Recognizing Impairment in the Workplace (Florida Only)

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Introduction

Limited data exists on the number of health professionals who misuse alcohol and other drugs, because they rarely report themselves for fear of disciplinary action. However, it is widely believed that health professionals misuse alcohol and other drugs at about the same rate as the general population (10-15 percent). The American Nurses Association (ANA) estimates that six to eight percent of nurses use alcohol or drugs to an extent that is sufficient to impair practice. Healthcare professionals are highly trained, self-motivated and are often expected to assume leadership roles, therefore may have great difficulty in acknowledging personal needs. It is common to hear, "I could not reach out for help."

Unfortunately, early recognition leading to intervention and treatment of the chemically dependent health professional is often delayed. The problem is denied, rationalized or minimized. Co-workers, colleagues, and supervisors may protect, blame, promote, transfer, or even ignore the affected person. It is difficult to take responsibility to deal with the problem for many reasons yet it is a professional responsibility to assist colleagues in recognizing deterioration in job performance that may be the result of chemical dependency.

Recognizing a Problem

The first step in assisting a colleague is Recognition: Chemical dependency should not be presumed by a single sign or symptom, but rather by changes in behavior and job performance. Because health professionals define themselves by their profession evidence of the disease on the job often indicates late stage of illness. Workplace problems are a last step in a downward spiral and often coworkers are shocked when the illness is uncovered.

Some behaviors are associated with emotional problems and/or substance abuse but are specific to alcohol or other drug abuse. Some signs common to alcohol and other drugs may also be signs of psychological or psychiatric conditions. Each situation is individual and symptoms may vary. It is important that health professionals are educated in appropriate limit/boundary setting and recognition of signs and symptoms of chemical dependency.

Signs and Symptoms
Many signs and symptoms of chemical dependency in the workplace are non-specific, but when an individual’s behavior is observed and documented over time, the concern becomes clear and it is time to act.

<table>
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<th>Common Signs and Symptoms of Workplace Impairment</th>
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| **Psychosocial** | • Fearful, anxious, panic attacks  
• Feelings of impending doom  
• Paranoid ideation  

**Physical** | • Runny nose, watery eyes  
• Dilated or constricted pupils  
• Sleeping on the job  
• Bloodshot or glassy eyes  

**Behavioral** | • Impaired cognition  
• Increasing forgetfulness  
• Isolation or withdrawal  
• Mood swings (e.g. erratic outbursts, emotionally labile)  

**Job Performance** | • Requests jobs in less supervised settings  
• Seems like a workaholic (e.g. frequently works overtime, arrives early and stays late)  
• Volunteers to count narcotics  
• Evidence of tampering with vials or capsules  
• Makes frequent medication errors  
• Frequent medication loss, spills, or wasting  
• Overmedicates compared to other staff  
• Patients complain of ineffective pain relief  
• Frequent tardiness  
• Frequent unexplained disappearances from
What You Can Do to Intervene

The suspicion that a professional is using drugs, alcohol, or may have some other type of psychological condition affecting his or her practice generally arises from a series of observations rather than from an isolated instance. When this occurs:

Don’t panic, but do act. Overreacting may create additional problems but patients must be protected and legal rights assured. The only thing you can do wrong is to do nothing.

Document carefully. All reports and direct observations of questionable behavior should be recorded with dates, times and names of observers, reporters, and the professional in question, description of circumstances, action taken, and the professional’s response. Notes should be factual and data should be objective.

Discuss your concerns with a supervisor or other senior colleague. Specific concerns related to impaired practice should be documented and then shared confidentially with a supervisor or colleague. An immediate situation should be shared with the person in charge at the time. This will enable the supervisor or colleague to evaluate the situation and determine an appropriate course of action. In-house policies and internal Employee Assistance Programs can provide additional direction.

If there is an Employee Assistance Program available in your workplace, it may be helpful to informally refer your colleague. Picking up a brochure informing them that the program is available and encouraging them to seek assistance may be an appropriate intervention. It is important that you do not take over the primary counselor role but rather offer support and refer to the appropriate professional for assistance.

Following-up with your supervisor or colleague is vital. If the situation warrants immediate action and you are concerned about patient/client safety, you may need to contact other key administrators.

If the health professional appears to be under the influence of mind-altering chemicals in the work setting, the issue must be addressed immediately. Remove the professional from the unit/department, get a drug screen, and evaluate the need for emergency treatment (either medical and/or psychiatric). If immediate medical intervention is needed, transport the individual to the emergency room. Once the immediate emergency is stabilized, then develop the plan of action to address the problem.

From Ohio Nurses Foundation (2008). Guidelines for managers of impaired nurses: Nurse’s with chemical dependency and/or psychiatric issues.

Post Intervention/Treatment Process

The purpose of treatment is the safe withdrawal from alcohol or other drugs, to help the professional honestly face the addiction and to develop new attitudes that will help them embrace a drug and alcohol-free lifestyle.
For the professional seeking help for chemical dependency, the most likely source will be a multi-disciplinary treatment program that is recovery oriented, has abstinence as a goal and utilizes a recovery-oriented or 12-step program such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). The program needs a broad rehabilitation component which supports restoration of function and ongoing sobriety. The health professional may seek treatment in either an outpatient or inpatient setting. Treatments vary in length depending on the problems identified and what is determined as appropriate. Day treatment may also be an option.

Florida Statues

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Procuring, attempting to procure, or renewing a license to practice nursing by bribery, by knowing misrepresentations, or through an error of the department or the board.

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing.

(d) Being found guilty, regardless of adjudication, of any of the following offenses:

1. A forcible felony as defined in chapter 776.
2. A violation of chapter 812, relating to theft, robbery, and related crimes.
3. A violation of chapter 817, relating to fraudulent practices.
4. A violation of chapter 800, relating to lewdness and indecent exposure.
5. A violation of chapter 784, relating to assault, battery, and culpable negligence.
6. A violation of chapter 827, relating to child abuse.
7. A violation of chapter 415, relating to protection from abuse, neglect, and exploitation.
8. A violation of chapter 39, relating to child abuse, abandonment, and neglect.

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.04 or similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.
(f) Making or filing a false report or record, which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the nurse’s capacity as a licensed nurse.

(g) False, misleading, or deceptive advertising.

(h) Unprofessional conduct, as defined by board rule.

(i) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this part.

(j) Being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General’s designee that probable cause exists to believe that the licensee is unable to practice nursing because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with such order, the department’s order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The licensee against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A nurse affected by the provisions of this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of nursing with reasonable skill and safety to patients.

(k) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant.

(l) Knowingly violating any provision of this part, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

(m) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the nurse knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the nurse also provides services.

(n) Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience.
(o) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The board shall not reinstate the license of a nurse, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of nursing.

(4) The board shall not reinstate the license of a nurse who has been found guilty by the board on three separate occasions of violations of this part relating to the use of drugs or narcotics, which offenses involved the diversion of drugs or narcotics from patients to personal use or sale.

(5) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

456.076 Treatment programs for impaired practitioners.—

(1) For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant’s expulsion of professionals from the program.

(2)(a) The department shall retain one or more impaired practitioner consultants who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who must be:

1. A practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464; or
2. An entity that employs:
   a. A medical director who must be a practitioner or recovered practitioner licensed under chapter 458 or chapter 459; or
   b. An executive director who must be a registered nurse or a recovered registered nurse licensed under part I of chapter 464.
(b) An entity retained as an impaired practitioner consultant under this section which employs a medical director or an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.

(c) 1. The consultant shall assist the probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine whether a practitioner is, in fact, impaired.

2. The consultant may contract with a school or program to provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible for paying for the care provided by approved treatment providers or a consultant.

(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.

(3) Each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine, before certifying or declining to certify an application for licensure to the department, that an applicant for licensure under its jurisdiction may be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant’s ability to practice with skill and safety. Upon such determination, the chair or other designee may refer the applicant to the consultant for an evaluation before the board certifies or declines to certify his or her application to the department. If the applicant agrees to be evaluated by the consultant, the department’s deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation by the consultant is communicated to the board by the consultant. If the applicant declines to be evaluated by the consultant, the board shall certify or decline to certify the applicant’s application to the department notwithstanding the lack of an evaluation and recommendation by the consultant.

(4) (a) Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which
could affect the licensee’s ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute grounds for discipline pursuant to s. 456.072 or the corresponding grounds for discipline within the applicable practice act if the probable cause panel of the appropriate board, or the department when there is no board, finds:

1. The licensee has acknowledged the impairment problem.

2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.

3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as required by the consultant, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.

4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee’s impairment and his or her participation in a treatment program.

(b) If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee’s case.

(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.

(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.

(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).

(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.
(5) In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with impairment and further establishes the licensee is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(6)(a) An approved treatment provider shall, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee’s impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7). Failure to provide such information to the consultant is grounds for withdrawal of approval of such program or provider.

(b) If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee’s impairment and participation in a treatment program in the consultant’s possession shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. Whenever the consultant concludes that impairment affects a licensee’s practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the State Surgeon General.

(7) A consultant, licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences. The provisions of s. 766.101 apply to any officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section.

(8)(a) A consultant retained pursuant to subsection (2), a consultant’s officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant’s duties under the contract with the department if the contract complies with the requirements of this section. The contract must require that:

1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.

2. The consultant establish a quality assurance program to monitor services delivered under the contract.

3. The consultant’s quality assurance program, treatment, and monitoring records be evaluated quarterly.
4. The consultant’s quality assurance program be subject to review and approval by the department.

5. The consultant operate under policies and procedures approved by the department.

6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.

7. The department be entitled to review the records relating to the consultant’s performance under the contract for the purpose of management audits, financial audits, or program evaluation.

8. All performance measures and standards be subject to verification and approval by the department.

9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, the consultant’s officers or employees, or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an act or omission by any of the consultant’s officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the licensee or student when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant’s duties under its contract with the department.

(c) If the consultant retained pursuant to subsection (2) is retained by any other state agency, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant’s officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant.

(9) An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The consultant may disclose to the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant’s duties under this section. The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to
receive disclosures from the consultant as allowed by federal law. If a disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.

Bibliography


Washington State Professional Services  
http://www.doh.wa.gov/portals/1/Documents/Pubs/600006.pdf

Online Resources

Alcohol and Drug 24-Hour Help Line: http://www.adhl.org/

Alcoholics Anonymous: http://www.aa.org/?Media=Playflash

American Society of Addiction Medicine (ASAM): http://www.asam.org/

National Organization of Alternative Programs: http://alternativeprograms.org/

National Treatment Provider Locator: http://findtreatment.samhsa.gov/

Substance Abuse and Mental Health Administration Within Federal HHS: http://www.samhsa.gov/