

**Withdrawal of Proposed Amendment to § 217.13, Relating to Peer Assistance Programs**  
**and Proposed Repeal of Rule 217.13 and Proposed new § 217.13, Relating to Peer**  
**Assistance Programs.**

The Staff recommends that the Board withdraw the current proposed amendment, and re-propose the repeal of rule 217.13 and propose new rule 217.13, as attached.

At the July 2007 Board meeting, the Board proposed amendments to section 217.13, Peer Assistance Programs, to include the requirement imposed by House Bill 2426 (Sunset Bill) that nurses who are impaired and commit a practice violation must be reported to the Board and not to a peer assistance program. This proposal was published in the August 3, 2007, edition of the Texas Register (Attachment #1).

Subsequent to the Board meeting and publication in the *Register*, Staff reviewed other requirements imposed by the Sunset Bill on the Board regarding peer assistance programs, and found the proposed amendment inadequate. Since the *Texas Register* does not allow two (2) proposals at the same time on the same section it is Staff's recommendation to withdraw the proposed rule and re-propose the amendments implementing all the requirements of the Sunset Bill.

The Nursing Practice Act, Texas Occupations Code §§ 301.4105 and 301.4106, requires the following:

Sec. 301.4105. BOARD RESPONSIBILITY FOLLOWING REPORT. The board shall 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.

Sec. 301.4106. PEER ASSISTANCE PROGRAMS. The board by rule shall 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.

In compliance with these requirements, the Staff recommends that the Board propose the current amendment as follows:

§217.13. Peer Assistance Program.

(a) A peer assistance program for nurses approved by the Board under chapter 467, Health and Safety Code, will identify, monitor, and assist with locating appropriate treatment for those nurses whose practice is impaired or suspected of being impaired by chemical dependency, mental illness or diminished mental capacity so that they may return to practice safe nursing.

(b) Role of the Board of Nursing and Peer Assistance Program.

(1) The Board of Nursing will retain the sole and exclusive authority to discipline a nurse who has committed a practice violation under Section 301.452(b) of the Nursing Practice Act regardless of whether such violation was influenced by chemical dependency, mental illness, or diminished mental capacity. The Board will balance the need to protect the public and the need to ensure the nurse seeks treatment in determining whether the nurse is appropriate for participation in an approved peer assistance program.

(2) The 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 for 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.

(c) General Criteria for Approved Peer Assistance Program.

(1) The program will provide statewide peer advocacy services to all nurses licensed to practice in Texas whose practice may be impaired by chemical dependency, certain mental illnesses, or diminished mental capacity.

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

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

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

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

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

(7) The program shall have a mechanism for documenting program compliance and for timely reporting of noncompliance to the board.

(8) 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.

(d) Evaluation of Peer Assistance Program

(1) The program shall collect and make available to the board and other appropriate persons data relating to program operations and participant outcomes.. At a minimum, the program shall submit the following statistical information quarterly to the Board for the purpose of evaluating the success of the program:

- (A) Number and source of referral;
- (B) Number of individuals who sign participation agreements;
- (C) Type of participation agreement signed, i.e., Extended Evaluation Program; substance abuse or dependency, dual diagnosis, mental illness;
- (D) Number of cases referred to program by Board of Nursing (this number should include all third party referrals that are reported to the board, but remain in participation pending board review);
- (E) Number of participants referred to program by Board order;
- (F) Number of self referred cases closed and reason(s) for closure;
- (G) Number of active cases;
- (H) Number of participants employed in nursing;
- (I) Number of participants completing program;
- (J) Number of participants who are reported back for failing to comply with the participation agreement;
- (K) Monitoring activities, including number of drug screens requested, conducted and results of these tests;
- (L) All applicable performance measures required by the Legislative Budget Board.

(2) The program shall have a written plan for a systematic total program evaluation. Such plan shall include at a minimum monthly reports of the programs activities showing compliance with this rule, quarterly reports of applicable LBB performance measure data and an annual report of program activities.

(3) 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.

(e) Participants entering the approved peer assistance program for chemical dependency or chemical abuse must agree to the following minimum conditions:

(1) The nurse shall undergo, as appropriate, a physical and/or psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(2) The nurse shall enter into a contract with the approved peer assistance program to comply with the requirements of the program which shall include, but not be limited to:

(A) The nurse will undergo recommended substance abuse treatment by an appropriate treatment facility or provider.

(B) The nurse will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber for legitimate medical purposes and approved by the program.

(C) The nurse must complete the prescribed aftercare, if any, which may include individual and/or group psychotherapy.

(D) The nurse will submit to random drug screening as specified by the approved monitoring program.

(E) The nurse will attend support groups as specified by the contract.

(F) The nurse will comply with specified employment conditions and restrictions as defined by the contract.

(G) The nurse shall sign a waiver allowing the approved peer assistance program to release, to the extent permitted by federal or state law, information to the Board if the nurse does not comply with the requirements of this contract.

(3) The nurse may be subject to disciplinary action by the Board if the nurse does not participate in the approved peer assistance program, does not comply with specified employment restrictions, or does not successfully complete the program

(f) Referral to Board of Non compliance with Peer Assistance Program.

(1) A participant may be terminated from the program for the following causes:

(A) Noncompliance with any aspect of the program agreement;

(B) Receipt of information by the board which, after investigation, results in disciplinary action by the board; or

(C) Being unable to practice according to acceptable and prevailing standards of safe nursing care.

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

(g) Eligibility for Program Participation.

(1) The program shall contact the board if it receives a third-party referral for a nurse who may have been impaired or suspected of being impaired and who may have failed to comply with the minimum standards of nursing (22 TAC § 217.11) and/or committed an act constituting unprofessional conduct (22 TAC § 217.12). The program shall send that report to the Board. The Board will balance the need to protect the public and the need to ensure the impaired nurse seeks treatment in determining the whether the nurse is appropriate for participation in an approved peer assistance program.

(2) An individual may not participate in the program if the information reviewed in conjunction with the report indicates to the board that the individual's compliance with the program

may not be effectively monitored while participating in the program. This information includes, but is not limited to, the following:

(A) The individual is not currently licensed as a registered nurse or licensed vocational nurse;

(B) The individual is currently using or being prescribed a drug normally associated with chemical dependency or abuse;

(C) The individual has a medical and/or psychiatric condition, diagnosis, or disorder, other than chemical dependency, in which the manifest symptoms are not adequately controlled;

(D) The individual has attempted or completed two or more chemical dependency monitoring programs as of the date of the application, notwithstanding the individual's current chemical dependency treatment plan and related treatment currently submitted for purposes of program eligibility;

(E) The board has taken action against the individual's license to practice nursing as either a registered nurse or a licensed practical nurse in Texas within the last 5 years;

(F) The individual has been convicted of a felony, placed on probation or received deferred adjudication relating to a felony, or felony charges are currently pending, or is currently being investigated for a felony; or

(G) The individual has been convicted or registered as a sex offender.

(h) Successful Completion of the Program. A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement. When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement. 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.

**Recommended action:** Move to withdraw the proposed amendment to section 217.13, relating to Peer Assistance Programs, (Attachment 1) published in the August 3, 2007, edition of the *Texas Register*; and propose repeal of rule 217.13 and propose new rule 217.13 to be published in the *Texas Register* for the 30-day comment period. If negative comments are not received, then adopt repeal of rule 217.13 and adopt new rule 217.13 as proposed.

## Attachment #1

### §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) - (E) (No change.)

(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) - (I) (No change.)

(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) - (M) (No change.)

(2) (No change.)

(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.