

Figure: 40 TAC §148.603(d)(1)

## MEMORANDUM OF UNDERSTANDING

The purpose of this MOU is to implement certain requirements enacted by Acts 1993, 73rd Legislature, Regular Session, Chapter 573 (Senate Bill 210), which amends Chapter 161 of the Health and Safety Code by adding Subchapter K, relating to, "abuse, neglect, and unprofessional or unethical conduct in health care facilities." Section 161.133 requires the Texas Board of Mental Health and Mental Retardation (TXMHMR), the Texas Board of Health (TDH) and the Texas Commission on Alcohol and Drug Abuse (TCADA) to adopt by rule a joint MOU, as set out below, detailing the health facility inservice training requirement for identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the health care facility.

In accordance with the above-referenced legislation, each health care facility is required to annually provide, as a condition of continued licensure, a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility, as such terms are defined in Chapter 161, Health and Safety Code, Subchapter K.

Accordingly, TXMHMR, TDH, and TCADA agree as follows:

### Section I APPLICATION

If a health care facility provides inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services in a separate and distinct unit of the hospital, the requirements of this MOU shall apply to all employees and associated health care professionals who are assigned to, or who provide services on such units.

### Section II DEFINITIONS

**Health care facility** — An inpatient mental health facility, inpatient treatment facility, or hospital that provides comprehensive medical rehabilitation services.

**Hospital that provides comprehensive medical rehabilitation services** — Includes a general hospital and a special hospital.

**Illegal conduct** — Conduct prohibited by law.

**Inpatient mental health facility** — As defined in §571.003 of the Texas Health and Safety Code, a mental health facility that can provide 24-hour residential and psychiatric services and that is:

- (A) a facility operated by the TXMHMR;
- (B) a private mental hospital licensed by the TDH;
- (C) a community center;

(D) a facility operated by a community center or other entity designated by the TXMHMR to provide mental health services;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the TDH; or

(F) a hospital operated by a federal agency.

**Inpatient treatment facility** — A treatment facility that can provide 24-hour residential and chemical dependency services and that is:

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) a community mental health center;

(G) a recovery center;

(H) a halfway house;

(I) an ambulatory care facility; or

(J) any other facility that offers or purports to offer chemical dependency treatment.

**Unethical conduct** — Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

**Unprofessional conduct** — Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

### Section III MINIMUM STANDARDS OF TRAINING PROGRAM

A. The inservice training program shall address, at a minimum, the following elements:

1. Applicable laws and regulations governing patient abuse and neglect, as well as policies and procedures adopted by the governing board of the facility with regard to patient abuse and neglect.

2. Applicable laws and regulations governing illegal, unprofessional, and unethical conduct, as well as policies and procedures adopted by the governing board of the facility with regard to illegal, unprofessional, and unethical conduct.

3. Applicable laws and regulations governing patient rights, as well as policies and procedures adopted by the governing board of the facility with respect to patient rights.

4. Specific types of patient abuse and neglect and how to identify when abuse or neglect is occurring or has occurred.

5. Specific types of illegal, unprofessional, and unethical conduct and how to identify when illegal, unprofessional, or unethical conduct is occurring or has occurred.

6. Requirements and procedures for reporting an incident of patient abuse and neglect, together with the applicable penalties for non-reporting.

6. Requirements and procedures for reporting an incident of patient abuse and neglect, together with the applicable penalties for non-reporting.

7. Requirements and procedures for reporting illegal, unprofessional, and unethical conduct, together with the applicable penalties for non-reporting.

8. The legal protection afforded to employees and associated health care professionals who report patient abuse and neglect and illegal, unprofessional, and unethical conduct.

B. In addition, the training program may include training designed to improve patient care or to prevent abuse or neglect and illegal, unprofessional, or unethical conduct from occurring. This additional training may be customized according to the type of tasks performed by the various employees and health care professionals, their amount of direct patient contact, and the likelihood of their being exposed to patient abuse or neglect and illegal, unprofessional, or unethical conduct. Courses related to improving patient care may include things such as the "Prevention and Management of Aggressive Behavior" (PMAB) or other programs designed to deal with aggressive behavior and crisis intervention, some aspects of existing employee orientation courses, and continuing education courses (CME, CNE, CEU) related to improving patient care.

C. Each full-time employee or associated health care professional shall receive a minimum of eight hours inservice training on identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct. The inservice training program shall include the topics outlined in paragraph (A) of this section; in addition, the training may include other topics as outlined in paragraph (B) of this section.

D. Although each part-time employee or associated health care professional must receive training as outlined in paragraphs (A) and (B) above, the amount and type of training provided to each part-time employee or associated health care professional may be determined based on a number of factors, including, but not limited to:

(1) the amount of direct contact the employee or associated health care professional has with patients;

(2) the amount of time the employee or associated health care professional spends at the health care facility (e.g., a consultant who is at the hospital 20 hours a week versus a consultant who works at the health care facility once a month).

E. An interim training program that does not meet the minimum requirements set forth in Section L, Paragraph A, above, is acceptable until June 1, 1994, to allow for development of a training program that meets the minimum standards of this MOU.

#### Section IV

#### MEANS OF REPORTING COMPLIANCE WITH REQUIREMENTS

A. Each facility subject to the inservice training requirement shall keep a record of the exact content of training provided.

B. Each facility subject to the inservice training requirement shall furnish documentation to show that each employee has completed the required training.

Documentation shall include:

1. course title
2. instructor's name
3. date(s) of course(s)
4. employee or associate health professional's social security number
5. signature block for employee or associated health care professional to verify that training was received and that he/she is aware of the training objectives
6. length of program presented

C. The health care facility shall keep the records required in Paragraphs A and B above for five (5) years.

D. A health care facility that utilized an independent contracting agency that supplies health care professionals and/or contract personnel to serve on a full or part time basis in a health care facility may rely on written representations by the independent contracting agency that such health care professionals and/or contract personnel have received inservice training on identifying patient abuse or neglect and illegal, unprofessional or unethical conduct. An independent contracting agency shall meet all other requirements of this MOU and shall supply evidence documenting each healthcare professional's and/or contract personnel's compliance with such requirements.

E. Employees and associated health care professionals may fulfill all or some of the training requirement by attending a continuing education program on patient abuse or neglect or illegal, unprofessional, or unethical conduct, provided such program meets the minimum requirements set forth in Section I, Paragraph A, above. In addition, briefings regarding the Code of Ethics for the appropriate discipline provided by the discipline head or other individual may be used to fulfill a portion of the requirement.

F. Each health care facility shall be in compliance with the annual requirement if it can demonstrate that each employee or associated health care professional received the required training over a twelve month period, and that the health care facility provided the required eight hours of inservice training over the twelve month period.

#### Section V MISCELLANEOUS PROVISIONS

A. This memorandum of understanding shall be jointly adopted as a rule by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, and the Texas Commission on Alcohol and Drug Abuse and shall be effective upon final joint adoption of the rules by the signatory agencies.

B. This memorandum may be amended at any time upon the mutual agreement of the agencies and such amendments shall also be made to the jointly adopted rules.

C. Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

## EXECUTION OF MEMORANDUM OF UNDERSTANDING

For faithful performance of the terms of this Memorandum of Understanding (MOU) concerning training to identify client abuse or neglect and illegal, unprofessional, and unethical conduct, it is hereby executed by the undersigned persons in their capacities as stated below.



David R. Smith, M.D., Commissioner  
Texas Department of Health



J. Ben Bynum, Executive Director  
Texas Commission on Alcohol  
and Drug Abuse



Dennis Jones, Commissioner  
Texas Department of Mental Health  
and Mental Retardation