

RULES AND REGULATIONS
PERTAINING TO A
NON-DISCIPLINARY ALTERNATIVE PROGRAM
FOR NURSES
(R5-34-24.1-NUR)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health

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As Amended:
**January 2002 (re-filing in accordance
with the provisions of section 42-35-
4.1 of the Rhode Island General Laws,
as amended)**

INTRODUCTION

These proposed *Rules and Regulations Pertaining to a Non-disciplinary Alternative Program for Nurses (R5-34-24.2)* are promulgated pursuant to the authority conferred under sections 5-34-24.1 and 42-35 of the General Laws of Rhode Island, as amended, and are established for the purpose of adopting minimal standards pertaining to a non-disciplinary alternative program for nurses involved in alcohol and drug abuse. Alcohol and substance abuse, which may lead to physical and/or psychological dependence, constitute major public health issues.

The non-disciplinary program attempts to ensure public safety by providing a system that voluntarily attracts chemically dependent nurses who otherwise might go undetected. The major concern in promulgating these rules and regulations is public safety. The program shall assist a chemically dependent nurse provided she/he cooperates and adheres to a prescribed program of recovery. No aspect or phase of this program shall require or result in exceptions to standard job performance requirements.

Other program goals include: to decrease the time between the nurse's acknowledgment of a problem with chemical dependency and the time she/he enters a recovery program; to provide a program for participating nurses to be rehabilitated in a therapeutic, non-punitive and confidential environment; to provide a voluntary alternative to the traditional disciplinary process; and to reach nurses who may be affected by chemical dependency but who are not being reached through the current disciplinary system.

In accordance with the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations; and (3) any significant economic impact on small business as defined in Chapter 42-35 of the General Laws. Based on available information, no known alternative approach, duplication or overlap, or significant economic impact was identified. Therefore, these regulations are adopted in the best interest of the health and safety of the public.

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PART I *DEFINITIONS*

Section 1.0 *Definitions*

Wherever used in these rules and regulations, the following terms shall be construed as follows:

- 1.1 *"Act"* refers to Chapter 5-34, entitled, "Nurses", of the General Laws of Rhode Island, as amended.
- 1.2 *"Advisory Panel"* means the eight (8) member panel established pursuant to section 5-34-24.4 of the Rhode Island General Laws, as amended, and appointed by the Director to provide guidance regarding the needs of the chemically dependent nurse, the direction of the program and the promulgation of the rules and regulations herein.
- 1.3 *"Aftercare"* means a plan for a participant nurse to follow after he/she leaves formal treatment. It is the nurse's individual plan for the future, including an identification of the nurse's personal goals and objectives.
- 1.4 *"Approved treatment program"* means an organized program in an inpatient, outpatient or residential setting whose primary function is the evaluation and treatment of nurses with chemical dependency disorders and approved by the Board in accordance with criteria set forth herein.
- 1.5 *"Board"* is the Board of Nursing within the Division of Professional Regulation of the Department of Health, established pursuant to the provisions of sections 5-34-4 through 5-34-8 of the Rhode Island General Laws, as amended.
- 1.6 *"Case manager"* means the professional responsible for organizing a system of coordinated activities developed and administered to ensure continuity of treatment services, efficient and effective utilization of available resources, and appropriateness of service to meet the needs of the nurse.
- 1.7 *"Chemical dependency"* means physical or psychological reliance upon one or more substances, including drugs and alcohol. This diagnosis shall be determined by the licensed health care provider, using standard diagnostic tools.
- 1.8 *"Department"* is the Rhode Island Department of Health.
- 1.9 *"Director"* is the Director of the Rhode Island Department of Health.
- 1.10 *"Division"* is the Division of Professional Regulation, Rhode Island Department of Health.
- 1.11 *"Eligibility Committee"* means a three (3) person panel appointed by the Advisory Panel that initially reviews and recommends applications for evaluation and subsequent admission to the program, as appropriate.

- 1.12 **"Non-disciplinary alternative program"** ("the program") means the voluntary, confidential non-disciplinary program for nurses who abuse or are chemically dependent upon drugs or alcohol.
- 1.13 **"Program contract"** means the contract between the nurse participating in the program and the Advisory Panel.
- 1.14 **"Relapse"** means the unauthorized use of drugs or alcohol when total abstinence from all drugs or alcohol is indicated.
- 1.15 **"Sworn complaint"** means a complaint that has been completed by a complainant and duly notarized by a notary public.
- 1.16 **"Worksite monitor"** means one (1) person at the worksite, at least one (1) management step above that of the chemically dependent nurse. The worksite monitor must be willing to monitor the nurse's job performance in relation to her contractual agreement.

PART II ***NON-DISCIPLINARY PROGRAM CRITERIA***

2.0 ***Admission Criteria***

- 2.1 A nurse may be considered for entry into the non-disciplinary program in the following ways:
- a) by self-referral;
 - b) by employer referral;
 - c) by identification of chemical dependency in conjunction with a sworn complaint filed against the nurse;
 - d) upon written referral from a family member, friend, nurse peer, another nurse or professional nurse association, union, or other health care provider;
 - e) referral by a health care institution/agency;
 - f) referral by a police department.
- 2.2 In order to gain admission to the program, a nurse shall submit evidence to the Department that she/he meets the participation criteria of sections 2.0 and 4.0 herein and is not engaged in any activity that would disqualify him/her from participation in the program. Additionally, the nurse applicant shall:
- a) be a registered or licensed practical nurse or person holding a receipt to work for ninety (90) days as a nurse in the state of Rhode Island from the Division;
 - b) voluntarily request participation;
 - c) be chemically dependent upon alcohol or other drugs;
 - d) if requesting endorsement from another state, be currently licensed as a registered nurse or licensed practical nurse currently enrolled in and compliant with the requirements of a peer assistance or non-disciplinary alternative program;
 - e) acknowledge, in writing, the extent of the chemical dependency problem and agree in writing to the terms set forth in the program contract;
 - f) cooperate by providing such evaluation, assessment and treatment information, disclosure authorizations, and releases of liability as may be requested by the Board.

Section 3.0 Disqualification Criteria

- 3.1 Criteria which disqualify a nurse from participating in a non-disciplinary substance abuse program include the following:
- a) has been previously enrolled and terminated for non-compliance in a non-disciplinary program in Rhode Island or other jurisdiction;
 - b) a judicial or administrative finding of drug diversion;
 - c) has a chemical dependency problem of such severity that it could represent a clear and present danger to patient health and safety or has had nursing practice problems resulting in the death of a patient or involving significant harm or potentially significant harm to a patient;
 - d) not have had previous formal disciplinary action (related to his/her chemical dependency) taken by a nursing board against her/him;
 - e) has been convicted of any crime related to a controlled substance or legend prescription drug.

Section 4.0 Requirements for Participation in the Program

- 4.1 Participation in the program is voluntary. A nurse participating in the program must:
- a) agree in writing to comply with terms of the contract;
 - b) be responsible for all costs for assessment, treatment, and monitoring;
 - c) agree to evaluations, including random body fluid testing, necessary to determine treatment and monitoring needs;
 - d) agree to a role in the treatment program as determined by the case manager.

Section 5.0 Causes for Termination from the Program

- 5.1 A nurse participating in the program may be terminated by a majority vote of the Advisory Panel for any of the following reasons:
- a) noncompliance with any aspect of the contract;
 - b) receipt of information by the Board, which after investigation, results in disciplinary action by the Board.
 - c) engaged in any act that would have been cause to have initially disqualified the nurse applicant from participation in the program.

- 5.2 Upon the nurse's successful completion of the program, the case manager shall make a recommendation to the Panel that the program contract with the nurse be terminated. The length of involvement of the nurse with the program shall be a minimum of two (2) years. A personal meeting between the nurse and the Advisory Panel may be required before the contract is terminated.
- 5.3 If the nurse does not agree to voluntarily participate in a treatment program protocol approved by the Advisory Panel, or fails to satisfactorily complete a treatment program, the Advisory Panel shall be informed and the Board of Nursing may initiate disciplinary proceedings, consistent with the *Rules and Regulations for the Licensing of Professional (Registered), Certified Registered Nurse Practitioners, Certified Registered Nurse Anesthetists and Practical Nurses and Standards for the Approval of Basic Nursing Education Programs (R5-34-NUR/ED)*.

Section 6.0 Entry into the Program

- 6.1 A nurse seeking admission into the program shall be screened initially by the Eligibility Committee, or its designee, in order to: 1. determine the nurse's eligibility to participate in the program; 2. to identify and assess the nature of the nurse's motivation in entering the program. Prior to rendering a decision related to entry into the program, the Eligibility Committee shall require that an applicant undergo a clinical assessment by the case manager, as approved by the Advisory Panel.
- 6.2 After initial eligibility is determined, the nurse will be required to complete a self-assessment and sign appropriate releases of information (see sample in Appendix "A"), waiving confidentiality and enabling the case manager to have contact with worksite personnel and the Advisory Panel for purposes of compliance monitoring.
- 6.3 In conjunction with the nurse, treatment program staff shall determine an appropriate, on-going treatment plan which is included in the nurse's contract with the program.
- 6.4 Nurse participants shall disclose all places of current employment as a condition of entry and continued participation in the program.

Section 7.0 Program Contract

- 7.1 The program contract is a voluntary agreement between the nurse and the program. At a minimum, it shall include the following components:
- a) dates of participation;
 - b) length of participation (not less than two [2] years);
 - c) treatment modalities/continuing care/aftercare;
 - d) support group attendance requirements;
 - e) random bodily fluid screenings at times to be determined by the treatment

- provider or the case manager;
 - f) medical information;
 - g) any necessary practice restrictions;
 - h) provisions for relapse, including the consequences with respect to continued participation in the program; and
 - i) worksite monitoring.
- 7.2 Nurse participants shall assist in the development of their individualized written contracts for meeting the requirements of the program.
- 7.3 Each contract shall be signed by the nurse and case manager.
- 7.4 The signed, written contract shall be reviewed on a periodic basis, but at a minimum of once every two (2) months, and shall include all pertinent information gathered by treatment providers and/or case managers throughout the course of treatment.
- 7.5 Premature termination of the program contract by the nurse shall constitute grounds for referral to the Board of Nursing.

Section 8.0 Compliance Monitoring

Monitoring for compliance is a central element of the non-disciplinary program in order to ensure that, in light of the need for program participation, the nurse is competent to practice and does not constitute a threat to patient well-being.

- 8.1 All reports shall be submitted to the case manager at the prescribed intervals (as below).
- 8.2 Compliance monitoring shall be done by the case manager and shall include the following components, unless specifically waived or amended by a vote of the Eligibility Committee and documented in writing:
- a) ***self-reports***: Each participant shall send a written personal report on a monthly basis to the case manager.
 - b) ***professional support groups***: The participant's weekly attendance report shall be submitted to the case manager on a monthly basis.
 - c) ***psychotherapist reports***: These reports shall be submitted to the case manager at least once every two (2) months until completion of the program, if the participant has been engaged in outpatient therapy.
 - d) ***aftercare reports***: These reports shall be submitted to the case manager at least once every two (2) months until completion of the program by the aftercare provider.

- e) **body fluid testing:** Random body fluid testing shall be conducted on a monthly basis, at a minimum, at times to be determined by the treatment provider or the case manager. All body fluid testing results shall be reported to the case manager on a monthly basis, at a minimum.
- i) All laboratories performing said screening shall be in compliance with the regulatory requirements of references 2 and 12 herein.
- f) **medical care:** Chemically dependent participants are required to inform all treating professionals of their recovery status and indicate to the case manager the names of all health care providers.
- g) **medication reports:** A list of medications dispensed by a licensed practitioner to the participant shall be sent, as needed, by the practitioner to the case manager.
- h) **worksite reports** shall be submitted to the case manager at least once every two (2) months until completion of the program.

Section 9.0 Case Management

The primary responsibility of the case manager shall be to monitor the compliance of the participant nurse with the prescribed treatment plan and to provide written quarterly reports to the Advisory Panel (and more frequently, as needed) on the nurse's progress. Other responsibilities shall include, but not be limited to, comprehensive assessments/referral, supportive counseling, and maintenance of a complete record system.

In order to be approved by the Panel, a case manager shall demonstrate the ability to meet all of the requirements in section 9.0 herein and coordinate treatment by providers who meet the criteria set forth in section 10.0 herein.

9.1 Primary functions of the case manager shall include:

- a) Open file with initial information from the Advisory Panel;
- b) Conduct comprehensive psychosocial evaluation;
- c) Formulate treatment plan for the participant nurse;
- d) Communicate treatment plan acceptance/rejection by participant nurse in facilitating the referral to treatment provider(s);
- e) Secure all appropriate releases of information from the participant nurse;
- f) Contact treatment provider(s) to establish monitoring relationship;
- g) Begin monitoring process;

- h) Coordinate random body fluid testing;
- i) Assimilate reports from treatment provider(s), body fluid testing and case manager's observation for reports to the Advisory Panel;
- j) Provide consultation, no less than once every two (2) months, to worksite monitor (i.e., employer);
- k) Provide information/recommendations to Advisory Panel, as appropriate and as required;
- l) Continue follow-up on a regular basis.

9.2 Secondary functions of the case manager shall include:

- a) Monitor and evaluate the effectiveness of current treatment providers;
- b) Conduct on-going search and evaluation of potential treatment providers;
- c) Provide emergency response services to the nurse in the case of relapse or the emergence of an acute disorder;
- d) Provide non-treatment supportive and motivational assistance.

Section 10.0 Criteria for Treatment Providers

10.1 Community treatment providers participating in the non-disciplinary program shall meet state licensure requirements and demonstrate the ability to provide comprehensive planning and care. Further, community treatment providers participating in the non-disciplinary program shall meet the following requirements, as necessary:

- a) ability to provide for any resources and referrals necessary to attend to the unique issues and characteristics of nurses both during the intensive treatment phase as well as following treatment;
- b) management of withdrawal and treatment;
- c) be licensed to provide the level of care required by the nurse:
 - 1. ability to provide or refer for inpatient assessment and medical detoxification with physician and professional staff to support safe withdrawal from mood-altering chemicals if management of withdrawal is necessary;
 - 2. ability of outpatient program to provide or refer to an appropriate referral for management of withdrawal;

- d) ability to provide or refer for a medical examination to include history, physical, and appropriate testing (e.g., body fluid testing and other laboratory testing as indicated);
- e) ability to provide or refer for a psychiatric examination and neuropsychological testing by qualified persons;
- f) shall cooperate with the non-disciplinary alternative program by obtaining the necessary release of information, and in a timely manner, provide the designated case manager with necessary communication and written reports prior to making a referral;
- g) evidence of individualized written plan of care to include assessment, diagnosis, treatment goals, discharge criteria and guidelines for continuing recovery;
- h) shall make financial arrangements for all costs incurred by the program;
- i) promotion of established recovery support program(s) as part of the recovery plan.

PART III *PROGRAM ADMINISTRATION*

Section 11.0 Confidentiality & Record-keeping

- 11.1 All records pertaining to a nurse's participation in the non-disciplinary program shall be confidential and not subject to discovery, subpoena or public disclosure. Provided, however, that information related to the non-disciplinary program shall be provided to the nurse's employer to ensure adequate worksite monitoring and compliance.
- a) Any records at the worksite pertaining to a nurse's participation in the program shall be kept in files separate and distinct from other personnel materials. Access shall be limited to duly authorized staff only. All other access shall be limited to individuals for whom a written release of information form has been signed by the participant.
- 11.2 Client records must be maintained in confidence as required by federal and state laws and regulations, and in particular, in accord with section 408 of Public Law 92-55 (the Drug Abuse Prevention, Treatment and Rehabilitation Act, 21 U.S.C. section 1175), as amended, and the regulations contained in 42 Code of Federal Regulations, Part 2.
- 11.3 Any inquiries about the program will be responded to in a confidential and timely manner.

Section 12.0 Advisory Panel

- 12.1 A non-disciplinary alternative Advisory Panel established pursuant to section 5-34-24.4 of the Rhode Island General Laws, as amended, to assist the Department in developing rules and regulations shall consist of eight (8) members appointed by the Director as follows:
- a) One (1) person who shall be a member of the nurse executive committee of the Hospital Association of Rhode Island, as designated by the President of the Hospital Association.
- b) One (1) person who shall be a member of an employee assistance program in Rhode Island, as designated by the Director.
- c) One (1) person who shall be a member of the Rhode Island State Nurses Association, as designated by its President.
- d) One (1) person who shall be a member of the American Federation of Teachers/Health Professionals, as designated by its President.
- e) One (1) person who shall be a member of the Rhode Island Health Care Association, as designated by its President.
- f) One person (1) who shall be a member of the Rhode Island Association of Facilities for the Aging, as designated by its President.

- g) One person (1) who shall be a member of the Rhode Island Visiting Nurse Association, as designated by its President.
- h) One person (1) who shall be a member of the New England Health Care Employees Union, District 1199, as designated by its President.

12.2 The Advisory Panel shall assist the Department in the development of rules and regulations and may also:

- a) contract with specially qualified persons, corporations or other entities to assist in the administration of the non-disciplinary program.
- b) review, evaluate and determine those treatment facilities and services to which nurses in the program may be referred.
- c) receive and review information concerning a nurse participating in the program and recommend action.
- d) consider and recommend to the Department, in the case of each nurse participating in the program, whether the nurse may, with safety, continue or resume the practice of nursing.
- e) prepare reports regarding the program for submission to the Board.
- f) inform each nurse who requests participation in the program of the following:
 - 1. the procedures followed in the program;
 - 2. the rights and responsibilities of the nurse while in the program;
 - 3. the potential results of noncompliance with the program.
- g) assist the Board and the Department in developing an outreach and education component to publicize the program.

12.3 ***Eligibility Committee***

- a) In addition to the duties cited above, the Advisory Panel shall appoint a voluntary Eligibility Committee from its members who shall be responsible for screening those nurses who request participation in the program according to the guidelines set forth herein.
- b) The Eligibility Committee shall consist of three (3) persons, two (2) of whom shall be nurses. The Eligibility Committee members shall serve on a rotating basis, as determined by the Advisory Panel.
- c) The Committee shall conduct meetings, as necessary, to consider the requests of nurses to participate in the program and to review reports regarding nurses participating in the program.

PART IV

Section 13.0 Rules Governing Practices and Procedures

All hearings and reviews required under the provisions of Chapter 5-34-24.1 of the General Laws of Rhode Island, as amended, shall be held in accordance with the provisions of the Act and of the *Rules and Regulations Governing Practices and Procedures Before The Rhode Island Department of Health (R42-35-PP)*.

Section 14.0 Severability

If any provision of these rules and regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.

APPENDIX "A"
Rhode Island Department of Health

Sample Consent for the Release of Confidential Information

I, _____, Date of Birth _____ do hereby
(name of nurse)

consent to and authorize _____

to disclose to: _____, information pertaining to my

identity, prognosis, diagnosis or treatment.

The information to be disclosed will be:

YES

NO

_____ Presence in treatment, prognosis, brief description of progress, occurrence of relapse

_____ Medical history and physical, intake sheet, treatment plan, aftercare plan, discharge summaries

_____ Other _____

This information is needed for the following purposes:

_____ To provide ongoing treatment

_____ To obtain insurance, employment, or government benefits

_____ To enable judges, attorneys, probation/parole officers to support treatment goals or make legal decisions on my behalf

_____ To coordinate treatment efforts with my family/concerned persons

_____ Other _____

I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2, and under the General Laws of Rhode Island and cannot be disclosed without my written consent except as otherwise specifically provided by law.

I understand that by law, I need not consent to the release of this information. However, I choose to do so willingly and voluntarily for the purpose specified above. This authorization will have a duration of consent no longer than ninety (90) days. I understand that I may revoke it at any time except to the extent that action has been taken in reliance on my consent.

Signature of participant

Dated

Signature of case manager

Dated

REFERENCES

1. *Rules and Regulations Governing Practices and Procedures Before the Rhode Island Department of Health (R42-35-PP)*, Rhode Island Department of Health, November 1981.
2. *Rules and Regulations for the Licensing of Substance Abuse Facilities (R23-17-SAF)*, Rhode Island Department of Health, February 1996.
3. *Rules and Regulations for the Licensing of Professional (Registered), Certified Registered Nurse Practitioners, Certified Registered Nurse Anesthetists and Practical Nurses and Standards for the Approval of Basic Nursing Education Programs (R5-34-NUR/ED)*, Rhode Island Department of Health, March 1997.
4. *Confidentiality of Alcohol and Drug Abuse Patient Records: Final Rule*, U.S. Department of Health and Human Services, Public Health Service, 42 CFR Part 2 (June 9, 1987).
5. "Confidentiality of Health Care Information," Chapter 5-37.3 of the Rhode Island General Laws, as amended.
6. "Non-disciplinary Alternative," Chapter 5-34-24.1 of the Rhode Island General Laws, as amended.
7. "Nondisciplinary Alternative Program Model Guidelines," National Council of State Boards of Nursing, Inc, Chicago, Illinois, March 1994.
8. *Statutes and Rules Relating to Nursing*, Montana Division of Public Safety, Bureau of Professional and Occupational Licensing, Helena, Montana, May 1992.
9. Annotated Code of Maryland, Subtitle 3: Licensing and Certification.
10. "Nondisciplinary Alternative Program for Impaired Nurses," Chapter 610-X-13 of Alabama General Laws, Alabama Nurse Practice Act, 1993.
11. *Substance Abuse Services and the Law*, New York State Division of Substance Abuse Services, 1990.
12. *Rules and Regulations for Licensing Clinical Laboratories and Stations (R23-16.2-C&S/LAB)*, Rhode Island Department of Health, April 1993.

RHODE ISLAND DEPARTMENT OF HEALTH
Non-disciplinary Alternative Program for Nurses

