RESOURCE MANUAL

The Impaired Nurse

Prevention
Identification
Investigation
Reporting

Colorado Board of Nursing
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IMPORTANT PHONE NUMBERS

DRUG ENFORCEMENT ADMINISTRATION (DEA):
North of Monument, CO-303-705-7300
South of Monument, CO-719-866-6127

Colorado Department of Public Health and Environment: 303-692-2800

Colorado Board of Nursing: 303-894-2430

Office of Investigations, Division of Registrations,
Department of Regulatory Agencies: 303-894-7696

"Helping the impaired nurse is difficult, but not impossible. The choices for action are varied. The only choice that is clearly wrong is to do nothing."

National Council of State Boards of Nursing (2001). *Chemical Dependency Handbook for Nurse Managers-A Guide for Managing Chemically Dependent Employees.* Chicago: NCSBN, p. IV.

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INTRODUCTION

Each year the Colorado Board of Nursing receives approximately 500 complaints against RNs and LPNs that allege a variety of violations of the Nurse Practice Act. Approximately 20% of the total number of complaints is related to drug/alcohol use or diversion of drugs in the workplace. Because this population of nurses poses a serious risk to the health and safety of patients, the Board of Nursing, in collaboration with the Colorado Nurse Health Program, is continuously seeking to proactively intervene with nurses who have substance use and dependency problems in an efficient and timely manner.

The purpose of this resource manual is to provide essential information regarding the prevention, identification, investigation, and reporting of a nurse with a substance use/chemical dependency problem and to assist in the referral of a nurse with a substance use/chemical dependency problem for appropriate assessment and monitoring. (See Appendix A-The Colorado Nurse Health Program and Appendix B-Chapter XII-Rules and Regulations for Impaired Professional Diversion Program.)

DIVERSION

Nurses who administer controlled drugs to patients have ready access to the supply. There are systems level strategies that can be implemented to both prevent and detect the diversion of controlled drugs.

Definition of Diversion: Pursuant to Board policy, "Diversion occurs when a controlled substance or a drug having a similar effect is not used as prescribed. Drug diversion includes obtaining a controlled substance or drug having similar effects from wastage."

PREVENTION OF DIVERSION

Most health care facilities report drug diversion as a result of an incident (e.g., a patient reports that he did not receive his pain medication, a nurse is found in a bathroom unconscious from an overdose of narcotics). Regular monitoring of medication records can greatly reduce or prevent these incidents. The following are recommendations for preventing drug diversion in a health care facility:

- Prohibit nurses from sharing or revealing their controlled substance access code to other nurses.

- Regularly monitor how drugs are administered, wasted and documented. For example:

    - Does one nurse document the administration of more PRN medications than other nurses?
    - Was the patient on the unit at the time the dose was documented?

- Was the dose signed out from the narcotic supply but not documented in the medication administration record and/or nurse's notes?
- Did the nurse medicate another nurse's patient?
- Does the nurse say s/he was "too busy" or "forgot" to obtain a witness to waste the controlled substance?
- Does the nurse sign out a larger dose of controlled substance when the ordered dose is available, then sign that the remaining medication was wasted?
- Did the nurse say s/he gave her/his controlled substance access code to another nurse?
- Do controlled substance withdrawal times generally correspond to administration times?
- Are patients reporting that the pain medication ordered does not relieve their pain on the nurse's shift?
- Is the controlled substance count inaccurate when a particular nurse works?
- Are controlled substances signed out for a patient who has no order for them?
- Are times and amounts of controlled substances signed out authorized by physicians' orders?
- Do staff signatures/initials appear to be forged?
- Do liquid medications have normal color, odor, and consistency? Have a pharmacist inspect the medication. Determine if testing by a chemical or forensic lab is indicated. If testing is indicated, send a sample of the medication to a chemical or forensic laboratory. Have someone witness that the sample sent to the lab came from the bottle of medication in question. Save the bottle with the remaining medication for evidence. Please note that most toxicology laboratories do not test for the chemical composition of substances.

- Regularly inspect controlled substance packaging and appearance for drug substitution.

- Have a pharmacist inspect any medications that are returned to the facility by a nurse, (e.g., the nurse says she took the missing controlled substance(s) home in her pocket by mistake). Determine if testing by a chemical or forensic lab is indicated. Refractometers may be purchased for drug identification at a facility. See the Internet for purchasing options.

- Learn common behaviors displayed by nurses with chemical dependency problems. (See Appendix C-Warning Signs of Chemical Dependency.)

- Establish fitness for duty policies and procedures that support timely and appropriate intervention when impairment is suspected.

- Schedule in-services on the fitness for duty policy, impairment, documentation of the administration of controlled substances, etc.

- Ensure that supervisors know when they can require alcohol/drug testing and the reporting requirements to the Board of Nursing and other agencies.

- Use state and federal resources for ensuring the proper storage, surveillance, and administration of controlled substances.

- Regularly access the Internet for information on chemical dependency and drug diversion issues. (See Appendix D-Web Sites of Interest.)

- Conduct pre-employment screening (e.g., drug screening, criminal background checks, licensure verification).

- Establish and enforce procedures for the safe disposal of controlled substances, including disposal at the time of a patient's death.

- Establish and enforce procedures for accepting deliveries of controlled substances from pharmacies.

- Inform all potential employees of your prevention plan. Regularly review this plan with current employees.

- Audit automated drug dispenser reports (e.g., Pyxis machines) on a routine basis.

A Special Note on Fentanyl:

Fentanyl is one of the most frequently diverted drugs because 28%-84% of the medication remains in a fentanyl patch after 72 hours (Wyoming Pharmacy Association NewsLetters-www.wpha.net/may2000.asp). Nurses divert patches by: removing the patch from the patient and keeping it; removing a new patch, keeping it and replacing the used patch on another part of the patient's body; removing the medication from the patch with a syringe; removing patches from sharps containers; and removing fentanyl from drug stock.

The following are recommendations for the prevention and detection of the diversion of fentanyl:

- During shift count of controlled substances, inspect the foil packets containing fentanyl patches for signs of tampering.

- Each time a fentanyl patch is newly applied to a patient's skin, use a pen or felt tip marker to write the date, time, and initials of the medication nurse on the patch. During the time the patient wears the patch, regularly check this documentation

against medication administration records. Also, inspect the patch for cuts, needle holes or other evidence of tampering, such as a dried-out appearance.

(New York State Info for Providers
www.health.state.ny.us/nysdoh/provider/nhadmin/fentanyl_ltr.htm).

- Return used fentanyl patches to the pharmacy for destruction. Have two nurses count used fentanyl patches on each shift as part of the narcotics count until they are returned to the pharmacy. Document and require a witness of the number of patches returned to the pharmacy.

- Never allow the injectable form of fentanyl to be left unsupervised (e.g., some nurses in surgery and emergency departments remove vials/ampules of fentanyl from the narcotic cabinet or draw up the fentanyl in a syringe in advance and leave it at the patient's bedside before medicating the patient).

A Special Note for Long Term Care Facilities Using Emergency Drug Boxes:

The following are recommendations for discouraging diversion of controlled substances from emergency drug boxes in long term care facilities:

- When the box is delivered from the pharmacy, a contents list of the box is checked by two licensed nurses. If the drugs documented on the contents list are in the box, the two licensed nurses sign the list as received and lock the box. If there are medications missing, return the emergency box to the pharmacy staff member who delivered it.

- Keep the contents list for the emergency drug box in the controlled substance count book. Write the number of the lock on the contents list. Document that the lock number was checked and verified each shift by two nurses.

- If medication from the box is needed, the medication is signed out on the contents list by a licensed nurse. The medications in the box are counted by two licensed nurses each change of shift until the medication is replaced and the box is relocked.

- Record administration of the controlled substance on a separate control sheet. (See Appendix E-Colorado State Board of Pharmacy, Rules and Regulations 10.00.00 Emergency Kits, Amended, effective 6/30/02.) Periodically check the Board of Pharmacy's web site at www.dora.state.co.us/pharmacy for revisions to this rule.

Identification of Substance Use/Drug Diversion

The following are recommendations for the identification of possible substance abuse and drug diversion in a health care facility:

- Educate staff about the signs of substance use and/or impairment and set the expectation that the staff will immediately report suspect behavior to the supervisor. (See Appendix C-Warning Signs of Chemical Dependency.)

- Assess the nurse's behavior and appearance. At least two people should conduct the assessment. The person who is assessing the nurse benefits from the support of another nurse and the second person serves as a witness.

- Assess the patient (e.g., for pain, reaction to medication the nurse may have substituted for the diverted medication, etc).

- Obtain an order for a urine drug screen for the patient from whom the drug was allegedly diverted to determine if the patient received the drug or if another drug was substituted for the ordered drug.

- Remove the nurse from duty immediately if impairment is suspected.

- Require a urine sample for drug screening. See "Important Information on Drug Testing." It is recommended that health care facilities establish written agreements with temporary staffing agencies that ensure that nurses employed by those agencies will be required to submit to urine drug testing at the request of the health care facility. That agreement could state that staff from the temporary staffing agency will come to the health care facility, at the time the health care facility staff determine that a urine drug screen/Breathalyzer is necessary, to escort the agency nurse to the collection site/lab used by the health care facility for testing. Such agreements are necessary because nurses from temporary staffing agencies are seldom required to submit to drug screening. Health care facilities believe that the agency nurse is not its responsibility. Not all staffing agencies interview the nurse about a substance abuse/diversion incident in a timely manner or require a drug screen. Therefore, many impaired nurses who are employees of temporary staffing agencies are allowed to work in multiple facilities until someone takes responsibility for reporting them to the Board. It is also common for a nurse who is an employee of a health care facility to allege that a staffing agency nurse diverted narcotics, when, in fact, the nurse employee diverted the narcotics.

- If the identity of the nurse who diverted the narcotics cannot be ascertained, identify who had access to the narcotic stock on all three shifts and require those nurses, all nurses or all staff to submit to urine drug testing, if facility policy supports this intervention.

Important Information on Drug Testing

Recommendations for drug testing include:

- Always escort the impaired nurse to the collection site.

- Ensure that chain of custody is preserved.

- Do not allow the impaired nurse to drive home.

- Request that the lab use an "expanded professional panel" when testing the nurse's urine. Specify on the lab form what substance was diverted to ensure that the lab tests for that specific substance. For example, synthetic opiates are not included in routine drug panels. Therefore, if Demerol is missing and "opiates" is checked on the lab form, the specimen will not be tested for Demerol.

- Ask the lab to test for the lower limit of quantitation of all controlled substances requested on the lab request form, not the standard cut off levels.

- If the nurse says s/he has a prescription, obtain the drug screen anyway. Ask for quantified testing that will establish if the nurse is taking the medication as prescribed or supplementing the amount from facility controlled substance stock. Require written verification of the prescription by the nurse's health care provider.

- If the drug screen indicates that the nurse is taking the controlled substance as prescribed, it is recommended that the nurse be referred for a fitness for duty evaluation to ensure that the medication s/he is taking is not interfering with critical thinking skills, memory, concentration, etc. Neuropsychological testing may be indicated to assess for cognitive impairment.

- If a nurse presents with the odor of alcohol on her/his person, require a Breathalyzer or a blood alcohol level in addition to a urine drug screen. Breathalyzers must be administered or blood alcohol levels drawn ASAP because alcohol is metabolized quickly by the body.

- The standards for sample collection and drug testing vary. Establish a urine drug screen policy and a relationship with a collection site and laboratory that has agreed to collect and test samples according to the health care facility's urine drug screen policy. (See Appendix F-Colorado Board of Nursing Urine Drug Screen Policy. It may be used as a reference when writing a urine drug screen policy for a health care facility.)

- Establish a plan for intervention on any shift and educate staff regarding the plan. For example, collection sites usually close in the evening. Consequently, the plan should include information on where a nursing supervisor should send a nurse for drug testing on evening and night shifts, who will cover for the nurse, who will escort her/him to the collection site or emergency department, how transportation will be paid, etc.

Investigation of Substance Use/Drug Diversion

One of the greatest barriers to the Board of Nursing's investigation of a case of alleged drug diversion is the lack of documentation, evidence, and witness information obtained by the reporting health care facility.

The following are recommendations for conducting an internal investigation for alleged drug diversion at a health care facility. These recommendations can supplement any facility procedures already in place:

- Do not destroy any documents that contain information about possible impairment/drug diversion.

- Ensure that investigative documents, including pertinent medical records, can be found by another administrative nurse in the investigating nurse's absence.

- Document your observations about the nurse, for example, appearance, gait, speech, pupils, mood swings, etc.

- Obtain witness statements in writing. Ensure that they are dated, timed, and signed.

- If the nurse admits to being impaired/diverting, obtain her/his admission in writing with a witness present. Ask the nurse to document what drugs were diverted, within what time period, and how the diversion occurred.

- Ensure that all documents are dated, timed, and signed with the staff member's full name and title.

- Refer the nurse for a urine drug screen and a Breathalyzer test/blood test for alcohol, pursuant to facility policy, as they are essential components of an investigation of drug diversion, drug/alcohol impairment.

- Take actions to ensure the safety of patients and other staff (e.g., suspension, administrative leave).

- After reviewing the results of the internal investigation, notify the required agencies, review the Board's reporting rules, and establish an intervention plan. (See Appendix G-Chapter XVIII- Rules and Regulations Concerning Reporting Requirements.) This plan may include any or all of the following: referral to the Colorado Nurse Health Program, a back to work agreement, and a complaint to the Colorado Board of Nursing. The Board mandates reporting of all instances of diversion. An employer is required by statute to report any nurse who is terminated or is allowed to resign in lieu of termination for violating the Colorado Nurse Practice Act. See 12-38-116.5(3)(b)(I).

- Meet with the nurse, present the plan; proceed as indicated by the nurse's response.

If you are unsure about how to proceed at any point in your internal investigative process, you may call a Board of Nursing Nurse Practice Consultant at 303-894-2430, or staff at the Colorado Nurse Health Program, 303-716-0212 or toll free at 1-877-716-0212, for assistance. (See Appendix H-Checklist for Internal Investigation of Drug Diversion.)

Reporting Substance Use/Drug Diversion

There are both state and federal requirements for reporting drug diversion. Health care facilities or individuals can make a report. Health care facilities are responsible for reporting, not for filing charges. The crime is against the state of Colorado. State statute protects those who report diversion/theft of controlled substances to law enforcement from civil lawsuits. An employer must report the diversion/theft of narcotics to a law enforcement agency. It is recommended that a report be filed with both the local police department and the Drug Enforcement Agency (DEA).

Contacts for reporting drug diversion include:

- DEA: If your facility is north of Monument, CO, call 303-705-7300.
  If your facility is south of Monument, CO, call 719-866-6127

- Colorado Department of Public Health and Environment (DOPHE): 303-692-2800

- Colorado Board of Nursing: 303-894-2430

All complaints to the Colorado Board of Nursing must be submitted in writing. Please submit your complaint on the Board's complaint form. Download a complaint form at www.dora.state.co.us/nursing or call 303-894-2430 to request a complaint form. (See Appendix I-The Complaint Process/Complaint Form.)

Please note that the Colorado Board of Nursing is exempt from HIPPA regulations. (See Appendix J-HIPPA letter.)

Of the estimated 700 complaints received by the Board of Nursing each year regarding RNs, LPNs, LPTs, and CNAs, 20% lack essential information. The following information is necessary:

- Documentation must be legible. If you are sending copies of documents, be sure the copies are legible.

- Nurse's name, including a middle name and any other names used by the nurse if known

- Nurse's license number, date of birth, and social security number

- Nurse's address, including zip code

- If you are submitting documents from a patient's medical record, highlight information that supports the complaint, especially automated drug dispenser reports or pharmacy records.

- Provide specific details of the incident. Do not submit generalized information on the complaint (e.g., "RN was terminated from employment on May 8, 2003, due to issues involving controlled substances that were in violation of the Nurse Practice Act"). Instead, answer the following questions:

    - What happened?
    - Who was involved?
    - When did it occur?
    - How was it discovered?
    - Where did it occur?
    - Was there a witness?
    - In the case of controlled substance diversion, also answer the following questions:

        - What drugs were diverted?
        - Did the nurse divert for self-use?
        - Did the nurse demonstrate impaired behavior while on duty?
        - Did the nurse falsify patient records?
        - Was the nurse arrested for obtaining controlled substances by fraud or deceit, or for possession of controlled substances?
        - Did the nurse undergo drug testing? If so, what were the results?
        - Was the drug test done as part of a random drug testing procedure or as part of an investigation for diversion of controlled substances? (See Appendix H-Checklist for Internal Investigation of Drug Diversion.

- Attach all relevant documentation to the complaint form, (e.g., drug screen results, witness statements).

- Do not include any type of document generated to or by the Colorado Department of Public Health and Environment with the complaint or in lieu of the complaint form. All complaints to the Colorado Board of Nursing, for any violation of the Nurse Practice Act, should be submitted in narrative form, including the above referenced information, as an attachment to the complaint form.

- **If you believe that the nurse is demonstrating behavior that puts patients in imminent danger, call the Board of Nursing immediately. The Board has the**

authority to summarily suspend a license if certain conditions are met. The number to telephone is 303-894-2430.

The Complaint Process

If you submit a complaint about a nurse who appears to have a drug/alcohol problem, the following process may be initiated by the Board:

1. The nurse is sent a copy of the complaint, an *Agreement to Participate in the Colorado Nurse Health Program*, and a letter informing the nurse that s/he has the option of signing the agreement, within 14 days, and participating in the program. If the nurse signs the agreement, the Colorado Nurse Health Program initiates its admission process. When Board staff receive notification from the Colorado Nurse Health Program that the nurse has signed a monitoring contract, the complaint is administratively closed. If the nurse remains safe to practice and compliant with the monitoring contract, the nurse can complete the program and not have any public record of discipline on her/his license.

2. If the nurse chooses not to sign the *Agreement to Participate in the Colorado Nurse Health Program*, s/he must respond to the allegations in the complaint within 30 days. An Inquiry Panel of the Board reviews the complaint and the nurse's response to the complaint and, if the facts presented indicate a violation of the Nurse Practice Act, the Panel can order further investigation, a summary suspension, or other disciplinary action.

3. When the investigation is completed, the investigator assigned to the case writes a Report of Investigation that is reviewed by the Panel along with other pertinent information. Depending on the facts presented, the Panel can dismiss the complaint, issue a confidential Letter of Concern (LOC), issue a public Letter of Admonition (LOA), or refer the case to the Office of the Attorney General for public disciplinary action. Public disciplinary action may include a stipulation to participate in the Colorado Nurse Health Program; a suspension until a period of sobriety can be proven, then participation in the Colorado Nurse Health Program; or a revocation of the nurse's license.

4. If a nurse who is admitted to the Colorado Nurse Health Program via the above-described process becomes unsafe to practice or noncompliant with her/his monitoring contract, the program is required to refer the nurse to the Board. The Board opens a new complaint, and the original complaint, that was administratively closed when the nurse signed the monitoring contract, is reopened. The nurse is sent a copy of the documents submitted by the Colorado Nurse Health Program and asked to respond within 30 days. (See Appendix K-Colorado Board of Nursing Philosophical Statement: Impaired Nurses Participating in the Colorado Nurse Health Program.)

Conclusion

The challenge is to ensure that the citizens of Colorado receive safe nursing care, knowing that nurses themselves experience health care problems such as drug/alcohol addiction. The prevention, identification, investigation, and reporting of nurses with

chemical dependency problems requires knowledge of the disease of addiction; knowledge of local, state, and federal resources; and a comprehensive plan supported by everyone in the health care facility.

The Colorado Board of Nursing and the Colorado Nurse Health Program invite health care facilities to participate in a collaborative effort to ensure public protection while affording nurses with substance use/chemical dependency problems an opportunity to receive treatment for their disease and to remain in nursing practice.

Appendix A

THE COLORADO NURSE HEALTH PROGRAM

OUR PURPOSE

- To achieve early recognition and intervention with nurses who are chemically dependent or have mental health problems.
- To reasonably ensure patient safety while providing the nurse an opportunity to get into treatment and recovery, keep his/her license, and go back to work.
- To provide an alternative to the Colorado State Board of Nursing's disciplinary process.

HOW WE MONITOR FOR PATIENT SAFETY

- We require that each participant establish and maintain a strong treatment program, a comprehensive monitoring contract, and a well planned back-to-work agreement.

WHAT WE CAN DO FOR NURSES

- We arrange for assessments and make referrals to treatment, support groups and other elements essential to the recovery process.
- We can coordinate referrals with your Employee Assistance Program.
- If a complaint has been made to the State Board of Nursing, the Board usually gives the nurse the opportunity to participate in our program in lieu of the disciplinary process.
- We provide case management and monitor contract requirements.
- We provide Nurse Support Groups across the state.
- We provide life skills classes, including self-care, pain management, family issues, and life management.

WHAT WE CAN DO FOR MANAGERS

- Provide education and training regarding the recognition of impaired practice and how to intervene appropriately.
- Assist in the development of policies that are fair and consistent, including the issues of fitness for duty and back-to-work parameters.
- We can assist in the coordination of back-to-work agreements.
- We can facilitate the transition of a nurse back into the workplace, including groups with co-workers, with the participant’s consent.

HOW THE COLORADO NURSE HEALTH PROGRAM WORKS

- The program is directed by a seven member committee made up of addiction and behavioral health nurses, recovering nurses, a physician specializing in addictive diseases, and a consumer knowledgeable in chemical dependency.

- Nurses may apply voluntarily, or may be offered the program by the State Board of Nursing as an alternative to the disciplinary process.
- Participation is for at least three years. To complete the program, a nurse is required to work in nursing practice for at least 30 months, at least 16 hours a week, and demonstrate safe practice and a strong treatment/recovery program.
- Voluntary participation in the program is confidential, and no reports are made to the Board of Nursing as long as the nurse follows the contract requirements and does not become unsafe to practice.

KEY ELEMENTS IN A MONITORING CONTRACT

- Agreement to abstain from mood altering drugs, including alcohol.
- Participation in assessments and ongoing treatment with reports from therapist.
- Completion of a back-to-work agreement and ongoing supervision.
- Participation in Nurse Support Groups with other nurses.
- Random alcohol and drug testing, as determined.
- For those with chemical dependency, active involvement in recovery and12 step meetings and development of a relapse prevention plan.
- Regular self-status reports and self assessments.
- Regular evaluation of performance by nurse manager or practice monitor.
- Consequences for non-compliance with the contract, including the parameters for referral to the Colorado State Board of Nursing.

KEY ELEMENTS IN A BACK-TO-WORK AGREEMENT

- Direct and specific supervision of performance.
- One consistent work area with a consistent team and supervisor.
- No overtime or floating to other units.
- May be restricted from working in some areas or positions.
- Practice restrictions may include a period of time with no access to mood-altering medications, then supervised medication administration before full access is allowed.
- Consequences for violation of the agreement.

WHERE WE ARE LOCATED AND HOW TO REACH US

Main office is located at: 44 Union Blvd., Suite 505, Lakewood, CO 80228.
Phone 303.716.0212 Western Slope: 970.261.5770
Toll free number is 1.877.716.0212 Visit our web site at www.CNHP.com

Pease Note: The Colorado Nurse Health Program is organized to provide an alternative to the traditional disciplinary process. A referral to CNHP does not take the place of any obligation an employer may have to make a report to the Colorado State Board of Nursing. It is suggested that you review any questions with your legal counsel and/or the Colorado State Board of Nursing (303.894.2430).

CHAPTER XII

RULES AND REGULATIONS
FOR IMPAIRED PROFESSIONAL DIVERSION PROGRAM

STATEMENT OF BASIS AND PURPOSE

The rules contained in this Chapter XII are adopted pursuant to authority granted the Board of Nursing by C.R.S., as amended, 2000, 12-38-131. These rules are adopted to set criteria for acceptance, denial, or termination from the program, specifying that only those persons who request acceptance into the program may participate; provide that a person who is not specifically identified by the board as a candidate for the program may apply; allow licensees credit for participating in a similar program in this or another state on a case-by-case basis; and allow information that would otherwise be confidential to be released, on a case-by-case basis, to another state when such information is requested of a person who has not satisfactorily completed the program in this state.

A. ACCEPTANCE OF PARTICIPANTS

The criteria for eligibility for participation in the program are as follows.

1. A person shall be a professional or practical nurse with a license to practice nursing in this state or have applied for licensure and paid all required fees.

2. A person shall acknowledge in writing a psychiatric, psychological or emotional problem, a dependence upon or an abuse of alcohol and/or other chemicals in a manner which may affect the person's ability to practice within generally accepted standards of practice or with reasonable skill and safety to patients under his/her care. The written acknowledgment of one or more of the above stated problems shall be separate from the diversion program's admission application and shall be submitted to the Board with any referral to the Board from the diversion program.

3. A person shall not have identified practice problems or previous disciplinary action. At its discretion, the Board may allow a previously disciplined person to participate if the facts considered at the time of the diversion program application warrant such action.

4. A person shall not have been terminated or denied from this or any other impaired professional diversion program. However, at its discretion, the committee may consider these applications on a case-by-case basis, as referred by the Board. The person must report to the impaired professional diversion program any pending or current action in this or any other state.

5. A person shall agree to the terms and conditions of any contract and contract amendments with the impaired professional diversion program as set forth by the program.

6. If a person has prior disciplinary action, or if a complaint has been filed with the Board, which if the facts contained therein were proven, constitutes a violation of 12-38-117(1)(i) or (j) C.R.S., the person may apply to the program only with the written agreement or authorization of the Board which may be delegated to board staff. Such written agreement may be a public document with the Board.

7. The program shall not notify the Board of a person who has not otherwise been identified to the Board solely because the person has contacted, applied to or participated in the program. If the program has reasonable cause to believe that the person in question may be unable to practice with reasonable skill and safety, the program shall orally notify the Board within twenty four hours (or next working day) and provide all relevant information to the Board, any oral report shall be followed by a written report.

8. A licensee in compliance with another state's impaired professional diversion program who meets all other eligibility criteria may transfer with the permission and/or written proof of compliance of the other program(s). Credit may be given for compliant time served in the first program(s).

9. Failure to meet the eligibility criteria as determined by the impaired professional diversion committee may constitute grounds for denial.

B. <u>TERMINATION FROM/DENIAL OF/DISCHARGE FROM THE PROGRAM</u>

1. A person may be referred to the Board of Nursing for disciplinary action for any of the following reasons:

A. Not complying with his/her monitoring contract with the program.

B. Becoming unable to practice with reasonable skill and safety.

C. Transferring to another state, engaging in nursing practice, and failing to inform in a timely fashion that state's board of nursing, impaired professional diversion program, or their equivalent of his or her participation in Colorado's impaired professional diversion program.

D. Not maintaining eligibility criteria.

E. Falsifying or failing to disclose violations of any provision of the Nurse Practice Act.

2. A person may be discharged from the program for any of the following reasons:

A. Successful completion of the monitoring contract or,

B. At the Committee's discretion, and if the person has no unresolved complaints or stipulated Board agreement in effect.

3. The Board may proceed with formal disciplinary action against any person who has been referred by the program.

4. The records of any person who has been referred to the Board shall be available to the Board through a subpoena.

C. DEMOGRAPHIC REPORTS

1. The program shall provide to the Board on a quarterly basis demographic data as requested by the Board.

D. FINANCIAL REPORTS

1. The program shall provide a report to the Board quarterly detailing how the monies from the administering entity were utilized.

2. The program shall establish and provide the Board with an annual budget so that the Board may order funds to be released from the administering entity.

E. THE PROGRAM

The program shall:

1. Implement an outreach program and education plan which will identify licensees with alcohol and drug abuse, psychiatric, psychological, or emotional problems.

2. Implement an outreach program and education plan to encourage participation by eligible persons.

3. Implement an outreach program and education plan to encourage referrals to the programs by nursing managers, employers, treatment providers, families, and other concerned individuals.

4. Conduct an initial assessment of persons who wish to participate in the program which may include referrals for evaluations as appropriate.

5. Make appropriate referrals for evaluation and treatment.

6. Monitor the nursing practice and treatment plan compliance of participants.

7. Have a written, signed contract with all participants regardless of method of referral to the program which outlines the consequences of a failure to comply with the terms and conditions of said contract.

8. Provide a written or oral report to the Board within 24 hours (or next working day) when a person who was referred by the Board has failed to apply, or been denied or terminated from the program for any reason other than successful completion and/or when a any person has been denied or terminated from the program due to safety to practice concerns. Any oral report shall be followed with a written report.

9. Provide the reports as set forth in these rules and regulations.

10. Establish treatment and monitoring plans which will reasonably assure protection of the public as well as benefit the licensee. Such plans shall meet generally accepted standards of treatment and monitoring for impaired professional diversion programs.

11. Submit to the Board an annual internal self evaluation beginning in 1997 and an external program evaluation in lieu of the annual internal self evaluation every three years, beginning in 1999. The external program evaluator must be approved by the Board.

Appendix C

Warning Signs of Chemical Dependency*

Listed below are some signs and symptoms that may indicate a nurse may be experiencing problems with drugs or alcohol and needs to be referred for help.

Job Performance

- Inconsistent work quality, alternate periods of high and low efficiency.
- Increased difficulty meeting deadlines.
- Unrealistic excuses for lowered work quality.
- Job shrinkage, doing the minimum work necessary for the job.
- Sloppy or illogical charting.
- An excessive number of mistakes or errors of judgment in patient care.
- Long breaks or lunch hours.
- Frequent or unexplained disappearances during the shift.
- Lateness for work and/or returning from lunch.
- Volunteering to work overtime despite difficulty showing for scheduled shifts.
- Excessive use of sick time, especially following days off.
- Absences without notice or last minute requests for time off.
- Repeated absences due to vaguely defined illnesses.

Behavior, Attitude, Mood and Mental Status

- Wide mood swings from isolation to irritability and outbursts
- Difficulty in concentration.
- Marked nervousness on the job.
- Decrease in problem solving ability.
- Diminished alertness, confusion, frequent memory lapses
- Difficulty in determining or setting priorities
- Isolates from others, eats alone, avoids informal staff get-togethers, or requests transfer to the night shift.
- Unwillingness to cooperate with co-workers or inability to compromise.
- Avoids contact with supervisor.
- Over reaction to real or imagined criticism.
- On the unit when not on duty.

Medication Centered Problems

- Consistently volunteering to be the medication nurse.
- Offering to hold narcotic keys during report.
- Volunteering to work with patients who receive regular or large amounts of pain medication.
- Frequently found around medication room or cart.
- Insists on administering drugs via IM when other nurses give it PO to same patient.
- Patient charting reflects excessive use of PRN pain medication compared to shifts when other nurses are assigned to the same patient.
- Patients complaining of little or no relief from pain medications when nurse is assigned to patient
- Use of two smaller tablets of medication to give prescribed dose (two 30mg codeine tablets instead of one 60 mg tablet).
- Use of larger than necessary dose, wasting the rest (100mg Demerol when patient is to receive only 50mg).
- Missing drugs or unaccounted doses.
- Frequently reporting spills, wastage or breakage of medications.
- Charting errors include medication errors.
- Defensive when questioned about medication errors.

For further information or assistance, call the Colorado Nurse Health Program at (303) 716-0212, or toll free (877) 716-0212, or on the Western Slope (970) 261-5770.

*Adapted from Hughes, TL, Smith, LL,. Is you Colleague Chemically Dependent? Am J Nurs 94(9):31-35, 1994, and Catanzarite, A., Managing the Chemically Dependent Nurse, A guide to identification, intervention, and retention, AHA Books, 1992.

Appendix D

Web Sites of Interest

The following web sites may be helpful:

Alcoholics Anonymous	www.alcoholics-anonymous.org
AA meeting locator	www.daccaa.org/meetings.htm
Colorado Alcohol and Drug Abuse Division	www.cdhs.state.co.us/ohr/adad/index.html
Colorado Board of Nursing	www.dora.state.co.us/Nursing/
Colorado Nurse Health Program	www.CNHP.com
Federal Exclusion Program	www.oig.hhs.gov/fraud/exclusions.html
Information on Addiction	www.wemac.com/info.html
International Nurses Anonymous	email: Patlgreen@aol.com
Narcotics Anonymous	www.na.org/
NA Meeting Locator	www.nacolorado.org/meeting.html
National Organization of Alternative Programs	www.alternativeprograms.org
Mental Health, Depression	www.womens-health.com/health_center/mental/
Mental Health Centers in Colorado	www.cbhc.org/members.htm
National Clearinghouse	www.health.org/aboutn.htm
National Institute of Drug Abuse	www.nida.nih.gov
National Institute of Mental Health	www.nimh.nih.gov
Recovery Sites	www.soberrecovery.com
Treatment Locator	www.findtreatment.samhsa.gov

10.00.00 EMERGENCY KITS (Amended, effective 6/30/02)

10.00.10 **Application.** Nursing homes, home health agencies, hospices, extended care facilities or intermediate care facilities licensed or certified by the Department of Public Health & Environment may maintain an emergency kit. Such kit is to provide an emergency supply of drugs, both controlled and non-controlled as provided below. The drugs maintained in the emergency drug supply shall remain the property of the pharmacy to whom the approval was issued. Emergency kits and the contents thereof shall meet the following requirements:

10.00.20 **Access**. Access to the contents of the kit shall be limited as follows:

(a) In the case of an approved facility, only a pharmacist employed by the prescription drug outlet which provides the kit, the consulting pharmacist, and any registered nurse employed at the facility shall have access.

(b) In the case of a certified home health agency or a licensed hospice, only a pharmacist employed by the prescription drug outlet which provides the kit or a nurse employed by the certified home health agency or licensed hospice shall have access.

10.00.30 **Categories and Limits**. The Board shall establish therapeutic categories for drugs to be placed in the kit.

(a) In the case of an approved facility (i.e. nursing homes, intermediate and extended care facilities, etc.) the medical director of the facility, or equivalent, and the consulting pharmacist shall determine the specific drugs to be kept in the kit. The number of drugs allowed in the kit shall be limited to sixty (60). Of the 60, twelve (12) may be controlled substances. The kit may contain no more than thirty (30) doses of any separate drug dosage form or strength for each drug. The container size for each drug shall be limited to unit dose or unit of issue packaging. Only an approved facility shall be permitted to have oral dosage forms of drugs in the kit.

(b) In the case of a certified home health agency or a licensed hospice, the director of nursing of the certified home health agency or of the licensed hospice, or designee, and a pharmacist employed and designated by the prescription drug outlet providing the kit shall determine the specific drugs to be kept in the kit. A certified home health agency or licensed hospice may not have oral dosage forms of drugs or controlled substances in the kit. The container size for each injectable drug shall be limited to unit dose or unit of issue packaging. The number of drugs allowed in the kit shall be limited to sixty (60). The kit may contain only thirty (30) doses of any separate drug dosage form or strength for each drug.

(c) The responsibility for stocking and restocking the emergency drug kit is that of a licensed pharmacist.

10.00.40 **Notification.** A pharmacy which supplies an emergency drug kit to an approved facility or certified home health agency or licensed hospice shall notify the Board in writing within seven days that it has done so, specifying the name and address of the facility.

Notification must be repeated, within 30 days:

(a) if there is any change of ownership of the kit, or

(b) if there is a change of the consulting pharmacist, in the case of an approved facility, or of the designated pharmacist in the case of a certified home health agency or a licensed hospice.

10.00.50 The kit shall be sealed in such a manner that the seal must be broken to remove a drug. Paper or tape seals are unacceptable.

10.00.51 The following information shall be placed on the outside of the kit and shall be readily visible and up-dated as required: name, address and telephone number of the prescription drug outlet providing the contents of the kit; the date of sealing; a suitable expiration date which shall be the earliest expiration date of any drug in the kit, but in no event shall it be more than one year from the date of sealing; and, in the case of an approved facility, the name of the consulting pharmacist, or, in the case of a certified home health agency or a licensed hospice, the name of the designated pharmacist. A copy of the kit contents shall also be attached to the outside of the kit.

Use of automated storage units must comply with current pharmacy rules and follow the procedures outlined in these regulations, except as provided below:

(a) No seal is required on the unit, but a code is required in order to access it;

(b) The unit shall be restocked by a licensed pharmacist only at the facility in which it resides.

10.00.60 **Inspection**. A pharmacist employed by the prescription drug outlet providing the kit shall inspect and inventory the contents of the kit at least annually and within 72 hours after being notified that the seal was broken. Inspection shall be documented by that pharmacist, and such documentation shall be maintained and available for inspection at the prescription drug outlet for a period of two years.

10.00.70 **Records**. The prescription drug outlet providing the kit shall maintain a separate record of use for each drug placed in the kit, and for each kit provided, which shall state the name and address of the approved facility, certified home health agency, or licensed hospice; the name and strength of the drug; and the container size and the quantity initially placed in the kit. When a drug is removed for administration the prescription drug outlet shall obtain a prescription order for the drug within 72 hours after being notified that the kit was opened and the drug was used. The order shall indicate the total number of doses administered. The order shall be assigned a serial number and the order shall be retained as required by Regulation 14.05.11. Additionally, the separate record required for each drug in the kit shall reflect the following information: date and quantity administered; names of both the patient and practitioner; date the drug was replaced in the kit; the quantity of the drug replaced, which shall not exceed the quantity administered or removed for administration; and the prescription order number assigned.

10.00.80 **Use**. The drugs shall only be administered to patients of the approved facility, certified home health care agency, or licensed hospice pursuant to the order of a practitioner.

10.00.90 **Withdrawal of approval.** The possession or disposition of the drugs in contravention to these regulations shall result in the Board withdrawing approval of the drugs in the kit and may be deemed to be in violation of CRS 12-22-125.

Urine Drug Screen Policy

A. RESPONSIBILITIES OF LICENSEE

1. The licensee must select a collection site that will comply with the requirements of this policy and the licensee's stipulation.

2. *The licensee must provide the name and phone number of the collection site to the Board prior to the collection site submitting the Board approved form to the Board.*

3. The licensee must have the collection site submit the appropriate Board approved form **prior to submitting any urine samples for drug testing.** The licensee must receive approval from the Board to use the collection site **prior to submitting any urine samples for drug testing.** The collection site may not be at the licensee's place of employment; this includes the Employee Assistance Program affiliated with the licensee's place of employment. The Board will inform the collection site of the drugs required for testing at the time it approves prior to approving the collection site.

4. *The licensee must provide the name and phone number of the laboratory to the Board prior to the laboratory submitting the Board approved form to the Board.*

5. The licensee must have the laboratory that will be testing the urine samples submit the appropriate Board approved form **prior to submitting any urine samples for testing**. The licensee must receive approval from the Board to use the laboratory **prior to submitting any urine samples for testing.**

6. The licensee must provide at least weekly *or on whatever schedule required by the Board*, random urine samples for drug testing as required by the Board.

7. A urine sample must contain at least 20 mg/dl of creatinine. The specific gravity of the sample must be within normal limits, i.e. 1.002-1.030. If the licensee, after observing the urine sample, believes that the urine may be dilute, the licensee may wait at the collection site and submit a second urine sample. Both samples must be tested and the licensee will be responsible for the added cost. A licensee who is notified *by the Board* of a dilute urine sample may ask the collection site to contact the laboratory and request that the sample be tested for adulterants. The licensee may also arrange with the collection site to have all urine samples tested for adulterants from the date a urine sample is identified as dilute or when the licensee selects the collection site.

8. The licensee must provide an adequate sample (minimum 30 ccs) of urine. If the licensee is unable to provide a sufficient sample, the licensee may either wait at the collection site until able to do so or return to the collections site prior to its closing for the day to provide the sample.

9. A urine sample will not be accepted *by the Board* if:

a. the specific gravity or creatinine level of the sample are outside the acceptable limits as defined in this policy.
b. the sample amount is insufficient as defined by this policy.
c. the collection site staff member who witnessed the collection of the sample has a personal relationship with the license.
d. the collection of the sample was not witnessed by a staff member of the collection site.
e. *any other requirement in this policy or stipulation are not met.*

10. The licensee must disclose all ingested substances, whether over the counter medications/herbs or prescriptions, at the time the urine sample is provided. It is the licensee's responsibility to research a substance's ability to affect the results of a drug test prior to ingesting such substance. Licensees must check with their health care provider before taking any medications. **If the licensee has knowledge that a substance will cause a positive urine drug screen, the licensee should not ingest the substance during the entire period that she/he is submitting urine samples for drug testing.** The Board will not accept positive urine drug screens based upon licensee's explanations, e.g. poppy seeds, hemp oil, herbs, *over the counter cold medications, etc.*

10. The licensee is not permitted to ingest controlled substances, other habit forming drugs, or drugs which have similar effect that were prescribed prior to the effective date of the licensee's stipulation until after the Board has received the Board approved form directly from the licensee's health care provider and the Board has approved the use of the medication.

11. If the licensee receives *or has previously received* prescriptions, for controlled substances, other habit-forming drugs, or drugs that have a similar effect, for the treatment of an acute or chronic condition, **before ingesting the medication the licensee must, within 72 hours *of receipt of the prescription*:**

a. Submit a copy of each such prescription to the Board; **or**

b. Request that the health care provider prescribing the drug fax a copy of the health care provider's order to the Board if the prescription was called in to a pharmacy;

and

c. Submit the appropriate Board approved form containing the following information **each** time any health care provider prescribes controlled substances, other habit forming drugs, or drugs that have a similar effect: The health care provider must document as follows: (1) an acknowledgement of the health care provider's awareness of the licensee's drug/alcohol problem and a statement from the health care provider regarding the rationale for prescribing controlled substances, other habit forming drugs, or drugs which have similar effect in light of that knowledge; **and** (2) a discussion by the health care provider regarding the use of alternative

methods of symptom control in the future. (3) **If** the treatment is for a chronic condition, the provider must indicate why it is acceptable or necessary for the licensee to intermittently use controlled substances, other habit-forming drugs, or drugs which have similar effect, and provide parameters for their use.

12. The Board will not excuse failure to provide urine samples or test results based upon the licensee's inability to pay the collection site and/or lab.

11. In the event of a situation requiring that the licensee receive emergency medical treatment, the physician who provided the emergency medical care must submit the appropriate Board approved form **within 72 hours of resolution of the medical emergency** if controlled substances, other habit forming drugs, or drugs which have similar effect were administered to the licensee during the medical emergency.

12. Travel/Vacations: **No later than two weeks prior to any travel, the licensee must submit to the Board the appropriate Board approved form.** The licensee must receive approval of the plan by the Board **before** any travel occurs. *Licensees are expected to comply with all requirements of their stipulation while they are traveling/on vacation.*

13. **Emergency Travel:**

a. If a licensee is unable to provide urine samples and/or lab results as required by the Board for a period of **six days or less because of emergency travel, and** the licensee provides documentation, within the six day period, which satisfies the Board that an emergency did occur, the Board may excuse noncompliance with the Board's standard requirements regarding submission, testing and reporting of urine drug screens. **The licensee must notify the Board 24 hours before or after initiating** the emergency travel if the licensee cannot comply with the Board's standard requirements.

b. If travel that was required due to an emergency lasts longer than six days, the licensee will be required to comply with the Board's standard requirements **beginning on day seven (7).** The licensee must submit to the Board the appropriate Board approved forms **on day five (5)** to allow time for the Board to review the forms and determine if the collection site and lab meet the Board requirements. It is recommended that a licensee on emergency travel contact a collection site/lab in the area as soon as possible, from the date of the licensee's arrival in the new location, to arrange for collection of urine samples for drug testing in the event that the licensee must submit to a call in procedure at a collection site on day seven (7).

Licensees, Please Note the Following:

1. Failure to provide urine sample(s)for drug testing, *failure to provide a sufficient quantity of urine for drug testing, providing a dilute urine, and providing a urine sample that tests positive for controlled/illegal substances* may result in disciplinary action,

which may take the form of a summary suspension, i.e. an immediate suspension, of the nursing license.

2. If a licensee *fails to provide a urine sample(s) for drug testing, provides a dilute urine sample, provides a urine sample that tests positive for controlled/illegal substances, submits a urine sample that cannot be tested because of insufficient quantity, or is non compliant with this urine drug screen policy or terms of the licensee's stipulation,* the licensee may submit a letter to the Board describing the circumstances that prevented the licensee from providing a urine sample for drug testing on the date the sample was required, *resulted in the non compliance*. The Board will consider the information provided by the licensee along with other pertinent information, when it makes its decision about the licensee's compliance with the terms of the licensee's stipulation and urine drug policy.

3. If the licensee fails to comply with this policy and *or* a positive urine drug screen report is received, the Board may take disciplinary action that may take the form of a summary suspension of the nursing license.

3. The Board approves the testing of urine samples submitted for drug testing by standard laboratory procedures only. It does not approve the use of pharmaceutical sweat patches, instantaneous methods of urine drug screen testing, or any other method of testing urine samples for drugs other than by standard laboratory procedures.

B. RESPONSIBILITIES OF COLLECTION SITES AND LABORATORIES

1. The collection site/lab must:

a. either have staff of the same gender as the licensee physically observe the licensee providing the urine sample, **or**, if staff of the same gender is not available, the collection site must certify that the urine sample was provided by the licensee in a "dry room", i.e. bluing agent was present in the toilet, no running water was available in the room, and that the licensee did not bring any items into the collection room such as a coat, purse, or backpack. In addition, verification of the temperature of the urine sample must be provided by the collection site if the licensee provided the urine sample without a same gender collection site employee witnessing the collection of the sample;

b. be able to accept samples pursuant to a six (6) day a week random selection method generated at the collection site, i.e. the licensee would call the collection site daily for the color that day;

c. split all samples positive for controlled substances and retain them for possible confirmation testing for six months;

d. maintain documentation of successive conveyance of urine or other specimens for the purpose of securing integrity, from the time the urine is collected until it is disposed of;

e. test for all substances required by this Board policy and any other substances required by the licensee's stipulation;

f. be able to perform tests on split samples to confirm a positive urine screen by GC/MS (Gas Chromatography and Mass Spectrometry) technology or other generally accepted scientific technology.

g. have the capability of testing for fentanyl or sufenta on site if required in the licensee's case;

h. submit reports to the Board on the appropriate Board approved form, signed by an authorized employee of the lab, which includes the dates the specimens were collected, test results, and the drugs for which the urine was tested, *and any dilute, missed, or urine samples of insufficient quantity.*

i. **guarantee** that any samples which test **positive, are dilute, are of insufficient quantity or which appear to have been tampered with or to have had a break in the chain of custody** will be reported to the Board within **24 hours** of the test results or within **24 hours** of the discovery of any other problem with the sample. ***Missed urines must also be reported to the Board within 24 hours of the licensee failing to submit a urine sample for drug testing***. Any oral report must be followed by a written report on the appropriate Board approved form.

CHAPTER XVIII

RULES AND REGULATIONS CONCERNING REPORTING REQUIREMENTS

General Authority: C.R.S. 12-38-108(1)(j) and (k), C.R.S. 12-38.1-103(3)
Specific Authority: C.R.S. 12-38-116.5(3)(b)(I) and 12-38-117(1)(f); C.R.S. 12-38.1-114(12) and 12-38.1-111(1)(f); and C.R.S. 12-42-113(1)(f)

1. STATEMENT OF BASIS AND PURPOSE

The Board of Nursing ("the Board") hereby finds that in order to safeguard the life, health, property and public welfare of the people of this state and in order to protect the people of this state from the unauthorized, unqualified and improper application of services by nurses, nurse aides, and psychiatric technicians ("licensees"), it is necessary to receive timely reports regarding licensees whose practice may have failed to meet generally accepted standards or whose conduct appears to have violated the Nurse Practice Act, the Nurse Aide Practice Act or the Psychiatric Technicians Act.

The obligation to report a nurse whose conduct may constitute grounds for discipline under section 12-38-117 of the Nurse Practice Act derives from C.R.S. 12-38-116.5(3)(b)(I) and 12-38-117(1)(f). The obligation to report a psychiatric technician whose conduct may constitute grounds for discipline under section 12-42-113 of the Psychiatric Technician Act derives from C.R.S. 12-38-117(1)(f), 12-38-116.5(3)(b)(I) and 12-42-113(1)(f). The obligation to report a nurse aide whose conduct may constitute a violation of the Nurse Aide Practice Act derives from

C.R.S. 12-38-117(1)(f), 12-38.1-114(12) and 12-38.1-111(1)(f). The Board therefore finds it necessary to promulgate the following rules with respect to reporting requirements.

It is the intent of the Board to require reporting of licensees whose continued practice may pose a risk of harm to persons under the care of the licensee. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Nurse Practice Act. This is particularly true when there are mechanisms in place in the licensee's employment setting to take corrective action, remediate deficits, and detect patterns of behavior.

2. DEFINITIONS

2.1 "Disciplinary action" means suspension by an employer after an internal investigation or termination of employment when such suspension or termination is due to substandard practice, conduct which poses a risk to the health and safety of the public, chemical dependency or drug diversion.

2.2 "Complainant" means any person filing a report.

2.3 "Licensee" means any person under the jurisdiction of the Colorado Nurse Practice Act, C.R.S. 12-38-101, et. seq., the Colorado Nurse Aide Practice Act, C.R.S. 12-38.1-101, et. seq., or the Colorado Psychiatric Technicians Act C.R.S. 12-42-101, et. seq.

3. FACTORS TO BE CONSIDERED IN THE DECISION TO REPORT

3.1 Anyone may report a licensee whose practice appears to be in violation of generally accepted standards of practice for that licensee.

3.2 Unless reporting is required by Rule 4 below, the complainant need not report the licensee when all of the following factors are present:

(a) the potential risk of physical, emotional, or financial harm to patients due to the incident is very low;

(b) the incident is a singular event without any pattern of poor practice by the licensee;

(c) the licensee demonstrates accountability and a conscientious approach in his/her practice (relative to the incident); and

(d) the licensee appears to have the knowledge and skill to practice safely.

3.3 Other factors to consider include:

(a) the significance of the patient outcome in the specific practice setting;

(b) the circumstances under which the event occurred; and

(c) the presence of contributing or mitigating circumstances in the health care delivery system.

4. INFORMATION THAT MUST BE REPORTED

4.1 Information regarding the following shall always be reported to the Board:

(a) Failure to meet generally accepted standards of practice by the licensee that creates or results in serious harm or risk to the persons under the licensee's care, or a demonstrated pattern of practice which fails to meet generally accepted standards.

(b) Reasonable cause to believe the licensee is unable to practice with reasonable skill and safety to patients as the result of a physical or mental disability or substance abuse.

(c) Disciplinary action taken against a licensee as defined in section 2.1.

(d) Failure by a licensee to comply with the terms of Board orders, including stipulations, and final agency orders.

(e) A person who practices or offers to practice as a nurse, nurse aide, or psychiatric technician when such person has not been licensed, registered, or certified, or who uses any title, abbreviation, card, or device to indicate that such person is licensed, registered or certified to practice in Colorado while not so licensed, registered, or certified.

(f) Patient abuse including but not limited to physical, emotional, psychological, verbal, sexual, or financial abuse.

(g) Conviction of a felony by a licensee that relates to the licensee's ability to practice safely.

(h) Conduct by a licensee which constitutes a crime and is relevant to such licensee's ability to practice safely. Such conduct includes but is not limited to felonies, all assaults and sexual assaults, fraud and theft. Such conduct need not have resulted in a conviction.

(i) Signs or symptoms of current addiction or dependence on alcohol or other habit-forming drugs, habitual use of controlled substances, as defined in C.R.S. 12-22-303(7) or other drugs having similar effect that negatively impacted the licensee's practice. If diversion of medications has <u>not</u> occurred, and there has been no

negative impact on the licensee's practice, a licensee who voluntarily participates in a treatment plan designed to end such addiction or dependence need not be reported.

(j) Actions, behavior, or information that suggest or substantiate diversion of controlled substances by the licensee as defined in C.R.S. 12-22-303(7), or other drugs having similar effects. Referral to the Impaired Professional Diversion Program (C.R.S. 12-38-131) is not a substitute for the reporting required under this rule and does not create an exemption from reporting.

CHECKLIST FOR INTERNAL INVESTIGATION OF DRUG DIVERSION

Done	Date/Done By	
		Ensure safety of patient(s) and staff, e.g. suspension
		Assess resident if appropriate
		If nurse refuses urine drug screen, have MD order urine drug screen for pt(s) from whom drug was diverted
		Record physical observations, i.e. patient, med room, med cart
		Record behavior of nurse, i.e. gait, speech, etc.
		Identify who was working, when and with whom
		Identify potential witnesses (staff, family, residents etc)
		Collect and preserve documents, i.e. MARs, Narcotic sheets
		Obtain resident statement(s) if appropriate
		Obtain witness statements in writing - ASAP
		Collect and preserve physical evidence, i.e. syringes, vials
		Drug screen-ask for professional panel, i.e. specific drugs that are missing.
		Drug screen-Ask for the presence of the drug, not the DOT cut off
		Reporting, name of contact, telephone #, case # for police
		Contact DOPHE, if appropriate
		Contact Board of Nursing
		Check that all internal forms needed are completed
		Copies of documents secured in a separate file

Appendix I

STATE OF COLORADO

STATE BOARD OF NURSING
Patricia F. Uris, Program Director

1560 Broadway, Suite 880
Denver, Colorado 80202-5146
Phone (303) 894-2430
Fax (303) 894-2821
V/TDD (303) 894-7880
www.dora.state.co.us/nursing

Department of Regulatory Agencies
Richard F. O'Donnell
Executive Director

Division of Registrations
Rosemary McCool
Director

Bill Owens
Governor

The Complaint Process

One goal of the State Board of Nursing ("Board") is maintaining high standards and protecting the public from unqualified, unethical, or incompetent practitioners. The Board has jurisdiction over Registered Nurses, Licensed Practical Nurses, Psychiatric Technicians, and Certified Nurse Aides. The Board receives approximately 700 complaints per year against its licensees.

Due to the important nature of complaints, please ensure that your complaint or letter is typewritten or written legibly in black or blue ink. The Board does not accept verbal complaints. Please provide as many factual details as possible and include your name, address, and telephone number.

If your complaint contains allegations that are not a violation of the Board's licensing law, the Board cannot act. If the allegations appear to violate the Board's licensing law, your complaint will be processed according to the Board's procedures.

You may wish to review the Board's Rules and Regulations Concerning Reporting Requirements before submitting your complaint to the Board. You can access these rules online at the Board's website, www.dora.state.co.us/nursing, or you may request a copy by calling 303-894-2436. There is other helpful information on our website regarding the complaint process.

You will receive written notification of the outcome of your complaint. Please be patient, as the complaint process can be lengthy.

STATE OF COLORADO

STATE BOARD OF NURSING
Patricia F. Uris, Program Director

1560 Broadway, Suite 880
Denver, Colorado 80202-5146
Phone (303) 894-2430
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Department of Regulatory Agencies
Richard F. O'Donnell
Executive Director

Division of Registrations
Rosemary McCool
Director

Bill Owens
Governor

PLEASE TYPE OR PRINT LEGIBLY

Please fill in as much information as possible about the person against whom you are registering the complaint.

COMPLAINT REGISTERED AGAINST (circle one)**:** RN | LPN | LPT-DD | LPT-MI | CNA
License Number: _____

_____
Licensee's Name **Licensee's Home Phone #**

_____
Licensee's Home Address **City** **State** **ZIP**

_____
Licensee's Social Security Number **Licensee's Date of Birth**

1. Please indicate the nature of your complaint against the licensee. (Check all that apply).

☐ Substandard practice.
☐ Inability to practice safely due to mental/physical disability or substance abuse.
☐ Non-compliance with Board order (i.e. Board Stipulation and Final Agency Order with probationary terms).
☐ Unlicensed or uncertified practice.
☐ Abuse of patient
  - ☐ physical
  - ☐ verbal
  - ☐ psychological
  - ☐ emotional
  - ☐ financial
  - ☐ other _____
  - ☐ Felony conviction relating to practice.
  - ☐ Conduct constituting a crime relevant to practice.
  - ☐ Current addiction or dependence on alcohol or other habit-forming drugs or habitual use of controlled substances that negatively impact practice.
  - ☐ Diversion of controlled substances or other drugs having similar effects.
  - ☐ Other _____

2. Please attach clear and concise statement of your complaint, including dates.

3. Please attach copies of all documents relevant to your complaint such as letters and other correspondence, police reports, contacts, witness statements and/or drawings, etc.

(*continued on next page*)

4. If you are a patient who has received care from the licensee, please complete the following Authorization for Release of Medical Records and Information. Otherwise, please skip to #5.

AUTHORIZATION FOR RELEASE OF RECORDS AND INFORMATION

I hereby authorize release of records and information pertaining to myself to the Colorado Board of Nursing ("Board") for the limited purpose of investigating and proceeding with the complaint submitted to the Board. Copies of this authorization may be used with the same effect as an original.

I understand that the records and information will be released to the licensee against whom I submitted the complaint.

_____
Date

_____
Printed Name

_____
Signature

_____
Date of Birth

5. THE FOLLOWING INFORMATION IS REQUIRED.

I attest that all statements made by me in relation to this complaint are true to the best of my knowledge and belief.

_____
Your Printed Name **Signature** **Date**

_____
Facility, Agency or Business Name **Address** **City**

_____
Home Address **City** **State** **ZIP**

_____
Work Phone # **Home Phone #** **FAX**

_____
E-mail Address

PLEASE RETURN THIS FORM AND ALL SUPPORTING MATERIALS TO THE ADDRESS INDICATED ON THE LETTERHEAD.

Appendix J

STATE OF COLORADO

STATE BOARD OF NURSING
Patricia F. Uris, Program Director

1560 Broadway, Suite 880
Denver, Colorado 80202-5146
Phone (303) 894-2430
Fax (303) 894-2821
V/TDD (303) 894-7880
www.dora.state.co.us/nursing

Department of Regulatory Agencies
Richard F. O'Donnell
Executive Director

Division of Registrations
Rosemary McCool
Director

Bill Owens
Governor

DATE

NAME
ADDRESS
ADDRESS

Re: Request for medical records

Dear NAME:

This letter accompanies a request from the Colorado Board of Nursing ("Board") for medical records needed to carry out the Board's statutory authority for licensure and discipline of nurses, psychiatric technicians, and certified nurse aides in the State of Colorado. This letter will clarify how the Health Insurance Portability and Accountability Act of 1998 ("HIPAA") applies to requests from the Board for medical records.

HIPAA applies to covered entities, which are defined in the regulations to include only a health plan, health care clearinghouse and health care provider who transmits certain covered transactions electronically. 45 C.F.R. §160.103.

In contrast, state health professional licensure agencies such as state nursing boards were specifically included in the definition of a health oversight agency under HIPAA in the preamble to the regulations. 65 Fed. Reg. 82492 (Dec. 28, 2000). As a health oversight agency under HIPAA, the Board is not a covered entity and therefore not subject to the requirements of HIPAA.

Health care providers who transmit covered transactions electronically are covered entities under HIPAA. As such, they must comply with the HIPAA privacy rules which generally require a patient's authorization if protected health information is used other than for treatment, payment or health care operations.

However, HIPAA also provides numerous exceptions to the requirement for patient authorization and allows a provider to release medical records without patient authorization if the disclosure is to a health oversight agency, such as the Board. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections, licensure or disciplinary action; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system. 45 C.F.R. §164.512(d). The Board is authorized

to make investigations, hold hearings, and take evidence in all matters relating to the exercise of performance of the duties and powers vested in the Board. In connection with any investigation (whether before or after a formal complaint is filed pursuant to §12-38-116.5, C.R.S.) or hearing, the Board may subpoena witnesses, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry or hearing. §§12-38-108(1)(h) and 116.5(13), C.R.S. The Board has further authorization pursuant to §§13-90-107(1)(d)(III)(C) and (2), C.R.S.

You must comply with the enclosed request and provide the medical records requested, and you are not required under HIPAA to obtain a consent or authorization from the patient to release these records to the Board.

Because you are potentially a covered entity under HIPAA, it is possible that you are permitted to disclose only the minimum necessary medical information for the stated purpose. HIPAA provides that a covered entity may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when making disclosures to public officials that are permitted under 45 C.F.R. §164.512, if the public official represents that the information requested is the minimum necessary for the stated purpose. 45 C.F.R. §164.514(d)(3)(iii)(A). I hereby state that the Board is requesting the minimum necessary information in order to carry out the health oversight activities of the Board. The entire medical record of each patient is the minimum necessary information for the Board's oversight function.

This information is provided in an effort to clarify the application of HIPAA to the Board's request and does not constitute legal advice. Neither I nor the Board can provide you with legal advice, and you should consult your own legal counsel concerning your responsibilities under HIPAA.

Sincerely,

NAME
Title

Colorado Board of Nursing Philosophical Statement:
Impaired Nurses Participating in the Colorado Nurse Health Program

Since the statutory creation of the state's first diversion program for impaired nurses in 1991, the Colorado Board of Nursing has made every effort to support the recovery of nurses practicing in Colorado who are impaired because of substance abuse problems while considering the protection of the public as its primary mission. The Board has acquired a body of knowledge about impaired nurses through data collected by the Colorado Nurse Health Program ("CNHP"), educational in-services, and the review of numerous complaints received against impaired nurses, both before their participation in CNHP and after their referral by CNHP back to the Board for non-compliance with their monitoring contract. This body of knowledge supports the need for timely, consistent, structured intervention and serious consequences for nurses who fail to comply with their CNHP monitoring contract.

The Colorado Board of Nursing, in order to best protect the public:

- May continue to allow a licensee to voluntarily enter CNHP without a formal complaint and formal discipline
- May suspend a licensee who becomes noncompliant with his/her CNHP monitoring contract. This licensee will be required to prove a period of sobriety before he/she is reinstated and Board-ordered into CNHP
- May revoke a licensee who becomes noncompliant with her/his CNHP monitoring contract after a period of suspension.

One of the Board's primary goals is to protect the public while ensuring that the impaired nurse is afforded due process as quickly as possible. In the case of CNHP contract noncompliance, the Board will request an Agreement to Cease Practice while the disciplinary process is completed. The Board supports the mediation process and reserves the option to inform the Office of the Attorney General when it does not want a case mediated. The terms of a CNHP monitoring contract cannot be mediated. The Board requests that terms of mediation reflect the terms of this philosophical statement.

May 30, 2002
Full Board of Nursing Meeting