New Requirement: Nursing Jurisprudence and Ethics

All nurses are required to complete at least two contact hours in nursing jurisprudence and ethics prior to the end of every third licensure renewal cycle. The contact hours must be approved as continuing nursing education (CNE). This requirement cannot be met through an approved national nursing certification. Rule 216, related to Continuing Competency, was amended to reflect the new requirements and became effective February 23, 2014.

New Requirement: Nursing Jurisprudence and Ethics

The content must include information about:
1. The Texas Nursing Practice Act
2. The Texas Board of Nursing (BON) rules, including Board Rule 217.11; Standards of Nursing Practice
3. The Texas BON Position Statements
4. Principles of nursing ethics
5. Professional boundaries

Types/Sources of Law

Statutory
TNPA
Administrative
BON Rules and Regulations
Common Law
Court Cases

Jurisprudence Exam

Beginning 9/2008- all new grads and endorsees must take and pass exam with a 75% pass rate before being licensed

Three Legal Pitfalls

Malpractice - Failing to do what a reasonable and prudent nurse would do in the same or similar circumstance [or “Doing what...etc”]

Peer Review - (Defined in NPA as variety of activities) Evaluation of nursing services, qualifications of a nurse, quality of pt. care rendered by a nurse, merits of a complaint re: a nurse/nursing care, determination or recommendation

Employment - Suspensions, Terminations, Non-Renewal of Contract
Brief Review of PEER REVIEW

Mission of Licensing Board
Protect and promote the welfare of the citizens of the state

Thousands of Texas Nurses Reported Every Year
Over 17,000 complaints in each of past two years
Over 3,000 Nurses disciplined each year from all types of practice sites, including the school setting

Composition of the BON
Members appointed by the Governor with advice and consent of senate (13 Members)
1 APN; 2 RNs; 3 LVNs; 1 Nurse Faculty LVN Program; 1 NF ADN; 1 NF BSN; 4 Public Members
Executive Director - Katherine Thomas
Staff - includes approximately 42 Investigators

Peer Review
Mandatory reporting
Confidentiality of process
Anonymous reporting
Immunity from liability (retaliation by the reported nurse) if in good faith

Reportable Conduct
(A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;
(B) causes a person to suspect that the nurse’s practice is impaired by chemical dependency or drug or alcohol abuse;
(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries;
(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse’s continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior
Rule 217.11 Standards of Practice

The Texas Board of Nursing is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse’s license even if no actual patient injury resulted.

(1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:

(A) Know and conform to the Texas Nursing Practice Act and the board’s rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse’s current area of nursing practice;

(D) Accurately and completely report and document:

(i) the client’s status including signs and symptoms;
(ii) nursing care rendered;
(iii) physician, dentist or podiatrist orders;
(iv) administration of medications and treatments;
(v) client response(s); and
(vi) contacts with other health care team members concerning significant events regarding client’s status;

(E) Respect the client’s right to privacy by protecting confidential information unless required or allowed by law to disclose the information;

Rule 217.11 Standards of Practice

(J) Know, recognize, and maintain professional boundaries of the nurse-client relationship;

(P) Collaborate with the client, members of the health care team and, when appropriate, the client’s significant other(s) in the interest of the client’s health care;

(Q) Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(S) Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made;

(T) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse’s educational preparation, experience, knowledge, and physical and emotional ability;

Rule 217.12 Unprofessional Conduct

The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

(1) Unsafe Practice—actions or conduct including, but not limited to:

(A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11.

(D) Delegating or assigning nursing functions or a prescribed health function when the delegation or assignment could reasonably be expected to result in unsafe or ineffective client care;

(4) Careless or repetitive conduct that may endanger a client’s life, health, or safety. Actual injury to a client need not be established
Rule 217.12  Unprofessional Conduct

(G) Misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation;

Minor Incident Rule 217.16

Revised May 2006
Need not be reported unless
5/year (was 3/year)
4 criteria= NOT minor-1) significant risk of harm; 2) lacks conscientious approach or accountability; 3) lacks easily remediated knowledge & competencies; 4) pattern of multiple minor incidents

Minimum Due Process
Rule 217.19 Incident Based PR

Written Notice
Time Frame/Limitations
Confidentiality
Opportunity to View Records
Hearing/Parity of Representation
Report to the BON is Advisory

BON: Typical Investigation Process

If RN/LVN has not already done so, advisable to hire an attorney

Current Typical Investigation Process

An Informal Settlement Conference may be held at the BON (BON staff may deny the nurse an ISC ). This is an attempt to resolve (settle) the matter. If an agreement is reached, an Agreed Order will be drafted by the BON enforcement staff for signature of the RN/LVN and RN’s/LVN’s attorney

Typical Investigation Process

The Order is then presented to the full Board for ratification and becomes effective on the day of ratification
The RN/LVN then functions under the stipulations in the Order for the time designated
**Typical Investigation Process**

The fact of the discipline remains on the RN’s or LVN’s record and is public information “forever”, unless deferred.

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**Corrective Action**

Passed in 2009 Legislative Session
Non-disciplinary action consisting of a fine, remedial education, or any combination of a fine or remedial education. Unlike disciplinary actions, a corrective action will not be reportable to the public or data banks. Confidential by law.

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**Change to Corrective Action**

The Board is proposing new §213.32(2)(H) to include low level practice violations in the list of violations that are eligible for Resolution through a corrective action. These types of practice errors do not involve a serious risk of harm to the public or patients.

As such, the Board believes that these types of practice violations may be safely resolved through a corrective action. A corrective action remains appropriate for situations where an individual has only committed one of the specified violations of the rule for the first time.

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**Categories of Discipline**

- Remedial Education
- Warning
- Reprimand
- Suspension
- Revocation

Can Surrender at any time, but can have serious employment consequences.

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**Typical Investigation Process**

If an agreement cannot be reached at the informal level and the BON has probable cause to believe the RN/LVN violated the NPA or R&Rs, Board will commence formal proceedings by filing formal charges (this is public information).
Types of Stipulations

- Nursing Jurisprudence Course
- Other Courses (Med, Physical Assess.)
- Indirect or Direct Supervision
- Practice Site Restrictions
- Employer Notification
- Employer Reports

National Data Bank

The names of all disciplined nurses are sent to the two national data banks and the information is available to all nursing licensing boards.

Case Studies

Nursing Ethics

Nursing Ethics: Rule 213.27  Good Professional Character

(a) Good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board’s rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

Nursing Ethics: Rule 213.27  Good Professional Character

2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting.
Nursing Ethics: Rule 213.27  Good Professional Character

(A) is able to distinguish right from wrong;
(B) is able to think and act rationally;
(C) is able to keep promises and honor obligations;
(D) is accountable for his or her own behavior;
(E) is able to practice nursing in an autonomous role with patients/clients, their families, significant others, and members of the public who are or who may become physically, emotionally, or financially vulnerable;
(F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;
(G) is able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.

Nursing Ethics: ANA Code of Ethics for Nurses

The Code of Ethics for Nurses was developed as a guide for carrying out nursing responsibilities in a manner consistent with quality in nursing care and the ethical obligations of the profession.

9 Provisions

Board Position Statements

Board Position Statements do not have the force of law, but are a means of providing direction for nurses on issues of concern to the Board relevant to protection of the public. Board position statements are reviewed annually for relevance and accuracy to current practice, the Nursing Practice Act, and Board rules.

15.1 through 15.29, covering topics that include:

Initiating Standing Orders (15.5)
“Abandonment” (15.6)
Duty of Nurse to Patient (15.14)
Use of Complimentary Modalities (15.23)

Board Position Statement 15.29 Use of Social Media by Nurses

The use of social media can be of tremendous benefit to nurses and patients alike. However, nurses must be aware of the potential consequences of disclosing patient-related information via social media. Nurses must always maintain professional standards, boundaries, and compliance with state and federal laws as stated in Board Rule 217.11(A). All nurses have an obligation to protect their patient's privacy and confidentiality [as required by Board Rule 217.11(E)] which extends to all environments, including the social media environment.
Professional Boundaries vs HIPAA

Spaces between the Nurse’s power and the patient’s vulnerability. Power comes from the professional position and access to private knowledge.

Professional Boundaries

Establishing boundaries allows the Nurse to control the power differential and allows a safe connection to meet the patient’s needs.

3 Types of Boundary Problems

Boundary Crossings
Boundary Violations
Sexual Misconduct

Boundary Crossings

Brief excursions across boundaries that may be inadvertent, thoughtless or even purposeful if done to meet a special therapeutic need.
Result in a return to established boundaries

Boundary Crossings

Should be evaluated for potential patient consequences
Repeated crossings should be avoided (establishes a pattern of practice)
Boundary Violations
Can result with confusion between needs of the Nurse and of the patient
Can cause delayed distress for the patient, which may not be recognized or felt by the patient until harmful consequences occur

Professional Sexual Misconduct
Extreme boundary violation
Includes behavior that is: seductive, sexually demeaning, harassing, or reasonably interpreted as sexual by the patient

Guiding Principles
The Nurse should avoid dual relationships, where the Nurse has a personal or business relationship and a professional one

Legal Implications
• Employer Discipline
• Malpractice
• License Investigation
• Criminal Investigation
Social Media and the Professional Nurse

Commonality

“I was stressed”
“I was overwhelmed”
“I was exhausted”
“I needed to vent”

National Council State Boards of Nursing

https://www.ncsbn.org/Social_Media.pdf

“White Paper: A Nurse’s Guide to the Use of Social Media”
Information and scenarios

National Council State Boards of Nursing

http://www.youtube.com/watch?v=i9FBEiZRnmo

YouTube video on Social Networking

Case Studies
Interventions to Decrease Your Risk

Protections
Know the Texas Nursing Practice Act, BON’s Rules and Regs. and specific laws
Professional Competency
Documentation
Professional Liability Insurance (Lawyer, Damages, Bond for Appeal)
Knowledge of Safe Harbor Protections
Delegation

Important to Remember
• Most Professional Liability Policies will reimburse the nurse for attorney’s fees and personal expenses for defense before the licensing board up to a specified amount.
• (Be sure to check the policy)