

**Proposed Amendments to 22 Tex. Admin. Code §217.13. Peer Assistance Programs**

House Bill 2426 amended the Nursing Practice Act, section 301.410, entitled Report Regarding Impairment by Chemical Dependency, Mental Illness, or Diminished Mental Capacity, to include the following provision: ...(b) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.

To address the board's responsibility when an impaired nurse with an alleged practice violation is reported to the board, section 301.4105 was added to the Nursing Practice Act and states that the board's responsibility following such a report is to determine "whether a nurse violated this chapter or a rule adopted under this chapter for any case reported to the board in which the nurse's ability to perform the practice of nursing was impaired or suspected of being impaired by chemical dependency or diminished mental capacity and in which the nurse is suspected of committing a practice violation. The board, in deciding whether to take disciplinary action against the nurse for a violation of this chapter or board rules, shall balance the need to protect the public and the need to ensure the impaired nurse seeks treatment".

In addition, section 301.4106 (Peer Assistance Programs) was added requiring the board by rule to develop guidelines to:

- (1) outline the roles and responsibilities of the board and a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;
- (2) outline the process for a peer assistance program to refer to the board complaints alleging a violation of the practice of nursing;
- (3) establish requirements for successfully completing a peer assistance program and for notification of the board of the successful completion by a nurse the board has ordered to attend or referred to the program; and
- (4) establish a procedure for evaluating the success of a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code.

To implement these changes to the Nursing Practice Act into Board rule, section 217.13 is proposed for amendment to comply with all of these standards, to include the requirement regarding an impaired nurse who has allegedly committed a practice violation also, and the board's duty to weigh the need to protect the public against the need to encourage impaired nurses to seek treatment.

Staff requests that the Board move to propose an amendment to section 217.13 and publish it in the *Texas Register* for a 30-day comment period, and if negative comments are not received in the 30 day comment period, adopt and publish the amendment in the *Texas Register*.

§217.13. Peer Assistance Programs.

A peer assistance program for nurses will identify, assist, and monitor professional colleagues experiencing mental health, alcohol, or drug problems that are or are likely to be job-impairing so that they may return to practice safe nursing.

(1) Additional criteria.

(A) The program will provide statewide peer advocacy services available to all nurses licensed to practice in Texas whose practice may be impaired by chemical dependency or certain mental illness.

(B) The program shall have a statewide monitoring system that will be able to track the nurse while preserving confidentiality.

(C) The program shall have a network of trained peer volunteer advocates located throughout the state.

(D) The program shall have a written plan for the education and training of volunteer advocates and other program personnel.

(E) The program shall have a written plan for the education of nurses, other practitioners, and employers.

(F) The program shall have a mechanism for documenting program compliance and for timely reporting of noncompliance to the board. Reports of noncompliance shall include information regarding nurses who have been reported in accordance with the requirements of Texas Occupations Code §301.410. The program shall report to the board a nurse reported to the program for chemical dependency, mental illness, or diminished mental capacity if the nurse also committed a practice violation, in order for the board to balance the need to protect the public and the need to ensure the impaired nurse seeks treatment.

(G) The program shall demonstrate financial stability and funding sufficient to operate the program.

(H) The program shall collect and make available to the board and other appropriate persons data relating to program operations and participant outcomes.

(I) The program shall have a written plan for a systematic total program evaluation.

(J) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(K) Counselors utilized by the peer assistance program shall meet the minimum criteria for counselors as established by the board or its designee.

(L) The program shall establish a plan to verify previous disciplinary action relative to impairment prior to admitting a nurse to the peer assistance program.

(M) If there has been any prior disciplinary action by the board within five years or if the program determines that the nurse most likely has impaired practice but is inappropriate for the program due to other reasons, the program may report the nurse to the board.

(2) Contractual agreement. The approved program(s) will enter into a contractual agreement with the board to provide peer assistance services. Said contract can be withdrawn for noncompliance and is subject to annual review and renewal.

(3) The program shall contact the board if a nurse under contract fails to comply with the terms of the contract and evidences conduct that indicates an inability or unwillingness to comply with the program.

(4) The program shall notify the board when a nurse who the board has ordered to attend or referred to the program successfully completes the peer assistance contract.