

Position Statements with changes are as follows:

- 15.1 Nurses Carrying Out Orders From Physician's Assistants
- 15.6 Board Rules Associated with Alleged Patient "Abandonment"
- 15.10 Continuing Education: Limitations for Expanding Scope of Practice
- 15.12 Use of American Psychiatric Associations Diagnoses by LVNs, RNs, or APRNs

Pros and Cons

Pros:

Adoption of the proposed editorial changes to position statements will provide an opportunity for updated and improved guidance to nurses based on current practice standards, and will offer clarification for frequently asked questions. As this information is available on the BON web page, it can be readily accessed without the delays that could occur were it necessary to speak with board staff via phone or e-mail for this same information.

Cons:

None noted.

Recommendations:

I move to adopt the editorial changes to position statements with allowance for non-substantive word editing for purposes of clarity as may be deemed necessary by Board staff.

15.1 Nurses Carrying out Orders from Physician's Assistants

The Nursing Practice Act includes the "administration of medications or treatments ordered by a physician, podiatrist or dentist" as part of the practice of nursing. There are no other health care professionals listed. The Board recognizes that in some practice settings nurses work in collegial relationships with physician assistants (PAs) who may relay a physician's order for a client being cared for by a **N**nurse.

A **N**nurse may carry out a physician's order for the administration of treatments or medications relayed by a physician assistant (PA) when that order originates with the PA's supervising physician. Supervision must be continuous but does not require the physical presence of a supervising physician at the place where the PA services are performed provided a supervising physician is readily available by telecommunications. The supervising physician should have given notice to the facility that he/she is registered with the Texas Medical Board (TMB) as the supervising physician for the PA and that he/she has authorized the PA to relay orders. The PA must be licensed or registered by the TMB. A list of physician assistants credentialed by the medical staff and policies directing their practice should be available to the nursing staff.

The order relayed by the PA may originate from a protocol; if the order originates from a protocol, the PA may select specific tasks or functions required to implement the protocol, provided they are within the scope of the protocol. The protocol must be signed by the supervising physician and must be on file and available to the nursing staff at the facility, agency, or organization in which it is carried out. If the tasks or functions ordered fall outside the scope of the protocol, the PA must consult with the physician to obtain a verbal order before the nurse may carry out the order.

As with any order, the **N**nurse must seek clarification if he/she believes the order or treatment is inaccurate, non-efficacious or contraindicated by consulting with the PA and physician as appropriate.

(Board Action 01/1994; revised 01/2005)

15.6 Board Rules Associated With Alleged Patient "Abandonment"

The Texas Board of Nursing (BON or Board), in keeping with its mission to protect the public health, safety, and welfare, holds nurses accountable for providing a safe environment for clients and others over whom the nurse is responsible [Rule 217.11(1)(B)]. Though the Nursing Practice Act (NPA) and Board Rules do not define the term "*abandonment*," the Board has investigated and disciplined nurses in the past for issues surrounding the concept of *abandonment* as it relates to *the nurse's duty to the patient*. The Board's position applies to licensed nurses (LVNs and RNs), including RN's with advanced practice authorization (Nurse Practitioners, Clinical Nurse Specialists, Nurse Midwives, and Certified Registered Nurse Anesthetists) in Texas.

Nurse's Duty To A Patient

All nurses, regardless of practice setting or position title/role, are required to adhere to the NPA and Board Rules. The "core" rules relating to nursing practice, however, are Rules 217.11, Standards of Nursing Practice, and 217.12, Unprofessional Conduct. The standard upon which other standards are based is 217.11(1)(B) "... promote a safe environment for clients and others." This standard supersedes any physician's order or facility's policy, and has previously been upheld in a landmark case, *Lunsford v. Board of Nurse Examiners*, 648 S.W. 2d 391 (Tex. App. -- Austin 1983). The concept of the nurse's duty to promote client safety also serves as the basis for behavior that could be considered unprofessional conduct by a nurse.

Patients under the care of a nurse are vulnerable by virtue of illness, injury, and/or the dependent nature and unequal power base of the nurse-patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised, and patients who are physically disabled, immobilized, restrained, or secluded. It is this dual-vulnerability (client status and nurse's power base) that creates the nurse's duty to protect the client. The distinction between a nurse leaving employment versus a nurse violating a duty to a patient through leaving an assignment is often confused. The first is an employment issue, the other is potentially a licensure issue.

There is also no routine answer to the question, "*When does the nurse's duty to a patient begin?*" The nurse's duty is not defined by any single event such as clocking in or taking report. From a BON standpoint, the focus for disciplinary sanctions is on the relationship and responsibility of the nurse to the patient, not to the employer or employment setting.

Employment Issues

Though the Board has no jurisdiction over employers or employment-related issues, other laws regulating facility licensure may apply certain responsibilities to the employer for provision of client safety, such as development of effective patient care systems or provision of adequate numbers of qualified staff. Specific requirements for a given facility may be obtained by contacting the applicable licensing authority for the institution.

The Board believes that the following additional examples of employment issues would not typically involve violations of the NPA or Board Rules:

- Resignation without advance notice, assuming the nurse's current patient care assignment and/or work shift has been completed.
- Refusal to work additional shifts, either "doubles" or extra shifts on days off.
- Other work-related issues, such as frequent absenteeism or tardiness, or conflicts between staff/employees.

The Board believes nurses should be vigilant and exercise good professional judgment when accepting assignments that may be requested by employers who need nurses to fill vacant shifts for licensed nursing staff, or other staffing-related situations. *Clear communication* between staff and supervisors is essential to arrive at solutions that best focus on patient care needs without compromising either patient safety or a nurse's license.

Licensure Issues

As previously noted, the rules most frequently applied to nursing practice concerns are Rule 217.11 *Standards of Nursing Practice*, and Rule 217.12 *Unprofessional Conduct*. In relation to questions of "abandonment," standard 217.11(1)(I) holds the nurse responsible to "notify the appropriate supervisor when leaving a nursing assignment." This standard should not be misinterpreted to mean that the nurse may simply notify the supervisor that he/she is leaving the premises, regardless of whether or not another qualified licensed nurse is available to assume care of the nurse's patients. Specific procedures to follow in a given circumstance (nurse becomes ill, family emergency, etc.) should be delineated in facility policies (which the Board does not regulate).

Some actions may be more obvious examples of unprofessional conduct that could result in sanctions on the nurse's license. Examples of conduct that could lead to Board action on the nurse's license may include:

- Sleeping on the job, which effectively makes the nurse unavailable to observe the patient or respond to the patient's needs, even though the nurse is physically present.
- Simply walking off the job in mid-shift without notifying anyone, and without regard for patient safety;
- Failing to initiate or complete an agreed assignment when the nurse is the sole care provider, and/or the nurse is a consultant or supervisor in a home or homelike setting; and/or failing to notify a supervisor in a timely manner that the assignment will not be done, and/or falsifying records to the effect that the missed nursing visit was indeed completed ; and/or
- Leaving the assigned patient care area and remaining gone/unavailable for a period of time such that the care of any/all patients may be compromised due to lack of available licensed staff.

The Board may impose sanctions on a nurse's license for actions that potentially place patients at risk for harm, or when harm has resulted because a nurse violated his/her duty to the client by leaving a patient care assignment in a manner inconsistent with the Board Rules.

Board Disciplinary Actions

Complaints of "patient abandonment" when it is obvious from the allegation that it is an employment issue will not be investigated by the Board. In these circumstances, however, both parties (the nurse and the employer) may be advised to strive for alternate solutions to avoid similar situations in the future.

Some general factors that would be considered in investigating a complaint of leaving an assignment by a nurse would include, but not be limited to:

- the extent of dependency or disability of the patient;
- stability of the patient;
- the length of time the patient was deprived of care;
- any harm to the patient/level of risk of harm to the patient;
- steps taken by the nurse to notify a supervisor of the inability to provide care;

- previous history of leaving a patient-care assignment;
- other unprofessional conduct in relation to the practice of nursing;
- general nurse competency regarding adherence to minimum nursing standards.

As with all allegations received by the Board, the alleged conduct by a nurse will be thoroughly investigated to determine what, if any, violations of the NPA and rules have occurred. If evidence of violations exists, the Board must then determine what level of sanction is appropriate to take on the nurse's license, and what specific stipulation requirements will be applied. Depending upon the case analysis, Board actions may range from the case being closed with no findings or action, all the way to suspension and/or revocation/voluntary surrender of the nurse's license.

Safe Harbor Peer Review:

If a nurse feels he/she is being asked to accept an assignment that would potentially cause the nurse to violate his/her duty to a patient, the nurse may be able to invoke "safe harbor," depending on whether or not the nurse's employer meets requirements that would make it mandatory for the employer to have a peer review plan in place. This is established in the NPA, Chapter 303 *Peer Review*, and in Rule 217.20 *Safe Harbor Peer Review and Whistleblower Protections*. Safe Harbor has two effects related to the nurse's license:

- (1) It is a means by which a nurse can request a peer review committee determination of a specific situation in relation to the nurse's duty to a patient; and
- (2) It affords the nurse immunity from Board action against the nurse's license if the nurse invokes Safe Harbor in accordance with Rule 217.20. For the nurse to activate this immunity status, the nurse must notify the assigning supervisor at the time the assignment request is made, and the nurse must submit the required information in writing as specified in Rule 217.20(d)(3)(A) or on the Board's Safe Harbor Quick Request Form.

For more information about Safe Harbor, see "related links" at the end of this article.

Links to Related Articles (all of the following are located on the Board's web page):

Safe Harbor Form <http://www.bon.state.tx.us/practice/Safe.htm>.

FAQ on Overtime/Hours of Work

<http://www.bon.state.tx.us/practice/faq-practice.html#overtime>

FAQ on Peer Review <ftp://www.bon.state.tx.us/PeerReview-FAQs.pdf>
"TYPE=PICT;ALT=AdobeAcrobatPDF"

FAQ on Staffing Ratios <http://www.bon.state.tx.us/practice/faq-practice.html#Staffing>

FAQ on Floating <ftp://www.bon.state.tx.us/floating.pdf>
"TYPE=PICT;ALT=AdobeAcrobatPDF"

[FAQ on When Does a Nurse's Duty to a Patient Begin and End](http://www.bon.state.tx.us/practice/faq-nurseduty.html)
<http://www.bon.state.tx.us/practice/faq-nurseduty.html>

RN Update, July 2002: Overview of TDH Staffing Plans and CNO Requirement Rules

(Adopted 01/2005)

15.10 Continuing Education: Limitations for Expanding Scope of Practice

Foundation for Initial Licensure and/or APRN authorization:

The Board's Advisory Committee on Education states in its *"Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002"* (<http://www.bon.state.tx.us/about/pdfs/del-comp.pdf>) that: "The curricula of each of the nursing programs differ, resulting in differentiated entry level competencies of graduates....The competencies of each educational level build upon the previous level." On a national level, the National Council of State Boards of Nursing, Inc. (NCSBN) develops and administers two national nurse licensure examinations; the National Council Licensure Examination for Practical Nurses (NCLEX-PN®), and the National Council Licensure Examination for Registered Nurses (NCLEX-RN®). These two examinations are used by all U.S. state and territorial boards of nursing to test entry-level nursing competence of candidates for licensure as Registered Nurses and as Licensed Practical/Vocational Nurses.

Recognition as an advanced practice [registered](#) nurse in Texas requires completion of a master's or post-master's advanced practice program as well as national certification in the advanced role and specialty. To gain recognition as an advanced practice [registered](#) nurse in Texas, the nurse must first be licensed as a RN in Texas or have a valid unencumbered RN license from a compact state. The nurse must then submit an application to the Board for "authorization" in the advanced practice role and specialty.

Limitations of "Continuing Education"

The nursing shortage is creating ever greater challenges for those who must fill nursing vacancies at all levels --- LVNs, RNs, and Advanced Practice Registered Nurses (APRNs) in various specialties. As efforts to invent new ways to fill this growing void expand, the Board is receiving a growing number of calls to clarify the term "continuing education" in relation to how far a nurse can expand his/her practice with informal continuing education offerings.

The formal education for entry into nursing practice in Texas is differentiated between vocational and professional (registered) nursing. Formalized education for advanced practice also requires completion of a formal program of education in the advanced practice role and specialty at the master's or post-master's level.

The Board believes that for a nurse to successfully make a transition from one level of nursing practice to the next requires the completion of a formal program of education as defined in the applicable board rule. The Board also believes that completion of on-going, informal continuing education offerings, such as workshops or on-line offerings in a specialty area, serve to expand and maintain the competency of the nurse at the current level of licensure/recognition. No amount of informal or on-the-job-training can qualify a LVN to perform the same level of care as the RN. Likewise, the RN cannot engage in aspects of care that require independent medical judgement in a given APRN role and specialty without the formal education, national certification, and proper authorization in that advanced practice nurse role and specialty.

For example, a LVN with 10 years of home care experience cannot perform the comprehensive assessment and initiate the nursing care plan on a patient newly admitted to the LVNs home care agency's service. This is precluded in both BON Rule 217.11 as well as in the home care regulations. Attending a workshop and/or spending time under the supervision of a RN does not qualify the LVN

to engage in practice that is designated in rule as being exclusive to the next level of licensure.

Therefore, any nurse, regardless of experience, who engages in nursing practice that would otherwise require a higher level of licensure or a different level of authorization is practicing outside of his/her scope of practice, and may be subject to disciplinary action congruent with the NPA and Rules applicable to LVNs, RNs, and/or RNs with APRN authorization in a given role/specialty.

(Adopted 01/2005)

15.12 Use Of American Psychiatric Association Diagnoses by LVNS, RNs, or APRNs

The Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnoses are multi-disciplinary psychiatric diagnoses used for the purpose of applying objective criteria, establishing a practice framework and communicating findings with other health care professionals. The current version, DSM-IV-TR (Fourth Edition, Text Revision) is ~~scheduled~~ anticipated to be replaced by the DSM-V (Fifth Edition) in ~~2011 or later~~ May of 2013.

In accordance with the Nursing Practice Act (NPA), Section 301.002(2) and (5), acts of medical diagnosis or prescription of therapeutic or corrective measures are beyond the scope of practice for licensed vocational nurses as well as registered nurses who are not Board authorized in an appropriate Advanced Practice Registered Nurse (APRN) role and speciality.

The use of DSM-IV diagnoses by a Registered Nurse recognized by the Board as an Advanced Practice Registered Nurse in the role and specialty of either a Clinical Nurse Specialist (CNS) in Psychiatric/Mental Health Nursing or as a Psychiatric/Mental Health Nurse Practitioner is authorized provided he/she is acting within the scope of his/her advanced practice role and specialty and that the diagnoses utilized are appropriate for the individual APRN's advanced education, experience, and scope of practice. APRNs must also utilize protocols or other written authorization when providing medical aspects of care in compliance with Rule 221 "Advanced Practice Nurses." When patient problems are identified that are outside the CNS'/NP's scope of practice or expertise, a referral to the appropriate medical provider is indicated.

(Board Action, 09/1996; revised 01/2005)