

Name – Nursing Peer Review Plan – NU 001	Revision #: 0 Revision Date: Effective Date: 09/01/2015
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## **Nursing Peer Review Plan**

Advocare Consulting & Support Solutions, Inc. (ACSS) under the Nursing Practice Act has developed a written plan to govern peer review of Licensed Nurses providing patient care. This plan will pertain to any vocational nurse (LVN), registered nurse (RN) or advanced practice nurse (APN) who is employed by ACSS or employed by a provider contracted with ACSS.

The written plan will identify and report nurses who are employed by ACSS or employed by a provider contracted with ACSS who expose or are likely to expose patients or other persons unnecessarily to a risk of harm, engage in unprofessional conduct, fail to care adequately for a patient, or fail to conform to the minimum standards of acceptable professional/vocational nursing practice, or whose practice is or is likely to be impaired by chemical dependency. Any incident that is reportable under the Nursing Practice Act will be reviewed by the nurse peer review committee.

### **I. Definitions**

**BOARD:** Means the Texas Board of Nursing.

**COMMITTEE:** Means the Peer Review Committee.

**MINOR INCIDENT:** Means conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the patient or other person. There are 3 circumstances in which the conduct cannot be considered a minor incident.

- Any error that contributed to a patient's death;
- Criminal conduct defined in NPA 301.4535; or
- A serious violation of the Board's Unprofessional Conduct Rule involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.

**PEER ASSISTANCE PROGRAM:** Means "The Texas Peer Assistance Program for Nurses" and is currently the only board approved program. The Program encourages nurses to seek help with psychiatric or substance use disorders. It was created as a non-punitive, confidential and voluntary alternative to reporting nurses to the Texas Board of Nursing.

**PEER REVIEW:** Means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of complaints concerning a nurse or nursing care, and determination or recommendation regarding a complaint.

**PROFESSIONAL NURSE:** Means a registered nurse and/or an advanced practice nurse.

**PROVIDER:** Means any agency that provides services to patients in Home & Community Based Services or Intermediate Care Facilities or related programs.

**RESPONSIBLE DEPARTMENT:** Means the department where the nurse receives assignments.

Name – Nursing Peer Review Plan – NU 001	Revision #: 0 Revision Date: Effective Date: 09/01/2015
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## II. Types of Peer Review

There are two types of nursing peer review:

1. Incident-based, in which case peer review is initiated by the department or clinic in which the services of a nurse are utilized; or
2. Safe Harbor, which may be initiated by a nurse prior to accepting an assignment or engaging in requested conduct that the nurse believes, would place patients at risk of harm, thus potentially causing the nurse to violate their duty to the patient(s). Invoking safe harbor protects the nurse from licensure action by the Texas Board of Nursing (Board) as well as from retaliatory action.

## III. Peer Review Committee Membership

There will be a Peer Review Committee (Committee) for the purpose of conducting nursing peer review. The Committee will review the nursing practice of a nurse. The Committee membership will include:

- nurses as three-fourths of its members;
- only vocational nurses and registered nurses as voting members when peer review involves the practice of a vocational nurse;
- registered nurses as two-thirds of its members with only registered nurses as voting members when peer review involves the practice of a professional nurse; and/or
- at least one nurse who has working familiarity of the area of nursing practice in which the nurse being reviewed practices.

Since peer review is an intra-professional, non-adversarial process, ACSS' legal staff participation shall be at the discretion of the Committee and limited in scope. The legal staff will attend by invitation and shall not be allowed to vote.

In addition, exclude from membership or attendance at the Committee hearing any person(s) with administrative authority for personnel decisions directly relating to the nurse. A person with administrative authority over the nurse may only appear as a fact witness.

The Committee Chairperson will call meetings of the Committee. A meeting will be held annually for the election of officers, orientation of new members, and other matters as deemed necessary.

## IV. Role of Peer Review Committee

The Committee will determine if licensure violations have occurred and, if so, if the violations require reporting to the Board. The Committee will provide that notice to the Board.

The Committee shall give the nurse being reviewed due process, including notice and opportunity for a hearing.

The Committee's determination and review is advisory only and does not make employment or disciplinary decisions. The nurse's reporting department with oversight from the Office of Human Resources will make their own decision about appropriate disciplinary actions; however, the

Name – Nursing Peer Review Plan – NU 001	Revision #: 0 Revision Date: Effective Date: 09/01/2015
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department may choose to utilize the decisions of the peer review committee in determining what action to take in regards to the nurse's employment.

In addition, neither the Board of Directors of ACSS nor its' Office of Human Resources or the provider in which ACSS is contracted with may prohibit the Committee from filing a report to the Board.

## **V. Confidentiality of Peer Review**

All proceedings of the Committee are confidential and all communications made to the committee are privileged. All information made confidential is not subject to subpoena or discovery in any civil matter, is not admissible as evidence in any judicial or administrative proceeding, and may not be introduced into evidence in a nursing liability suit arising out of the provision of, or failure to provide nursing services.

## **VI. Disclosure of Peer Review**

The Committee, on request, shall disclose written or oral communications made to the Committee and the records and proceedings of the committee to:

- a licensing authority of any state;
- a law enforcement agency investigating a criminal matter;
- ACSS;
- any provider contracted with ACSS;
- another peer review committee;
- a peer assistance program;
- an appropriate state or federal agency or accrediting organization or surveys for quality of care; or
- a person engaged in approved research, if all information that identifies a specific individual is deleted.

## **VII. Request for Initiation of Peer Review**

To request that an incident be reviewed by the Committee, the facts/allegations should be forwarded along with any additional pertinent data to the Committee. Peer review may also be initiated pursuant to the Safe Harbor provisions.

## **VIII. Incident-Based Peer Review**

The nurse being peer reviewed must receive notification of the peer review process including:

- that his/her practice is being evaluated by the Committee;
- the date the Committee will meet, which is not less than 21, but no more than 45 calendar days from the date of notice;
- a copy of the peer review plan, policies and procedures;
- the notice must include:

- a description of the event(s) to be evaluated in enough detail to inform the nurse of the incident, circumstances and conducts, and should include date(s), time(s), location(s), and individual(s) involved. Any patient information shall be identified by initials or number to protect confidentiality, but the nurse shall be provided the name of the patient.
  - the name, address and phone number of the appropriate Committee's Chair as the contact person to receive the nurse's response.
- the nurse is provided the opportunity to review, in person or by attorney, at least 15 calendar days prior to appearing before the Committee, documents concerning the event under review;
- the nurse if provided the opportunity to appear before the committee, make a verbal statement, ask questions and respond to questions of the committee and provide a written statement regarding the event under review;
- the nurse shall have the opportunity to:
  - call witnesses, question witnesses, and be present when testimony or evidence is being presented;
  - be provided copies of the witness list and written testimony or evidence at least 48 hours in advance of the proceeding;
  - make an opening statement to the Committee;
  - ask questions of the Committee and respond to questions of the Committee; and
  - make a closing statement to the committee after all evidence is presented.
- the Committee must complete the evaluation within 14 calendar days from the date of the peer review hearing.
- within ten (10) calendar days of completion of the peer review hearing, the Committee must notify the nurse in writing of its determination.
- the nurse shall be given the opportunity, within ten (10) calendar days, to provide a written rebuttal to the committee's findings which shall become a permanent part of the peer review record.

#### **IX. Process for Nurse Invoking Safe Harbor**

To activate Safe Harbor protections, the nurse must:

- At the time the nurse is requested to engage in the activity, notify the supervisor making the assignment in writing that the nurse is invoking Safe Harbor. The nurse should complete the Board's Quick Request form or provide a document that contains the minimum information required by the Board.
- Prior to leaving at the end of the work period, the nurse must submit a written Comprehensive Request for Safe Harbor form or provide a document that contains the minimum information required by the Board.
- A nurse may complete a determination regarding the Medical Reasonableness of a Physician's Order form.

#### **X. Nurse Refusing Assignment**

Under the Nursing Practice Act, section 301.352 a nurse may refuse an assignment when the nurse believes in good faith that the requested conduct or assignment could constitute grounds for reporting

Name – Nursing Peer Review Plan – NU 001	Revision #: 0 Revision Date: Effective Date: 09/01/2015
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the nurse to the Board, could constitute a minor incident, or could constitute another violation of the Board statutes or rules. Situations involving potential risk of harm to patients or the public would be “violating the nurse’s duty to the patient” because all nurses have a duty to maintain a safe environment for patients and others for whom the nurse is responsible. Safe harbor enables the nurse to accept assignment, thus allowing the nurse to protect their license from Board sanctions while at the same time delivering the best care possible to a patient(s).

## **XI. Duty of Peer Review Committee to Report**

The Committee is required to report to the Board if they believe in good faith that a nurse has engaged in conduct subject to reporting as defined in the Nursing Practice Act, §301.401(1). This normally involves one or more suspected violations of Rules 217.11, Standards of Nursing Practice, or 217.12, Unprofessional conduct, or may fail to meet the criteria for consideration as a minor incident.

If the Committee finds that a nurse is engaged in conduct that is subject to reporting, the Committee must file a signed, written report to the Board using the Employer/Peer Review Report form.

## **XII. Employer Reporting**

The department where the nurse is assigned may take disciplinary action before the Committee reviews. The Employer/Peer Review Report form will need to be completed by the responsible department with review by the Office of Human Affairs and sent to the Board if one of the following actions is taken toward a nurse:

- termination or suspension for seven (7) or more days;
- makes an agency nurse a do-not-return, or
- takes other substantive disciplinary action against a nurse for practice-related errors (including accepting a nurse’s resignation in lieu of termination).

The above disciplinary action would be taken against a nurse for the following behaviors:

- unnecessarily exposing a patient or other person to a risk or harm,
- unprofessional conduct;
- failure to care adequately for the patient;
- failing to conform to the minimum standards of acceptable nursing practice;
- impairment or likely impairment related to chemical dependency or mental illness

The responsible department will notify the Chairperson of the Committee for their review. In this instance, the Committee will meet solely to review external factors that may have contributed to the nurse’s error to determine whether further review is warranted. Because the nurse has already been reported to the Board, due process requirements do NOT apply to the nurse in this situation.

## **XIII. Minor Incidents Reporting Obligation**

The Committee, when reviewing a nurse’s involvement in a minor incident will not report to the Board unless the conduct:

Name – Nursing Peer Review Plan – NU 001	Revision #: 0 Revision Date: Effective Date: 09/01/2015
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- Creates a significant risk of physical, emotional or financial harm to a patient;
- Indicates the nurse lacks a conscientious approach to or accountability for their practice;
- Indicates the nurse lack the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies are not readily mediated; or
- Indicates a pattern of multiple incidents demonstrating that the nurse’s continued practice would pose a risk of harm to clients or others.

#### **XIV. Reporting of Nurse to Approved Peer Assistance Program**

The Committee has the option to report a nurse whose conduct results from mental illness or chemical dependency to the Texas Peer Review Assistance Program in lieu of reporting to the licensing board.

#### **XV. Peer Review Records**

Peer review records will be maintained by the chair of the Committee in a secured locked cabinet or electronic folder on an approved server. The institution’s record retention schedule will be followed.