



The American Association of Nurse Attorneys

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The American Association of Nurse Attorneys (TAANA) Opposes

"Samuel's Law:" A South Carolina Bill Mandating Revocation of a Nurse's License for Medication Errors

A bill called "Samuel's Law," advanced by the Senate Medical Affairs subcommittee in South Carolina, would require the State Board of Nursing to revoke a nurse's license if a nurse misreads a physician's order and either over medicates or under medicates a patient. This proposed bill arose from the tragic circumstances of human error resulting in the death of a child.

TAANA is sympathetic to this family and recognizes that medication errors are of serious concern. However, this bill disregards fundamental due process, usurps the authority of the regulatory agency, namely the Board of Nursing, to perform its duty of protecting the public by rendering appropriate discipline in light of various mitigating factors, and contradicts the basic principles of fairness (sometimes called "Just Culture") that have been widely adopted in the health care industry.

Role of the Board of Nursing

The State of South Carolina Board of Nursing (Board) has the mandated authority to investigate all matters of nursing practice whether or not harm results to a patient. This Board, as well as all Boards of Nursing across the country, regulates the practice of nursing. Boards exist to ensure the safe delivery of nursing care to the public and to take appropriate disciplinary action when a nurse's practice indicates a risk of harm to the public. Boards across the country maintain standards of nursing care, which are the benchmark for safe nursing practice. The State of South Carolina must allow the designated members of the Nursing Board to do its job as set forth in the State's enabling statutes. Similarly, all Nursing Boards should perform the duties set forth in the enabling statutes of each State. To do otherwise usurps the authority of the Boards to safeguard the public. "Samuel's Law" seemingly disregards nursing standards of practice and licensure regulation by statutorily mandating the revocation of a nurse's license for misreading a physician's order resulting in a medication dosing error. Cases such as this require a thorough investigation on a case-by-case basis and through the lens of a Just Culture.

"Just Culture"

TAANA, like many experts in the healthcare industry, recognizes and accepts the Just Culture philosophy as a prerequisite to safety and reliability in health care. The Just Culture Model promotes non-punitive transparency in situations which arise as a result of an unintended medical injury. The appropriate response to a medication error is investigation to distinguish between recklessness (which requires discipline), unknowing risk-taking (which requires coaching and remediation), and blameless normal human error. Moreover, justice requires an examination of the complex system in which the adverse event occurred. Technological, environmental, cultural, and workflow problems beyond the control of any individual nurse can all lead to medical injuries. Punishment does not reduce the incidence of error; rather, it drives errors underground due to a nurse's fear of reprisal. "Samuel's Law" as proposed fails to address the manner in which patient safety can be improved. Instead, "Samuel's Law" would impose a strict liability standard requiring revocation of a nursing license in a situation where a nurse "misreads" a medication order. This action contravenes the widely



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accepted and endorsed models of safety, which have documented success. Strict liability should not be the standard in situations that may involve error or negligence. Since the South Carolina Board of Nursing has the authority to investigate and take action resulting from a medication error, "Samuel's Law" is not necessary.

Furthermore, TAANA recognizes the legal principle of proportionality and fairness; namely, disciplinary action should not be arbitrary and that action should be consistent with remediating the misconduct. With this principle in mind, the mental state of the nurse at the time of the adverse incident is highly relevant. Intentional conduct should be punished more harshly than accidental conduct. "Samuel's Law" would disregard this foundational legal principle by imposing an automatic revocation of the nursing license for accidental conduct (misreading a prescription). For this reason, the bill must be abandoned altogether in order to recognize that, although the harm caused by a medication error can be catastrophic, the conduct specifically targeted by "Samuel's Law" should be addressed by the South Carolina Board of Nursing, and the Board must be permitted to assign the disciplinary action it deems appropriate under the circumstances.

TAANA, founded in 1982, provides leadership, resources, and education to the health care and legal communities regarding health law and policy as well as advocacy in litigation and in the defense of licensed health care professionals.