

Agenda Item: 6.6
Board Meeting on October 25-26, 2018
Prepared by: Jena Abel

Consideration of Adoption of Proposed Amendments to 22 Tex. Admin. Code §217.13, relating to *Peer Assistance Program*, including Written Comments Received and Results of Public Hearing, if any

Background: Proposed amendments to §217.13 were approved by the Board at its July 2018 meeting for submission to the *Texas Register* for public comment. The proposal was published in the *Texas Register* on September 14, 2018, and the comment period ended on October 14, 2018. The Board received one written comment on the proposed amendments. The Board did not receive any requests for a public hearing. A copy of the written comment received is attached hereto as Attachment "A".

The Board received a comment from a representative of the Texas Nurses Association. Staff recommends making the commenter's suggested change.

A summary of the comment received and Staff's proposed response is attached as Attachment "B". The proposed rule text, with recommended changes, is included in Attachment "C".

Board Action: Move to adopt the proposed amendments to 22 Texas Administrative Code §217.13, relating to *Peer Assistance Program*, with changes, as set forth in Attachment "C". Further, authorize Staff to publish the summary of comments and response to comments attached hereto as Attachment "B".

Attachment “B”

Summary of Comments Received

Summary of Comment: A commenter representing the Texas Nurses Association states that, while the applicable statute references a “treatment plan,” the commenter recommends that the Board take the opportunity to provide a much-needed clarification in this regard. The commenter states that neither the Board nor the Texas Peer Assistance Program for Nurses (TPAPN) provides nurses with a “treatment plan”. Instead, the commenter states that the Board sets requirements for participation. The commenter is concerned that calling the requirements a “treatment plan” implies that TPAPN provides treatment, which it does not. The commenter suggests replacing “treatment plan” with “participation requirements” in the rule language as a possible remedy. The commenter states that this change would make it clear to applicants that the Board can re-evaluate the participation requirements rather than the plan for treatment, and that TPAPN is not a treatment provider.

Agency Response: The Board agrees that TPAPN, the Board’s current peer assistance program provider, does not provide treatment to its participants, and that the rule should not imply that it does, nor should the rule imply that any future contracted peer assistance program provider will provide treatment to its participants. The purpose of the Board’s contracted peer assistance program provider is to provide monitoring and advocacy for its participants, not treatment. To that end, the Board has changed the language in the rule as adopted to replace “treatment plan” with “participation requirements”.

Attachment "C" (with recommended changes)

§217.13. Peer Assistance Program.

(a) - (h) (No change.)

(i) Re-evaluation of Participation in Peer Assistance Program.

(1) Each individual receiving an eligibility order requiring participation in a peer assistance program upon initial licensure shall be notified by the Board, upon the issuance of a nursing license, that he/she may request re-evaluation of his/her participation in the peer assistance program.

(2) If an individual wishes to have his/her participation in a peer assistance program re-evaluated by the Board, the individual must affirmatively request re-evaluation by the Board and provide the Board with relevant evidence supporting the individual's request.

(3) The following factors shall be considered when re-evaluating an individuals' required participation in a peer assistance program:

(A) the individual's criminal history record information and whether participation in the program is warranted based upon the time that has elapsed since the individual's conviction or end of community supervision;

(B) the individual's participation requirements and the amount of time the individual is required to participate in the peer assistance program based upon the individual's individualized needs; and

(C) verifiable and reliable evidence of the individual's sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of

inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, letters of support from sponsors, a substance use disorder evaluation, and evidence of support group attendance.

(4) An individual must comply with the terms of his/her eligibility order until the Board completes its review under this subsection and issues a decision.

(5) The Executive Director is authorized to:

(A) review an individual's request for re-evaluation of his/her participation in a peer assistance program under this subsection;

(B) amend **the participation requirements** for an individual based upon the individual's individualized needs and/or the amount of time an individual must participate in the peer assistance program;

(C) require the individual to comply with terms and conditions issued and monitored by the Board instead of participating in a peer assistance program; and

(D) execute a waiver of an individual's participation in a peer assistance program if the individual has achieved a satisfactory period of treatment or documented sobriety that complies with Board rules and policies, and it is determined that the individual's continued participation is not necessary for the protection of the public.



September 24, 2018

James W. Johnston
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

Re: 22 TAC §217.13, *Peer Assistance Program*

We appreciate the Board's implementation of the peer assistance provisions of HB 2950. TNA agrees with the recommendations from the Sunset Commission, and is looking forward to working with Board of Nursing (BON) to make improvements in the Texas Peer Assistance Program for Nurses (TPAPN).

We have one minor concern with the rule language, as proposed. We understand that the applicable statute references a "treatment plan," but we hope the agency will take this opportunity to provide a much-needed clarification in its rule language. Neither the BON nor TPAPN provide nurses with a "treatment plan." Instead, the BON sets requirements for participation. Our concern with calling the requirements a "treatment plan" is that it implies that TPAPN provides treatment, which it does not.

The program auditors agreed with the need for clarification. In their first recommendation, they stated, "TPAPN should clarify the mission and role of its program." The auditors went on to say, "TPAPN should clarify that it is a monitoring program and not a treatment program. Nurses participating in the program need to receive treatment from credentialed treatment facilities and practitioners." This is a straightforward recommendation that is easy to implement.

The BON could fix this misnomer by replacing "treatment plan" with "participation requirements" in the rule language. This would make it clear to applicants that the Board can reevaluate the participation requirements rather than the plan for treatment, and that TPAPN is not a treatment provider.

Thank you for taking the time to consider our comments, and we hope that you will reach out to us with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Jeff Watson". The signature is written in a cursive, flowing style.

Jeff Watson, DNP, RN-BC, NEA-BC, NE-BC, CRRN
President, Texas Nurses Association