing up to five minor incidents by the same nurse within a year's period of time) should be reported to the Board, or if the nurse's conduct does not require reporting because the conduct constitutes a minor incident that can be remediated. The review includes whether external factors beyond the nurse's control may have contributed to any deficiency in care by the nurse, and to report such findings to a patient safety committee as applicable."

A facility conducting incident-based peer review shall have written policies and procedures that address the minimum due process requirements in 22 TAC §217.19(d).

Reporting Minor Incidents

The BON believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the NPA or a BON 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 further states that it 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 BON (22 TAC §[217.16\(a\)](#)).

A DADS surveyor will review the rules listed at in 22 TAC §[217.16](#) to determine if an incident is minor before making a report to the NPRC or BON.

A "minor incident," means conduct by a nurse that may be a violation of the NPA or a BON rule but does not indicate the nurse's continued practice poses a risk of harm to a patient or another person (22 TAC §217.16(b)).

22 TAC §217.16(c)(1) lists factors that should be considered when determining if conduct must be reported. Specifically, the rule provides that a nurse involved in a minor incident need not be reported to the NPRC or to the BON unless the conduct 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;
- lacked a conscientious approach to or accountability for his/her practice;
- lacked the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or
- 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.

Other factors that may be considered in determining whether a minor incident should be reported to the NPRC or BON are:

- the significance of the nurse's conduct in the particular practice setting; and
- the presence of contributing or mitigating circumstances, including systems issues or factors beyond the nurse's control, in relation to the nurse's conduct (22 TAC §[217.16\(c\)\(3\)](#))

The BON rules, position statements and the NPA are available at www.bon.state.tx.us.

If you have questions concerning this memorandum, please contact a policy specialist at (512) 438-3161.