

Update from the Board of Nursing:

**The New Mexico Board of Nursing Diversion Program
Supporting Facilities thru Cooperation in Diversion Investigations &
Mandatory Reporting Requirement by Nurses to the Board of Nursing**

Sheena Ferguson, DNP, MSN, RN, FANA-I
Executive Director: New Mexico Board of Nursing

Wednesday, August 21, 2024

16:00-17:30

Case Study:

D.B. is a 13-year LPN on a compact license working for a prominent staffing company. She is working on a multi-week contract with a LTC facility in New Mexico. Four weeks into her assignment, she removed controlled substances for a patient. The patient reported she was in pain to the CNA and hadn't received medications. The CNA reported this up the chain-of-command, because she remembered a similar situation the week before.

The leadership questioned the patient, the CNA, and the LPN. Leadership felt that the LPN also seemed slightly dazed. The LPN was sent home.

Having noted other errors, the LPN's contract was terminated.

Leadership did not report this to the NM Board of Nursing.

This is a violation of the NM Nursing Practice Act.

The Staffing Agency tested the LPN two-weeks later.

Unable to validate the complaint, the LPN was re-assigned to another LTC in New Mexico.

Four weeks later, the LPN was accused of similar behavior, sent home and wrecked her car on the way home. Three people ended up in the hospital, one critical.

Why is this conference so important?

Nursing is your profession; it isn't a job.

Patient safety is paramount to the public trust in nursing integrity and quality.

Regulation ensures that there is a standard of practice that ensures patient safety.

Nursing is the most trusted profession because we have such high standards.

However, the highest standards come from a coming together of nurses, advanced practice nurses, nurse managers, nurse leaders, and nurse educators to create a just culture that supports change where we work to zero patient harm.

NM BON Authority:

NEW MEXICO BOARD OF NURSING AUTHORITY

Established in 1923

Governor by State Statute appoints a seven-member Board of Nursing

The Board by statute hires a nurse executive to operate the board of nursing agency

By statute, the Board follows a somewhat complex procedure to change rules



There is created a seven-member "board of nursing." The board shall consist of four licensed nurses, one preferably a licensed practical nurse, and three members who shall represent the public and shall not have been licensed as a registered or licensed practical nurses, nor shall the public members have any significant financial interest, direct or indirect in the profession regulated. §61-3-3.A. NMSA 1978

Your Nursing Board

7-MEMBER BOARD

APPOINTED BY THE GOVERNOR
RECOMMENDATIONS FROM NURSING ASSOCIATIONS

— NMNA, NMNPC, OTHERS

THE BOARD HIRES THE EXECUTIVE DIRECTOR
THE BOARD PROMULGATES RULES BASED ON NEEDS
PATIENT SAFETY AND NURSE PROTECTION
WHY ARE WE HERE?

What is the Role of the New Mexico Board of Nursing?

- Protect the public
- Nurses are the public too
- Professions regulate themselves
- Ensure the profession is protected
- Or someone else will do it.....



Dr. Jacqueline Kaiser,
DNP, MSA, APRN-CRNA
Nurse Member
Bernalillo County
Chair
Term ends 07/01/2026



Monica Arencon-Smith,
MSN, APRN, FNP-BC, CPN
Nurse Member
Bernalillo County
Vice Chair
Term ends 07/01/2024



Dr. Karen L. Brooks,
Esq., EdD, MSN RN
Nurse Member
Santa Fe County
Term ends 07/01/2025



Sandra Lynn Meyer
Guardian Ad Litem
Public Member
Doña Ana County
Secretary
Term ends 07/01/2025



Pam Cordova,
MA, BS
Public Member
Valencia County
Term ends 07/01/2026



Candi Lorraine Miller-Morris,
MSN, RN, CNS, CCRN, CEN, TCRN
Nurse Member
Chaves County
Term ends 7/1/2027

New Mexico Board of Nursing

Nursing Practice Act by the Legislature 61-3-1

- ❑ Board has only as much authority as it is granted by statute
- ❑ Board action is at times subject to procedural requirements

Granted certain express powers:

- ❑ Issue licenses to practice
- ❑ Setting educational standards and approving curricula for educational programs
- ❑ Establish continuing education requirements
- ❑ Administer Nursing Excellence Fund
- ❑ Discipline licensees and unlicensed practitioners

Purpose of the New Mexico NPA:

Promote, preserve and protect the public health, safety and welfare

- ❑ *Taking appropriate remedial (disciplinary) action for violations of the NPA*
- ❑ *Providing for the rehabilitation, where possible, of practitioners*

Expanded on in the Board's rules:

- ❑ *"the ultimate goals of protecting the citizens of New Mexico and ensuring professionalism in the nursing profession"*
- ❑ *Considers whether "the licensee or applicant posed or poses a real or potential danger to the public"*
- ❑ *Considers each case on its own merits*

A Nurse Leader is required to report violations of the NPA.

It is the Law. Failure to follow the Law is also a violation of the NPA.

Requirement to Report:

NPA provides civil immunity to individuals who report nurses suspected of diversion issues to the Board:

- ❑ “if the reports are made in good faith and with some reasonable basis in fact”
- ❑ Not limited to nurses: anyone can file a report with the Board
- ❑ Board’s rules require licensees to “report a nurse or certificate holder who is suspected of violating the New Mexico Nursing Practice Act or Rules”
- ❑ NPA’s “reasonable basis in fact” is the standard
- ❑ Not required to report based on pure gossip or hearsay

NM Diversion Program: Early & Excellent

THEN:

Remember:

Darbro N. (2005). Alternative diversion programs for nurses with impaired practice: Completers and non-completers. *Journal of Addictions Nursing*, 16, 169-85.

Darbro N. (2011). Model guidelines for alternative programs and discipline monitoring programs. *Journal of Nursing Regulation*, 2, 42-9.

Darbro N. & Malliarakis K.D. (2012). Substance abuse: Risks factors and protective factors. *Journal of Nursing Regulation*, 3, 44-8.

NOW:

Bettinardi-Anares, K. (2020). Nurses with substance use disorder: Promoting successful treatment and reentry, 10 years later. *Journal of Nursing Regulation*, 11(1), 5-11. [https://doi.org/10.1016/S2155-8256\(20\)30054-5](https://doi.org/10.1016/S2155-8256(20)30054-5).

Russell, K. (2020). Components of nurse substance use disorder monitoring programs. *Journal of Nursing Regulation*, 11(2), 20-27. [https://doi.org/10.1016/S2155-8256\(20\)30106-X](https://doi.org/10.1016/S2155-8256(20)30106-X)

Smiley, R. & Reneau, K. (2020). Outcomes of substance use disorder monitoring programs for nurses. *Journal of Nursing Regulation*, 11(2), 28-35. [https://doi.org/10.1016/S2155-8256\(20\)30107-1](https://doi.org/10.1016/S2155-8256(20)30107-1)

Stimpel, A., Liang, E., & Goldsamt, L. (2020). Early career nurse reports of work-related substance use. *Journal of Nursing Regulation*, 11(1), 29-34. [https://doi.org/10.1016/S2155-8256\(20\)30058-2](https://doi.org/10.1016/S2155-8256(20)30058-2).

Annual Diversion Conference: year 3!

REGISTER NMNA WEBSITE


National Speakers

Continuing Education

Cheap (\$25.00)

CNM Workforce Training > Parking

September 27, 2024 Friday at 0730



NEW MEXICO BOARD OF NURSING

Diversion Program/Alternative to Discipline Conference
Reimagining Nurse Wellness

Date: September 27, 2024 Time: 7:30 am – 5:00 pm Cost: \$25.00 In-Person (No Virtual)
 Location: CNM Work Force Training Center 5600 Eagle Rock Ave, Albuquerque, NM 87113 ***The deadline to register: September 25, 2024**
 Contact Hours: 8.00 **Register on the NMNA Website**
<https://nmna.nursingnetwork.com/>
No registration at the door

Time	Topic/Activity	Presenter
0730-0800	Registration	Ashley Gow (NM BON) Education and Practice Assistant
0800-0815	Welcome/Introductions/Agenda	Sheena Ferguson, DNP, MSN, RN, FANA-I Executive Director BON Jacqueline Kaiser, DNP, APRN, CRNA Chairperson Board of Nursing Deborah Walker, MSN RN, New Mexico Nursing Association
0815-0900	Substance Use Disorder/Diversion Program Overview	Becky Gonzales MSN RN HWNC-BC (BON)
0900-0930	Let's Talk with our Regional Advisory Committee	Brenda Zander, Retired RN, Connie Smith-Fassler, DNP, MHA, RN, CNML, Rosanne S. Eakin (Retired RN)
0930-0945	Stretch	Drinks and Snacks
0945-1215	Reimagining Nurse Wellness	Dr Victoria Priola PsyD Clinical Psychologist
1215-1230	Break pick-up lunches.	Lunch Provided by the BON
1230- 1330	Table Case Study Discussion (Share Mic)	Dr Victoria Priola PsyD Clinical Psychologist
1330-1400	Linking back to Reimagine Nurse Wellness and Prioritizing Nurse Wellness	Dr Victoria Priola PsyD Clinical Psychologist
1400-1415	Stretch	Drinks and Snacks
1415-1445	NPA, Rules, and Regulations	Melissa Charlie, PhD, RN (BON)
1445-1530	Call to Action/ Who's Responsible	Sheena Ferguson, DNP, MSN, RN, FANA-I Executive Director BON
1530-1630	Peer to Peer for Nurses	Kristin Waite-Labott, BSN, RN, CARN, CPRC
1630-1645	Closing What's to Come	Becky Gonzales MSN RN HWNC-BC (BON)
1645-1700	Evaluation & Adjournalment Pick-up CEU Certificates	Ashley Gow (NM BON) Education and Practice Assistant

Five Issues Blocking Nurses from getting Help

Not using the best practices to stem the hemorrhage

Nurses are not reporting suspected SUD

Nurses are not hiring nurses with SUD

The alternative is flawed

The name of the program is wrong



Diversion Programs

Believed to be the best option to help nurses overcome SUD without discipline

Many nurses do not get the care that is needed, before their addictions disrupt their lives and careers

Due to ATD programs nurses can escape harm to their reputation and public disciplinary action in exchange for their participation in a state-authorized protocol that can include workplace monitoring.

Research shows when ATD are offered the nurse stays sober with successful completion-all confidential

Programs are designed to view the nurse's issue as a disease, not a crime or a character flaw, particularly since nurses with vulnerabilities are exposed in the workplace to temptation,

Emergency Nurses Association as well as the International Nurses Society on Addictions:

- *advocates for the ATD option for nurses to overcome SUD and return to valued careers in the healthcare workforce, and*
- *should be considered "the standard for recovery".*

Diversion Programs more

Robert DuPont, MD, author of numerous papers on the benefits of such programs for health professionals and the first director of the National Institute on Drug Abuse, DP programs

“provide a path that saves nurses' careers, promotes long-term recovery, and is an attractive option for nurses with alcohol and other drug problems,”

“The public and the nursing profession are well served by maximizing this as the go-to choice.”

Stephen Strobbe, PhD, RN, clinical professor at the University of Michigan School of Nursing: DP programs

– should be considered “the standard for recovery.”

ALTERNATIVE TO-DISCIPLINE PROGRAM FOR NURSES: NEW ENROLLMENT						
STATE	LICENSEES	2020	2019	2018	2017	2016
CALIFORNIA	457,604	112	115	109	159	
TEXAS	359,636	155	130	128	143	163
FLORIDA	333,951	196	212	213	255	308
PENNSYLVANIA	232,300	103	146	162	225	180
OHIO	230,608	16	11	11	10	8
ILLINOIS	212,299	9	25	33	4	
MICHIGAN	189,241	159	168	184	191	184
MASSACHUSETTS	153,989	11	28	16	31	38
NORTH CAROLINA	147,292	36	44	55	48	53
NEW JERSEY	134,819	468	524	556	539	575
MINNESOTA	118,394	117	112	113	120	
VIRGINIA	111,224		82	91	103	106
TENNESSEE	109,267	68		61		
ALABAMA	91,272			66	69	71
COLORADO	82,391	131	116	107	100	
	TOTAL 2,810,579					

The number of licensees (except for Michigan) were taken from the NCSBN website on July 28, 2021. Pink boxes denote an enrollment of 120 or fewer nurses. Image courtesy of MedPage Today / www.medpagetoday.com/special-reports/exclusives/93883.

Referrals Tragically Low: should be at least 10% of the licensee number

From Medpage – Nurse Rehabilitation Programs; Why is enrollment so Low?

By Chery Clark August 3.2021

Completed a 3-month investigation.

Purpose of the Diversion program:

- Self-report or referral due to a complaint
- Alternative to disciplinary process
- Less costly, avoids lengthy investigation and prosecutorial process
- Rehabilitate nurses and enable them to practice while still protecting the public
- Voluntary on the part of licensees
- Currently the BON is paying for testing costs for the first year

Structure of DP reflects balance of interests involved:

- Avoid disciplinary action
- Strict confidentiality
- Subject to testing and reporting requirements
- Licensee is subject to immediate suspension up to 90 days

Why so low?

Facilities (LTC & Hospitals) just aren't looking very hard to find nurses who would benefit

Healthcare organizations have little in place to prevent medication diversion or to identify substance use disorders of staff members

Silence about substance misuse even to the point of 'protecting' those who may have a problem, rather than pursuing the help they need

Addiction is a stigmatized, confounding illness as well and people don't feel comfortable getting involved"

Stigma attached to a nurse who self-reports or is caught with a substance use disorder

More attention needs spent on educating professionals about underlying medical causes

Financial resources are also at play, if the employer terminates and/or they stop working during treatment, they may lose any health coverage as well

Suggest taking family medical leave with paid-time off

What is at Stake?

An estimated 25 to 40 million individuals in the U.S. are in remission or recovery.

"Success rates of treatment for healthcare providers -- nurses and physicians -- are absolutely the highest. ... The roadmaps are there.

It's only under circumstances in which a nurse is actively retained and her healthcare benefits not stripped away that increases the likelihood the nurse will participate in what is often a rigorous and expensive pursuit to establish and maintain adherence.

"Addiction inherently strives to remain hidden, covert, secretive, and out of view."

It's correctly viewed as a disease, "and when we treat it seemingly as a criminal offense instead of an illness, little wonder we continue to stumble in the dark."

COVID: Gasoline on the Fire

During the ensuing years, the COVID-19 pandemic has magnified the mental health crisis.

The Future of Nursing 2020-2030 (NASEM, 2021) report warns of anticipated increases rates of nurse suicide and mental health (MH) problems and substance use disorders (SUD).

As the world faces an ongoing nursing shortage, coordinated, comprehensive, multi-level initiatives are needed to support and maintain nurses' health and well-being and retain them to the profession.

Three drivers of suicide in the health care workforce are stigma, access, and the job environment (American Hospital Association, 2022).

In an investigation of nurse suicide, Davidson et al. (2021) identified that suicide occurred in nurses with known job-related problems, almost all of whom were unemployed (94%), and their unemployment was related to untreated and under-treated mental health issues, being processed for substance use disorders, and insufficiently managed pain due to chronic illness or musculoskeletal injury.

STIGMA

It is a disease, a valid medical condition.

The psychological burden derived from a career in nursing is often compounded by ongoing stigma and punitive regulatory measures that prevent nurses from acknowledging mistakes and seeking treatment for mental health and substance use disorders (Choflet et al., 2021; Kunyk, 2015).

Stigma as a primary driver of suicide stems from fear that seeking MH or substance use disorder treatment may have a negative effect on the ability to renew or retain nursing licenses or credentials; feeling judged, unsupported, or perceived as weak; or concerns about confidentiality (AHA, 2022).

Stigma may mean not being accepted by society, fear of exposure, limits on career advancement, and potential for loss of licensure if one seeks care.

Stigma inhibits disclosure and is a barrier for nurses to access resources.

Public criticism and the social stigma related to the disclosure of MH and SUD are significant (Weston & Nordberg, 2022).

Diversion Program

- All complaints that come into BON related to SUD/diverting are forwarded to the DP program.
- Information is sent to the nurse via nurse portal (20 days to respond)
- DP staff follows up with the nurse via phone call.
- Nurses are terrified they are going to lose their jobs.
- Intakes Completed with Regional Advisory Council (from virtual to in-person).
- Safety of self and surroundings addressed (suicide identification).
- Goals setting:
 - Focus on the present and future
 - Not dwelling on the past
 - Developing patience and a good work ethic
 - Creating a sense of pride when people reach their goals

It is a reportable disciplinary process on the licensee's record
Lengthy investigation and prosecutorial process where the Licensee may wish to hire an attorney
Rehabilitate nurses and enable them to practice while still protecting the public
Involuntary on the part of the licensee
Licensee pays for their testing costs
After the Board orders a Discipline, it is public
Subject to testing and reporting requirements
Licensee is subject to immediate suspension up to 90 days
License can also be revoked or probationary
Strict legal process covered by the Uniform Licensing Act (ULA)

If a licensee rejects the Diversion Program offer, then the Board may Order formal discipline.

Back to the Case Study:

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The leadership questioned the patient, the CNA, and the LPN. Leadership felt that the LPN also seemed slightly dazed. The LPN was sent home.

Having noted other errors, the LPN's contract was terminated.

Leadership did not report this to the NM Board of Nursing.

This is a violation of the NM Nursing Practice Act.

The Staffing Agency tested the LPN two-weeks later.

Unable to validate the complaint, the LPN was re-assigned to another LTC in New Mexico.

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What are your next steps?

What are you legally required to do?

Making a Strong Report

Travelers or Agency? Contracts that allow you to test!

Gather and secure all evidence (videos, patient records, waste logs, etc).

Have Crucial Conversation with employee and ask for-cause testing.

Report incidents to NMBON Complaint Portal.

Once identified, do not terminate!!!!!!

Leave of absence

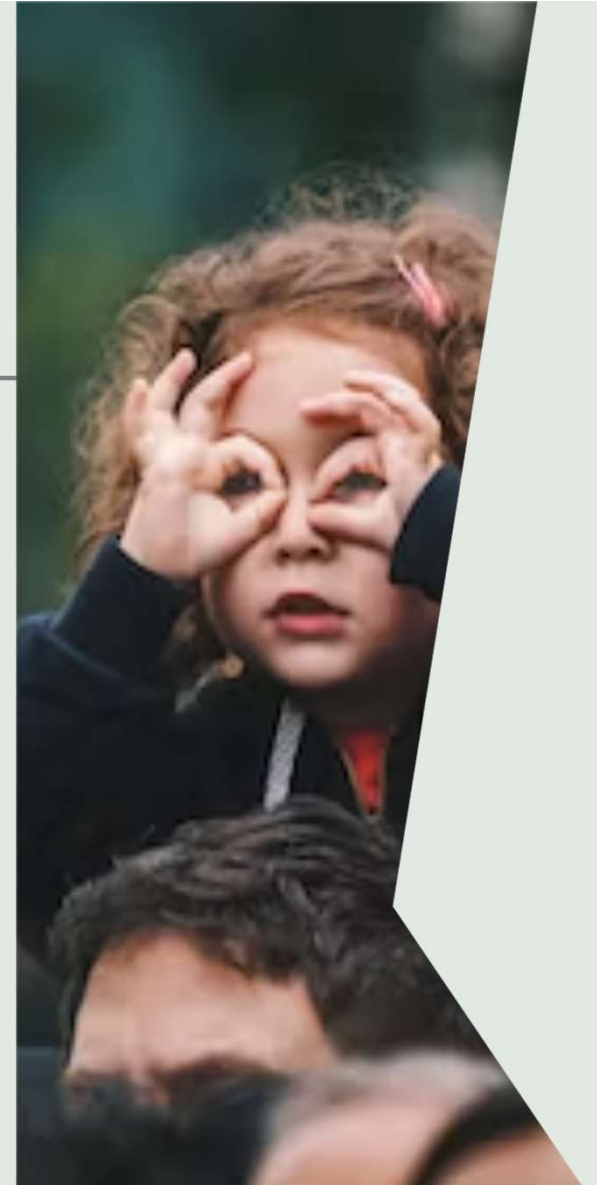
Another location in the facility

Reduce migration to another facility

Unsafe to nurse (no rehabilitation)

Unsafe for Patient Care

Suicide



How do we get there?

EDUCATION & RECOGNITION

- New Grads
- Leader Education
- Ongoing Education
- Information Availability
- Unit/Department Boards
- Wellness Programs
- Crucial Conversations
- Report as Required by Law
- DP Program Knowledge

PREVENTION

- Create a Facility Taskforce
- Create a System Taskforce
- Traveler Process
- Policy Adherence
- Procedure Updates
- Workplace RN Involvement
- Forensic Analysis
- Systems Protections
- Technology Investment
- Waste Process Adherence

SUPPORT

- Leaders' knowledge of DP
- Keep SUD Nurses Employed
- Hire Nurses in the DP program
- Create a System program
- Educate Administration
- Educate HR and RM

What are we doing?



Drug Testing will be done by Recovery Trek for constancy and maintain quality

Home drug screening will be available for nurses (vacation, decrease time, fit into their schedule)

MRO (Medical Review Officer) access

Advocate for the accuracy and integrity of the drug testing process

Due to the cost of the program- BON will pay for the first year of drug screens for new participants

Case Management Program

Nurses will have access to the program- allowing for an "easier" path for submitting monthly reports

Developing education for outreach with contact hours attached to it

Peer to Peer Support Groups for Nurses

BON Website!!

All the Laws!

All the Rules1

FAQ's (including LPN Guidelines)!

Save as a favorite: Info at your fingertips!

Complaint portal!

What else are we doing?

Paying for New Grad Licenses

Graduating nursing seniors>how-to get a license

First year testing for DP participants

Converting Investigator Positions to RNs

Planned: Reimbursement for Refresher Course

Monthly HR Q & A session for employers>Dawn

Assessing Clinical Placement Software



RN & LPN Scope of Practice

N. "professional registered nursing" means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

- (1) assessing the health status of individuals, families and communities;
- (2) establishing a nursing diagnosis;
- (3) establishing goals to meet identified health care needs;
- (4) developing a plan of care;
- (5) determining nursing intervention to implement the plan of care;
- (6) implementing the plan of care commensurate with education and verified competence;
- (7) evaluating responses to interventions;
- (8) teaching based on the theory and practice of nursing;
- (9) managing and supervising the practice of nursing;
- (10) collaborating with other health care professionals in the management of health care; and
- (11) conducting nursing research;

J. "licensed practical nursing" means the practice of a directed scope of nursing 3 7.2.2019 requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes but is not limited to:

- contributing to the assessment of the health status of individuals, families and communities;
- participating in the development and modification of the plan of care;
- implementing appropriate aspects of the plan of care commensurate with education and verified competence;
- collaborating with other health care professionals in the management of health care; and
- participating in the evaluation of responses to interventions;

NURSYS SYSTEM for FACILITIES

<https://www.nursys.com/EN/ENDefault.aspx#>

Nursys e-Notify

Receive automated license and discipline notifications of your enrolled RNs, LPN/VNs, and Advanced Practice nurses from participating boards of nursing.

Primary source equivalent: The Nursys licensure and disciplinary database is the repository of the data provided directly from State Boards of Nursing.



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Thank-you for all that you do!

Questions? Comments?