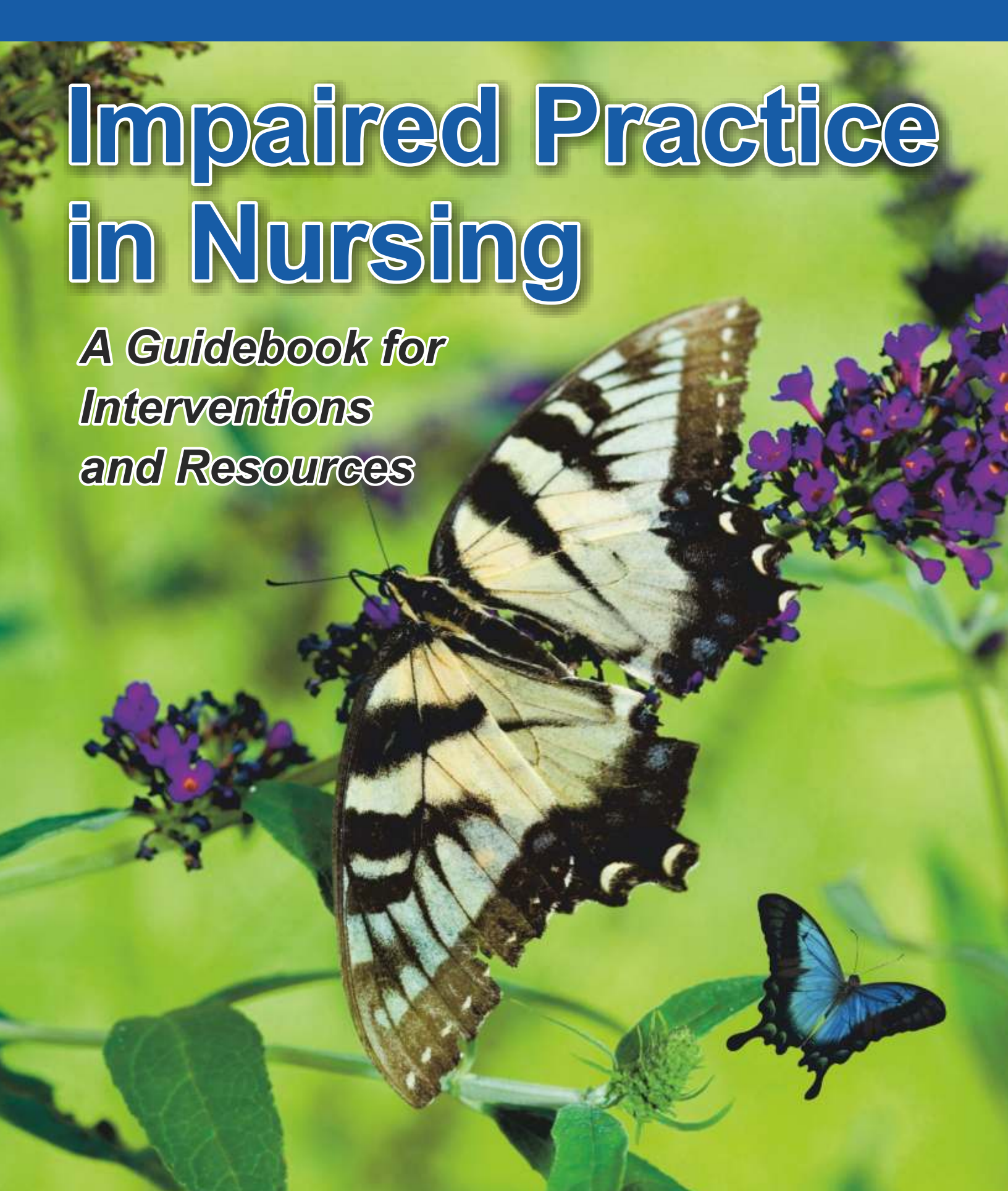


Impaired Practice in Nursing

*A Guidebook for
Interventions
and Resources*



Massachusetts
Nurses
Association

MNASM



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United

Approved, MNA Addictions Nursing Committee 9/11

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Impaired Practice in Nursing: A Guidebook for Interventions and Resources

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Developed by the MNA Addictions Nursing Committee 2011

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Statement of Intent

This reference work is **not** intended to be construed or to serve as a standard of practice. This guidebook was developed to be a resource to the collective bargaining representatives, within the Massachusetts Nurses Association, as they assist nurses with impaired practice and/or substance use problems. In addition, it serves as a resource for nurses who may have a concern regarding their own use of substances or a colleague's behavior associated with substance use. If any nurse has any questions or legal concerns, MNA encourages legal council.

Mandatory Reporting Laws vary by state. This reference refers to the laws and programs available in the Commonwealth of Massachusetts. Nurses in other states are encouraged to refer to their individual state laws, nurse practice acts, professional associations and/or union agreement/contracts.

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The Guide's Purpose is to:

- Improve understanding of substance use problems in the Nursing Profession.
- Provide a framework for collective bargaining representatives and co-workers who assist colleagues with substance use problems and issues.
- Outline a process that can guide and assist colleagues towards recovery.
- Provide a set of recommendations for nurses to address substance use in the workplace.

Statement of the Problem:

Alcohol and drug dependence affects all segments of the population. Nurses are not immune to the issues of substance use. There is a concern that an increasing number of nurses use substances for a variety of reasons. Precise data on how many nurses are chemically dependent or use substances in various forms is unknown. However, recent statistics in state Boards of Nursing clearly define an upward trend. The two most common issues nurses have are access and availability (*Tsindoff, Storr and Wall, 1999*).

Nurses may be at higher risk for substance use disorders given their risk for physical injury on the job, familiarity with comfort medications, and the overwhelming compassion fatigue on a regular basis given the stress of the work. The approach, the method of intervention and response to a colleague afflicted with a substance use problem, may directly impact the outcome. It is paramount to concurrently protect the nurse as well as the patients entrusted to his/her care.

Substance Use and Dependence is complex and shown to be a brain disease. It is more than compulsive use of substances by individuals who may or may not have heritability factors or environmental stressors that precipitate brain circuitry changes.

A spectrum of behavioral changes often accompanies substance dependence and may illuminate the destruction of all aspects of a person's life. The ability to be a productive employee is margin-

alized as the use of a substance continues. It is incumbent on the profession of nursing to assist our colleagues who may suffer from this disease and facilitate an improved quality of life with a return to health in a life of recovery.

Possible Warning Signs:

Work habits:

- Tardiness
- Absenteeism
- Long Breaks
- Frequent trips off the work unit
- High absenteeism for vague illnesses
- Dramatic reasons for tardiness or absenteeism
- Disappearances from the work area
- Coming to work early or staying late
- Frequent trips to the bathroom
- Use of sick time, especially before or after regular days off
- Willingness to float or pick up extra shifts or transport
- Willingness to be the Medication Nurse, or medicate patients not assigned to their care.

Job performance

- Poor judgment or mistakes
- Difficulty completing responsibilities
- Sloppy job performance
- Forgetfulness
- Drowsiness
- Drug discrepancy
- Reports of poor pain relief by patients assigned to the nurse

Behaviors:

- Inability to concentrate
- Mood swings
- Nervousness
- Irritability
- Change in personality
- Anger if questioned about alcohol or drug use
- Preference for isolation
- Memory loss
- Nodding off during quiet time
- Illogical or illegible charting/mistakes in electronic medication administration record (EMAR)
- Frequent breakage or drug spills
- Frequent use of breath purifiers.

Appearance:

- Deteriorating personal appearance or perfectionism in appearance (to avoid attention)
- Tremor of hands
- Diaphoresis
- Puffy face
- Odor of alcohol
- Ocular changes: pin point pupils, glossy eyes or very dilated pupils that don't react to light

It is important to note that the behaviors listed above, separately or in combination, are not reliable evidence by themselves of a substance use problem. No conclusion should be reached in this regard without additional reliable evidence of substance use.

Assisting a Nurse Prior to the Substance Use Problem Affecting his/her Nursing Practice

Nurse colleagues working directly with a nurse affected by a substance use problem are often the first to identify the subtle changes in a co-worker. It is important to address the issue as soon as concerns are identified. This may encourage the nurse to take action toward recovery before the issue affects their clinical practice. Refer to the algorithm on pages 13-15 *Algorithm for Assisting a Nurse with a Substance Use Problem, Prior to it Affecting Workplace Performance/Nursing Practice*.

A critical step is to inform the nurse about the availability of a family medical leave (FML). It is important that the nurse understands that his/her options will become limited and their license will be in jeopardy if substance use continues. Problems related to substance use most often progress to affect clinical practice. The MNA provides a free and confidential Peer Assistance Program to nurses seeking recovery. In addition to one-on-one peer support, the MNA can also provide resources and answers to questions. The MNA Peer Assistance Program can be accessed by calling 800-882-8056 ext 755 or 781-830-5755. The nurse should also contact his/her primary care practitioner.

Because it is not possible to be aware of all the possible causes for the behaviors, it is recommended to preface the discussion with: "I am not asking you to confirm, deny or explain the reasons for the observed behaviors. I am here to share concerns and offer possible resources for your consideration."

Assisting a Nurse Colleague With a Substance Use Problem After the Problem Has Been Identified by Supervisor/Management and Nurse is Currently Under the Influence

When a manager has identified a nurse with the possibility of being under the influence of substances while on duty, the first priority is to ensure that management provides a prompt and comprehensive evaluation by a licensed independent practitioner for safety risk/stability and provide safe transport to a safe environment. When a nurse is initially discovered to have a substance use disorder, there is often a significant amount of associated shame and guilt. At this level of intervention, the nurse can be at risk for self harm and it is imperative that he/she be evaluated appropriately and transported to a safe environment.

The second concern is to contact the bargaining unit representative to revise the contract and determine if drug testing is permitted by contract and, if so, under what circumstances. See the *General Drug Testing Considerations* – page 19 for more information.

Initial Meeting with the Nurse & Management (refer to algorithm on page 14)

Bargaining unit representatives should be prepared with peer assistance materials. *It is important to encourage the nurse to withhold their comments and response until all the concerns/issues are presented by management.* Initial intervention meetings are often charged with emotions and it is best if the collective bargaining representative can keep the meeting focused on concrete, observed behaviors. *Once all the information is presented, request to terminate the meeting and re-convene in 24 - 48 hours. Encourage the nurse to seek legal counsel prior to responding to observed behaviors.* The issues presented will have a direct effect on not only the nurse's job status but may also affect the nurse's license. If diversion of narcotics is suspected, the facility will most likely report the diversion to the Department of Public Health (DPH) and/or Board of Registration in Nursing (BORN).

Typically one of two reactions occurs at the initial meeting: 1) anger/denial or 2) remorseful confirmation of a substance use problem. In either case, the nurse is not in the best position to respond immediately. Therefore, a follow-up meeting needs to be scheduled. Management generally present their course of action for the nurse related to the job status and reporting to DPH or BORN at the initial meeting. The collective bargaining representative should attempt to gather this information if it is not provided.

After the initial meeting with management/HR is complete, it is in the nurse's best interest to contact a private attorney for license-related issues and seek advice through MNA for issues related to employment.

Recommendations to the Collective Bargaining Representatives When a Nurse Denies the Substance Use Allegations: (refer to algorithm on page 15)

Request the following information from management/HR:

- Current job status - classification
- If terminated, is it with or without cause
- The nurse's eligibility for unemployment
- Access to earned time/sick time and /or leave of absence

- Access to health insurance and length of time available.
- Access to disability insurance
- FMLA options
- COBRA costs
- Copies of all documentary evidence supporting their allegations

The collective bargaining representative should encourage the nurse to contact their nursing liability insurance provider and obtain legal counsel ASAP. It is also recommended to document the comments from the meeting. It is important to advise the nurse to *seek legal counsel prior to responding to any DPH/BORN investigators questions*. Investigators may contact the nurse by telephone to gather information as part of their investigation. This information is used as part of the nurses testimony and thus should be provided in writing only after attorney review.

For more information on Board of Registration (BORN)/Substance Abuse Rehabilitation Program (SARP) process, refer to the Important Considerations section on page 10. The bargaining unit representative should review grievance time line with the nurse. Peer assistance materials may also be offered.

Recommendations to the Collective Bargaining Representatives When a Nurse Admits/Confirms a Substance Use Problem: (refer to algorithm on page 15)

Request that management/HR provide answers to the nurse on the following questions:

- If the employee is willing to maintain employment while the nurse seeks recovery assistance, what are the terms?
- Potential for alternate worksite employment within the agency
- Leave of absence options
- Access to earned time/sick time and/or leave of absence
- Access to health insurance while nurse obtains treatment and seeks recovery care
- Access to disability insurance while nurse obtains treatment and seeks recovery care
- FMLA options
- COBRA costs

- Unemployment eligibility
- Re-hire/seniority options
- Pension options (if applicable)

It is important for the collective bargaining unit representative to caution the nurse from self-reporting to the BORN/SARP without legal counsel. *The nurse's access to liability insurance may be limited if they self-disclose use of substances. SARP Coordinators will answer questions anonymously. However, once personal identifiers are provided, confidentiality will not be maintained* and the reported data will be forwarded to the BORN for investigation if the nurse does not follow through with completing the application and entering the five year program. See "Important Considerations and Information" section for a summary of the SARP program below.

- SARP Intake Coordinator: 617-973-0931 or 617-973-0800.

For detox and recovery information, nurses should refer to their health insurance provider and/or contact their primary care physician for appropriate referrals. For additional support, encourage the nurse to contact the confidential MNA Peer Assistance Program at 781-830-5755 for peer support, information on support groups and additional resources. www.peerassistance.com.

Important Considerations and Information:

Understanding the BORN's Substance Abuse Rehabilitative Program (SARP):

SARP is a five year, license leveraged program, provided by the Massachusetts Board of Registration in Nursing (BORN). Designed as an alternative to discipline, this five year program supports recovery. It is a rigorous program with daily call-in for random drug testing, weekly requirements for support groups and counselor appointments. There are clinical practice and travel restrictions. An important element of the SARP contract is the condition of "summary license suspension" which indicates that if a participant is unable to comply with the program requirements, at any time during the five year contract, their license can be summarily suspended.

The nurse must submit their license upon application and they are generally not able to work as a nurse for at least one year. Participants of SARP submit quarterly progress updates to the SAREC (Substance Abuse Rehabilitation Executive Committee, an oversight group of volunteer nurses

who oversee the participant cases and meet quarterly in various regions of the state). Nurses in SARP must agree to remain abstinent from all substances of abuse including alcohol for five years. While in the SARP, any short-term use of prescription pain or anti-anxiety medications requires documentation and notification of the SARP coordinators and lab testing facility. Recovery supportive drugs such as suboxone, naltrexone or methadone are currently not allowed while in SARP.

Complaints/Reports to DPH/BORN

Healthcare facilities are required by law to report narcotic discrepancies and suspected diversion to DPH. When the hospital files a report to the DPH for diversion, an investigation will ensue. The data is then forwarded to the BORN investigators to prepare the case for a disciplinary hearing for any nursing personnel involved (cases may take three to six months for investigation). When the investigation is complete and a substance abuse problem is suspected, the nurse will receive a letter from the BORN stating: “an investigation at XYZ facility has revealed that he/she *may* have a problem with substance abuse” and offer him/her the option of an alternative to discipline with SARP. The nurse will have 30 days to decide if they would like to pursue the discipline route, or enroll in the five year SARP program. If the nurse chooses to pursue the discipline route, cases can take an additional six to twelve months to receive a hearing date and legal counsel is advisable in these cases.

Additionally, hospitals can file a complaint directly with the BORN under the *mandatory reporting* law CMR244-9.03. which states “A nurse who holds a valid license and who *directly observes* another nurse engaged in any of the following shall report the nurse to the Board in accordance with Board guidelines:

- (a) Abuse of a patient
- (b) Practice of nursing while impaired by substance abuse
- (c) Diversion of controlled substances

Self Disclosure to BORN and SARP:

There are many factors to consider regarding self disclosure to the SARP/BORN. At the point of discovery of a substance use problem, the disease is often at a profound state and the nurse is at risk for harm if he/she does not seek treatment immediately. Self reporting to SARP may speed up the entry process by at least three to four months and often helps the nurse engage in the recovery process sooner. *It is recommended that the nurse secure legal counsel prior to self-reporting to SARP.* Once the nurse self reports to SARP, the information cannot be retracted. Failure to complete the application and submit your license will most likely result in a BORN investigation. By self-disclosing the nurse often waives access to their liability insurance since self reporting eliminates the formal complaint/investigation, which most liability insurers use as an indication for access to the nurse's individual liability insurance. Many hospitals may use the leverage of his/her job to strongly encourage the nurse to self report. However, when a nurse enters SARP they are not able to work as a nurse for one to two years and it is unlikely a facility will secure a registered nurse position for that duration.

Typically after one year, if the SARP candidate complies fully with the terms of the SARP contract, the nurse may request a contract adjustment from the SAREC committee to return to nursing practice. Upon return to work, the SAREC committee will often initially specify the practice restriction of not administering medications/narcotics. This restriction poses significant limitations for the nurse in terms of workplace options. The key benefit of self reporting, for the nurse, is that he/she will be able to enter SARP within one to two months as opposed to waiting three to six months if the hospital files a report and an investigation is required.

Weingarten Rights:

All union employees have the legal right to request a union representative be present at any meeting with a manager/supervisor in which the discussion could lead to the employee being disciplined or terminated. At the onset of any meeting with management, and employee should ask if there is any chance that discipline could result from information/discussion at the meeting. If yes, the nurse can choose not to participate in the discussion until a union representative is available.

Algorithm for Assisting a Nurse with a Substance Use Problem, Prior to it Affecting Workplace Performance/Nursing Practice.

Nurse Colleague has identified a nurse with a potential substance use problem prior to it affecting his/her Nursing Practice

Because it is not possible to be aware of all the possible causes for the behaviors, it is recommended to preface the discussion with: "I am not asking you to confirm, deny or explain the reasons for the observed behaviors. I am here to share concerns and offer possible resources for your consideration."

- Address the issue privately with the nurse ASAP. Keep the focus of the meeting on observed behaviors and concern for their health and clinical practice.
- Be prepared with support resources (MNA Peer Assistance Program & Support Groups Lists located at www.peerassistance.com).
- Suggest the nurse take a leave of absence (personal or medical) to address their SA issues immediately. **Encourage the nurse to contact an Attorney.** The attorney will advise the best wording for the FML forms to protect privacy during recovery.
- Research leave of absence options for recovery care.
- *Inform the nurse that their options will become limited and their license may be in jeopardy if they allow SA to affect their clinical practice. SA problems often progress to alter clinical practice and often results in the requirement for enrollment into SARP and temporary loss of license.*
- Inform the nurse of their union representation rights should any meeting be requested by management or HR (Weingarten Rights).
- For detox and recovery information, nurses should refer to their health insurance provider and/or the MNA Peer Assistance program: www.peerassistance.com, 800-882-8056.
- Mandatory reporting law requires any nurse who "*directly observes* another nurse engaged in the "practice of nursing while impaired by substance abuse" or "diversion of controlled substances" to report that nurse to the Mass Board of Registration at 617-973-0931 or 617-973-0800.

Algorithm for Assisting a Nurse Colleague with a Substance Abuse Problem

Management has identified a nurse with a potential substance abuse problem

The identified nurse appears to be currently under the influence of drugs/alcohol at work?

YES

1. Management is obligated to provide prompt and comprehensive evaluation by a licensed independent practitioner for safety risk/ stability and provide safe transport home.
2. Bargaining unit representative should review contract and determine if drug testing is permitted by contract and, if so, under what circumstances.
3. Arrange a plan to re-address the issue as soon as feasible.
4. Attempt to gather information on identified issues of concern and the facilities possible plan of action.
5. Bargaining Rep should advise nurse to seek legal counsel and avoid signing binding documents while under the influence.
6. Bargaining Rep should provide information regarding the MNA Peer Support Program

NO

- Initial Meeting with the Nurse & Management**
- Be prepared with support resources (MNA Peer Assistance info, available at www.peerassistance.com.)
 - Ensure the focus of the meeting is on observed behaviors and concrete observations.
 - Encourage the nurse to *delay responding* until all the evidence and observed behaviors are presented by management (take extensive notes).
 - After the initial information is provided by management, it is in the *best interest of the nurse to terminate the meeting and request minimum of 24 hour delay* and schedule second meeting. Nurse should seek legal counsel prior to responding to observed behaviors.
 - Meet privately with the nurse to discuss observations presented and answer any questions. (Note: content of conversation and notes from this meeting are subject to subpoena)
 - Typically one of two reactions occur: 1) anger/denial or 2) remorseful confirmation of a SA problem. In either case the nurse is not in the best position to respond immediately so a f/u meeting needs to be scheduled.



Nurse Denies SA Problem

- Request management /HR to provide answers to the following questions:
- Job Status
- If terminate, with or without cause
- Unemployment eligibility
- Access to benefit time & wages
- Access to health insurance
- Access to disability insurance
- FMLA options
- COBRA costs
- Gather copies of evidence supporting allegations
- Nurse should contact their nursing liability insurance provider and seek legal counsel ASAP and document the comments from the meeting.
- *Advise the nurse that contact with BORN investigators will require legal counsel involvement.*
- See the “Important Considerations” section for more information on the BORN/ SARP process.
- Review grievance procedure for time line issues.

Nurse Confirms SA Problem

Request management /HR to provide answers to the following questions:

- Alternate worksite employment within the agency
- Leave of absence options
- Access to benefit time & wages
- Access to health insurance while nurse seeks recovery care
- Access to disability insurance while nurse seeks recovery care
- FMLA options
- COBRA costs
- Unemployment eligibility
- Re-hire /seniority options
- Pension options

Caution the nurse from self-reporting to the BORN / SARP without legal counsel. The nurse's access to liability insurance may be limited if they self-disclose.

- SARP is a 5 year license-leveraged program with multiple practice and travel restrictions.
- SARP applicants must submit their license and will not be allowed to work as a nurse for 1-2 years minimum.
- SARP Coordinators will answer questions anonymously. However, once personal identifiers are provided confidentiality may not be maintained. The reported data with identifiers may be forwarded to the BORN for investigation if the nurse does not follow through with completing the application and entering the 5 year program.
- SARP Intake Coordinator: 617-973-0931 or 617-973-0800.
- See Important Consideration sections for a summary of the SARP program
- For detox and recovery information, nurses should refer to their health insurance provider.
- **Encourage the nurse to contact the confidential MNA Peer Assistance Program at 781-830-5755 for peer support, information on support groups and additional resources. [www. peerassistance.com](http://www.peerassistance.com)**

Resources Available

Internal Resources

- Established written policies in your facility
- Union contract (if applicable)
- Human Resources Director and/or the Employee Assistance Program (if a nurse elects to utilize the hospital's EAP, he/she should confirm in advance if confidentiality is maintained)

External Resources

- **Massachusetts Nurses Association Peer Assistance Program** 1-800-882-2056 ext 755 or 781-830-5755 is a free and confidential peer support program provided to any nurse in Massachusetts. Program is not related in any way to the Board of Registration in Nursing.
- **Weekly Nursing Support Groups** for nurses with a substance abuse problem are offered throughout Massachusetts. Refer to the MNA Peer Assistance website at www.peerassistance.com for a list of meetings.
- **Massachusetts Board of Registration in Nursing (BORN) has a Substance Abuse Rehabilitative Program (SARP):** The SARP program is established in accordance with Massachusetts General Laws, Chapter 112, section 80F, as a voluntary alternative to disciplinary action for nurses who have alcohol and drug problems. For more information refer to Board of Registration in Nursing Web site: www.state.ma.us/reg/boards/rn/sarp.htm.
- **Self help groups:** Alcoholics Anonymous (AA); Narcotics Anonymous (NA); or Cocaine Anonymous (CA).
- **SMART Recovery:** SMART Recovery® is the leading self-empowering addiction recovery support group network with a 4 step program for alcohol and other substance use disorders. www.smartrecovery.org.
- **Faith Based Recovery Programs:** Within certain faiths, there are recovery programs.
- Decisions about in-patient and/or out-patient **detoxification and rehabilitation facilities**, are usually best directed by the individual nurse's health insurance program and primary care practitioner. The facility's EAP may also be of assistance in this area (in many cases the nurse can be placed on a "medical leave of absence" in order for him or her to maintain health insurance coverage during the rehabilitative phase).

Legal Considerations:

Mandatory Reporting Law:

(The following information is referenced from the Massachusetts Board of Registration in Nursing at CMR 9.03(26) Duty to Report to the Board:

A nurse who holds a valid license and who directly observes another nurse engaged in any of the following shall report that nurse to the Board in accordance with Board guidelines:

- a) abuse of a patient;
- b) practice of nursing while impaired by substance abuse
- c) diversion of controlled substances

- For further information contact the Board of Registration in Nursing (BORN) or visit the BORN/SARP web site: www.state.ma.us/reg/boards/rn/sarp.htm

Returning Employees to Work (see Appendix A – page 23)

When the nurse employee who has been treated for and is recovering from a substance use problem returns to work, there is potential for relapse with use of substances. The nurse manager /HR may choose to establish a written “return to work agreement”. Any agreement as such is separate from the BORN / SARP written contract. This agreement may include any or all of the following:

1. Limitations on the scope of practice of the nurse employee; for example, a nurse employee may be restricted from administering medications.
2. Mechanisms for closer supervision of the nurse employee.
3. Limitations on hours of work; for example, a nurse employee may be restricted to particular shifts or days of work.
4. Limitation on overtime worked.
5. Expectations relative to documentation of continued treatment and after care, including periodic random testing of bodily fluids.

The 1990 Americans with Disabilities Act (ADA) expanded the definition of “disabled” and clearly includes individuals recovering from illegal drug use and alcoholics. The ADA mandates reasonable accommodation of an individual’s disability in order to allow performance of the essential functions of the job, unless undue hardship would result. Reasonable accommodation may extend to job restructuring, part-time or modified work schedules, and/or reassignment to a vacant position. The ADA’s legislative history would also support reasonable accommodation to reallocation and revision of work assignments, redesigning procedures and providing additional unpaid leave days. The Equal Employment Opportunity Commission and the Massachusetts Commission Against Discrimination (MCAD) is specifically charged with the enforcement of the ADA.

Nurse managers should consult with their institutional and agency attorneys regarding the specific applicability of state or federal law to their work setting.

Return To Work Issues

For the nurse in recovery, the re-entry and return to work and can cause concerns for the nurse co-workers and agency. It is critical for the nurse to have a strong support team in place and a plan that clearly delineates expectations. A structured system for a re-entry program consists of a network of support services and a written contract between the employer and the employee. (See sample Return to Work Agreement – page 23) The following are some suggested elements of the return to work process.

Elements of a Return-to-Work Agreement

1. It is preferable that a nurse return to a work environment that provides structure and support.
2. A designated contact person should be available while the nurse is on duty.
3. If the restriction of medication administration is warranted, specific limitations should be clearly defined, documented and reviewed periodically.
4. Follow-up conferences should be scheduled with the supervisor or Human Resource personnel as per agreement.
5. Professional outpatient counseling with random supervised toxicology screens or breathalyzer testing is often indicated.

6. Abstinence from alcohol and/or other drugs is required.
7. Regular attendance at support group meetings is often an expectation.
8. Institutional policies should guide the direction of the re-entry agreement.

It is important to establish a supportive work environment. It is also critical for the nurse to be clearly informed of the plan and expectations.

General Considerations for Drug Testing

When a facility seeks to establish a policy and procedure for drug testing and screening, the collective bargaining agents should request the policies be subject to negotiation. There are several methods of drug testing, such as urine, hair, saliva and breathalyzer. Urine and breathalyzer testing are the most common and cost effective methods employed.

The following guidelines are commonly found in negotiated drug and alcohol policies.

Purpose of Drug Testing Programs

1. Commitment by the Employer to fairness in testing. All testing must be free from undocumented reasons for testing.
2. Deterrence from the effects of drug use by making education and training available for all employees regarding the effects of substance abuse on individuals and on the workplace.
3. Detection. The facility will employ testing based on reasonable suspicion.
4. Treatment and Rehabilitation. The facility should support rehabilitation for those employees who desire rehabilitative services. All employees should be encouraged to receive help for substance use problems through participation in an Employee Assistance Program and/or a recognized rehabilitation program.

Drug Testing for Controlled Substance Based on Reasonable Suspicion

1. Direct observation of illegal use, diversion or possession of drugs and/or the physical symptoms of being under the influence of a drug, controlled substance or marijuana.
2. A documentable pattern of abnormal conduct or erratic behavior while on duty (See signs and symptoms, page 5).

The supervisor making the initial determination of reasonable suspicion shall contemporaneously document, in writing, all circumstances, information and facts leading to and supporting his/her suspicion. If possible, a second supervisor should document their observations. The report will include appropriate dates and times of suspicious behavior, reliable/credible sources of information, rationale leading to referral for testing and action(s) taken. Said observations must be made during work time.

Once an employee has been referred for testing based on reasonable suspicion, it is the responsibility of the supervisor to advise the employee of this decision and to escort the employee to the collection facility.

Procedures for Drug Testing

- A. Direct observation of urine sampling based on facility policy.
- B. If urine testing is performed, split sampling is the preferred methodology.
- C. *Facilities should refer to the Laboratory regulations (consistent with the Department of Health and Human Services guidelines).*

Consequences of a Positive Test

Employers need to have a formulated policy for employees that test positive for substances while on duty. It is recommended that employers offer the nurse the option to enter a rehabilitation program (the nurse's individual medical insurance program will determine the available options for detoxification and rehabilitation facilities).

All records and documentation regarding drug testing, intervention, rehabilitation and all associated events must be retained in a confidential file (refer Human Resources policies).

Frequently Asked Questions

1. Why should we help nurses with impaired practice?

Addiction is a disease and those affected with this disease, as well as family and friends suffer as a result of this disease. Support of our nurse colleagues who suffer from addiction is an essential component of our profession. Research reveals that when a nurse is supported in gaining recovery it can help lessen the devastation in the life of a nurse struggling with addiction, preserve a career, and return a valuable resource to the healthcare community.

2. Does a nurse need to be reported to the Department of Health (DPH) if drug diversion is suspected?

The DPH regulation requires reporting of diversion of controlled substances. If the DPH investigation indicates that a specific nurse is involved, a report may be sent to the Board of Registration in Nursing.

3. If a nurse is having a problem with substance use but it is not occurring at work, do I need to report him/her to the Board of Registration in Nursing?

The mandatory reporting law states:

CMR 9.03(26) Duty to Report to the Board: A nurse who holds a valid license and who **directly observes** another nurse engaged in any of the following shall report that nurse to the Board in accordance with Board guidelines:

- a) abuse of a patient;
- b) practice of nursing while impaired by substance abuse
- c) diversion of controlled substances

4. How can this information be applied to student nurses?

Many schools of nursing have an established policy and procedure for addressing substance abuse. The American Association of Colleges of Nursing (AACN) has a position statement entitled: Policy and Guidelines for Prevention and Management of Substance Abuse in the Nursing Education Community. For more information please refer to their web site at: www.aacn.nche.edu/Publications/positions/subabuse.htm

5. Are nurses required to submit to alcohol or urine drug testing when impaired practice is suspected?

Requirements for Drug Testing are based on the facility's written policy and procedure and union contract.

6. If a nurse is convicted of "Operating Under the Influence" (OUI), how will that affect his/her RN licensure?

The Massachusetts Board of Registration in Nursing (BORN) holds the legal authority to investigate allegations of violations of the statutes and regulations governing nursing in the commonwealth of Massachusetts.

Appendix A

Sample Return to Work Agreement

Expectations regarding the return to work of: _____ (employee)

This agreement from _____ (date) to _____ (date)

I _____ (employee) agree to work _____ hours per week, on _____ shift with _____ overtime and _____ floating.

I further agree to:

1. Abstain from alcohol and other drugs and potentially addicting medications.
2. If a potentially addicting medication is prescribed by my physician, I agree to notify Employee Health and provide evidence from my treating physician.
3. Provide a physician's note if out sick for more than _____ days.
4. Participate in the following treatments: (check all indicated)

- Individual Therapy _____ frequency
- Group Therapy _____ frequency
- AA / NA __ times per week
- Attend Professional Support Groups weekly

I agree to provide documentation of participation in the above treatment modalities.

I agree to give permission to my therapist to contact the Human Resource Department if I fail to attend any of the above treatments.

I agree to:

1. Submit to random urine / blood screens / breathalyzer tests when reasonably requested.
2. Participate in meetings with:
 - Human Resources Department _____ per month
 - Supervisor _____ per month
 - Support Person _____ per month

This agreement will be modified, as necessary, by the Human Resource Department

Employee Signature

Human Resource Department Personnel

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