

GUIDING PRINCIPLES TO PROTECT PATIENTS FROM AT-RISK OR RECKLESS BEHAVIOR BY REGISTERED NURSES

BACKGROUND

The nurses and caregivers in our healthcare system are on the frontlines of care, serving a special role that mandates a high standard of care to ensure a safe patient culture. This standard was paramount when the leadership of the American Organization of Nurse Executives (AONE), American Society for Healthcare Risk Management (ASHRM), and the American Society for Healthcare Human Resources Administration (ASHHRA) met to discuss how this process could be improved. Although rare, headlines remind us that criminal behavior does occur that requires us to be ever vigilant in our protection of patients. It was critical that these three organizations collaborate to develop guiding principles for further discussion and use by respective members – nurse leaders, healthcare risk managers, and human resource professionals.

The resulting guiding principles include suggested practices as a starting point for organizations interested in reviewing their preparedness to deal with a provider who may act in an at-risk or reckless manner. The exhibits attached are intended as examples to assist organizations in building on their own knowledge and practices.

It is our intent that each healthcare organization will consider these approaches as a starting point and use their own substantive knowledge, expertise, and best practices to build the details of processes appropriate for their organization.

PURPOSE STATEMENT

This document establishes guiding principles for the identification and mitigation of registered nurses/APRNs that may act in manner detrimental to a patient's safety when conducting their professional duties.

These principles are based on the tenets of *Just Culture* espoused by James Reason, which is the development of a trusting environment in which people are encouraged (even rewarded) for providing safety-related information; commitment to excellence; and establishment of guidelines that foster personal accountability as well as corporate self-regulation in matters of safety (Reason, 1997). We also recognize the body of work by David Marx and his analysis of behavioral concepts important to understanding the inter-relationship of discipline and patient safety (Marx, 2001). The *Just Culture* model describes three types of behavioral categories that we can expect in the occurrence of an adverse event. *Human error* is an inadvertent action—slip, lapse, or mistake (Marx, 2001). *At-risk behavior* is a behavioral choice that increases risk where risk is not recognized or is mistakenly believed to be justified (Marx, 2001). *Reckless behavior* is a behavioral choice to consciously disregard a substantial and unjustifiable risk (Marx, 2001). We will focus on *at-risk behaviors* and *reckless behaviors*.

As leaders of our professional organizations and on behalf of the patients we serve, we commit the experience and resources of our individual organizations to create awareness and discussion to ensure the safety of patients in our care. We believe that the following principles can guide us in this process.

PART I: EFFECTIVE RECRUITMENT, SCREENING, AND HIRING

It is essential that the recruitment, screening, and hiring process for clinical staff/nurses is effective in order to protect patients and create a safe clinical environment for staff. The organization's healthcare human resource professional is an important resource as you consider clinical candidates.

*The following are **Elements of the Recommended Hiring Process**:*

- Human Resources reviews and approves candidate application form prior to position posting.
 - See Appendix for sample applicant reference form.
- Human Resources screens applications and conducts the initial candidate interview.
- The Nurse Director and/or appropriate staff conduct the next or second candidate interview.
- Human Resources conducts the candidate background check, which includes the following:
 - **Drug screen** to test for illegal substances and prescription drugs (barbiturates, opiates, amphetamines, marijuana/hashish; hallucinogens).

- **Criminal background check.**
- Verifies that candidate is NOT on the **Medicare Exclusion** list (footnote).
- If required by the state, obtains a copy of **candidate fingerprints**. If not required by the state, consider obtaining as part of the hiring process.
- Request a copy of candidate's last **performance evaluation**.
- Human Resources performs the following as part of the hiring process:
 - Verifies candidate's education and training.
 - Verifies candidate's Licensure with the relevant State Board of Nursing.
 - Queries the National Practitioner Data Bank (NPDB) for advanced practice registered nurses.
 - Human Resources conducts two to three candidate reference checks with former employers. Questions may include but are not limited to: recommend adding disclaimer – "Under advice of legal counsel."
 - Would you rehire candidate X? Yes No
 - If not, why? (Factors to consider include attention to safety, interpersonal relations, compliance, attendance, professional practice issues.)
- Human Resources, after consultation with nursing hiring staff, decides to hire or not hire the candidate.
- Human Resources communicates the hiring decision and terms to the candidate.

PART II: ENSURING EFFECTIVE CLINICAL ONBOARDING

All newly hired clinical staff/nurses should have a defined probationary period during which goals are set to establish and assess competency. The length may vary, though 90 days is customary. A defined competency based orientation program, supervised by a registered nurse, is recommended.

Clinical staff is one of the most important assets of any healthcare organization. In order to attract clinical staff, it is important to effectively orient newly hired clinical/nurse staff.

The following are elements of an **effective onboarding process**:

- Use an onboarding process that is proactive, transparent, and flexible.
- Engage those involved in the process, such as, but not limited to:
 - Human Resource professionals
 - Nurse managers
 - Senior executives

- Health care risk managers
- Others with a vested interest in the successful hiring and integration of clinical staff.
- Support and consistently communicate the processes essential to creating a safe patient and work environment, even if they are time-intensive.
- Engage those involved in efforts to continuously improve the onboarding process.

PART III: MONITORING BEHAVIOR

Monitoring for high-risk (i.e., at-risk or reckless behavior) requires a collaborative approach including Human Resources, Nursing Leadership, and Risk Management professionals. Hospitals/healthcare organizations should establish a defined mechanism to monitor, investigate, and report at-risk or reckless behaviors.

The following are components of a process to **monitor high-risk behaviors of clinical staff**:

- Establish appropriate job expectations and performance criteria
- Establish mechanisms for proactive performance review that includes behavioral performance
- Establish a process to monitor and evaluate clinical staff transfers to ensure that registered nurses with high-risk behavior don't move within the facility as a way to avoid detection
- Ensure that there are multiple mechanisms for employees and others to report suspicious or high-risk behavior
- Establish mechanisms that provide ongoing assessment and monitoring of permanent and temporary staff for quality and safety of care (i.e., incident reports, sentinel events, complaints, grievances, near miss data, claims data, quality audits, and chart audits)
- Identify triggers that will alert staff of the need for further investigation of events that cause harm (i.e., discrepancies in medication administration, adverse drug events, and adverse events).

Part IV: Assess Culpability

Upon suspicion or detection of an adverse event that could be the result of malicious intent the following actions are recommended:

- Notify the Risk Management Department and/or appropriate personnel pursuant to organizational policies and procedures.

- Respond to the patient. Determine if there is an ongoing threat. Implement strategies to stop the loss or mitigate the loss, as appropriate.
- Remove registered nurse/APRN from unit/department.
- Contain the environment and evidence, if applicable.
- Ensure that staff is provided with support (i.e., employee assistance program, as indicated).
- Conduct a thorough investigation that is objective, purposeful, valid, confidential and timely. Investigation findings must permit analysis and corrective action to prevent reoccurrence. Disseminate those findings, as appropriate. Disclose to patient/family, as appropriate.
- Refer to “Workplace Violence” and “Fitness for Duty” policies.
- Implement Corrective Action/Disciplinary Action – consult with HR.
- Report, as appropriate, to the State Board of Nursing, accreditation or regulatory agencies, and/or law enforcement pursuant to applicable state laws and regulations.

The *Just Culture* model promotes creating an open, fair, and just culture that creates a safe haven for reporting and supports safe behavioral choices among staff. Under the *Just Culture* model, managing behavioral choices requires holding staff accountable for their behaviors. *At-risk behaviors* may be managed through coaching – removing incentives for at-risk behaviors, creating incentives for healthy behaviors, and increasing situational awareness. *Reckless behaviors* may be managed through remedial action and punitive action (Marx, 2001).

CONCLUSION

These principles and strategies are intended to assist organizations in addressing situations involving clinical staff, specifically registered nurses/APRNs, but they can be applied to any healthcare environment or other types of healthcare providers. The values that ground this work are: collaboration, partnership, and transparency. Incorporating these guiding principles requires trust, courage, and a deep commitment to change our current system and the development of processes and practices that will ensure patient safety and quality.

These principles require courage on the part of employees and employers to act in spite of personal fear or retaliation, organizational liability or legal implications, and regulatory/legislative barriers. We believe that the principles identified are essential for the creation of a community of trust among employers, employees, and patients/families.

APPENDIX/EXHIBITS

- ❖ Resources and References
- ❖ Applicant Reference Form - This is intended to assist you in starting this recommended process. Consult with your legal counsel to ensure that other information should or should not be included on this form.

RESOURCES AND REFERENCES

American Nurses Association. (2010). *Position paper on just culture*.

Becker C. In wake of nurse accused of killing patient, the health system wrestles with balancing shortage, ineffectual reference process. *Modern Healthcare*. 2003 Dec 22-29; 33 (51): 6-7.

Dunbar CN. Nurses who kill: picking up the pieces after the Charles Cullen arrest. *Forensic Nursing*. 2004 Mar/Apr. Accessed June 10, 2010 at <http://www.forensicnursemag.com/articles/431feat1.html>

Case of the killer nurse reveals new-hire obstacles. *Healthcare Risk Management*. 2004 Feb 1. <http://www.ahcpub.com/>.

Fliszar GM. 'Nurse Cullen' Legislation Requires NJ Health Care Entities to Report Incompetence and Negligence. *Martindale.com Legal Library*, July 26, 2004. http://www.martindale.com/health-care-law/article_Pepper-Hamilton-LLP_173954.htm.

Frellick M. This Could Be You: Cullen Law Under Scrutiny. Two New Jersey nurse attorneys cite RNs as unfair targets and are working hard to change the Cullen law <http://news.nurse.com/article/20090223/NATIONAL02/302230053> Nurse.com Feb. 23, 2009.

Marx, D. (2001). *Patient Safety and the "Just Culture": A Primer for Health Care Executives*. New York, NY: Columbia University.

MW Phelps. *Perfect Poison: a Female Serial Killer's Deadly Medicine*. Pinnacle, 2003. <http://www.amazon.com/Perfect-Poison-Female-Killers-Medicine/dp/0786015500/>.

Pyrek KM. Healthcare serial killers: recognizing the red flags. *Forensic Nursing*. 2003 Sep/Oct. Accessed June 10, 2010 at <http://www.forensicnursemag.com/articles/391feat1.html>.

Ramsland K. *Inside the Minds of Healthcare Serial Killers: Why They Kill*. ABC-CLIO, 2007. <http://search.barnesandnoble.com/Inside-the-Minds-of-Healthcare-Serial-Killers/Katherine-Ramsland/e/9780275994228>.

Reason, J. (1997). *Managing the risks of organizational accidents*. London: Ashgate Publishing.

Sullivan MK. Serial murder in healthcare. *Nursing Management (Springhouse)*. 2009 June;40(6):32-36. http://journals.lww.com/nursingmanagement/Citation/2009/06000/Serial_murder_in_healthcare.10.aspx.

Sumner J and others. Health Care Communication Networks: Disseminating Employee Information for Hospital Security. *Health Care Manager*. 2009 Oct/Dec;28(4):287-298. http://www.nursingcenter.com/library/JournalArticle.asp?Article_ID=941015.

Yorker BC and others. Serial murder by healthcare professionals. *Journal of Forensic Sciences*. 2006 Nov;51(6):1362-1371. <http://www3.interscience.wiley.com/journal/118609348/abstract>.

APPLICANT REFERENCE FORM

Key aspects of the Applicant Reference Form include:

1. Employee's certification and waiver for information to be provided by former employers from employment within the past 3 years.
2. Demographic information.
3. Reason for separation from service.

The information above allows former employers to provide information regarding rehire, formal disciplinary actions due to incidents involving violent behavior, abuse, neglect, or negligence toward patients/clients/residents as well as other formal disciplinary action of a general nature. The former employer is asked to respond to questions regarding employee's attendance.

The form (see reverse) will provide your organization with a statement that indicates whether performance was satisfactory or less than satisfactory and give a brief description of documented unacceptable performance. Consult with your legal counsel prior to utilizing this or any other form to accept/document reference information on candidates.

APPLICANT REFERENCE FORM

Instructions: Read each question carefully. Our organization is interested in gathering information about your employment within the past three years. If you were employed at only one institution within the prior three years, simply complete the information below. However, if you have worked for two or more employers during the past three years, you must complete a separate form for every employer during the past three year period.

CERTIFICATION AND WAIVER

I certify that all information I will provide is true, complete, and correct. Any information provided found to be false, incomplete or misrepresented in any respect, will be sufficient cause to cancel further consideration of this application, or immediately terminate me from the employer's service, whenever it is discovered.

I authorize and request that my former employer listed on this form complete the form where indicated and release any additional information about my job performance that they may have upon receiving a further inquiry. My signature indicates my approval for this process and for the release of any such information requested during the reference. I waive all claims, any right of action, cause of action, or other means of redress related to both the completion of this form by my former employer and any further disclosure of information about me. I agree to release all prior employers from whom such information is obtained from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance, or any attempts to comply, with this authorization.

I understand that the prospective employer does not unlawfully discriminate in employment and that no question will be used for the purpose of limiting or excusing any applicant from consideration for employment on a basis prohibited by applicable local, state, or federal law. Finally, to the extent I have signed with my prior employer any document by which the prior employer promised not to disclose information requested on this form, I waive all rights to enforce such a promise and release my prior employer from any such non-disclosure obligation.

I certify that I have read, fully understand, and accept all terms of this statement.

APPLICANT: _____ DATE: _____

Note: You must sign the consent and waiver for this form to be considered a valid document.

TO BE COMPLETED BY APPLICANT

Name of Applicant: _____ Last 4 digits of the SSN: _____

Former/Current Employer: _____

Employer's Address: _____

City: _____ State: _____ ZIP: _____ Employer's Phone: (____) _____ - _____

Type of Facility: Hospital Long Term Care Agency Hospice Home Health
 Physician Practice Freestanding Ambulatory Center Other: _____

Position(s) held at this place of employment: _____

I provided care to clients/patients/residents: Yes No Dates of employment: _____ to _____

Reason for separation from service (please check one):

Resigned in good standing Resigned in lieu of termination * Terminated *
 Laid Off Other (specify): _____

**If terminated from employment or you resigned in lieu of termination, specify reason:*
