



# The American Association of Nurse Attorneys

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## TAANA's POSITION ON COVID-19

Released, April 2, 2020, advocating for

NURSES and other Healthcare Professionals licensed throughout the United States of America<sup>1</sup>

### I. Introduction

The American Association of Nurse Attorneys (TAANA) is a national organization that provides resources, education and leadership to its members, healthcare providers and legal communities. TAANA recognizes the myriad of challenges presented during this unprecedented time of the novel coronavirus (COVID-19) pandemic, including legal/ethical dilemmas encountered by healthcare professionals as a result of the pandemic. Given the alarming number of COVID-19 cases in the United States, TAANA encourages federal, state and local governments and administrative professional licensing agencies to adopt universal protocols addressing (a) the shortage of Personal Protective Equipment (PPE); (b) inadequate COVID-19 testing capabilities; and (c) novel legal, employment, and licensure concerns in the face of an unprecedented situation. TAANA further encourages nurses and other healthcare professionals to partner with their professional associations in educating the workforce regarding their legal and ethical rights and responsibilities in the healthcare workplace.

### II. Key Issues & Recommendations

#### A. Lack of Personal Protective Equipment (PPE)

The Centers for Disease Control and Prevention (CDC) admits the nation is currently facing a shortage of Personal Protective Equipment (PPE).<sup>i</sup> TAANA is concerned about inadequate PPE for healthcare professionals, including but not limited to N95 respirators, eye protection, isolation gowns, and surgical masks. Inadequate PPE places health providers, their families, and the community at risk for contracting the virus. In response to the PPE shortage, CDC recently loosened its infection control standards for COVID-19. Many hospitals across the country are referencing these loosened standards when implementing their own COVID-19 infection control policies. As a result, many healthcare professionals are being forced to utilize less effective masks, asked to refrain from wearing their own N95 respirators or asked to reuse N95 respirators and other PPE. Healthcare professionals have expressed concern that N95 respirators and other

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PPE cannot be properly cleaned, decontaminated, and maintained between uses. Even the Joint Commission, an organization that accredits and certifies more than 22,000 healthcare organizations in the U.S., has released a Statement in support of healthcare professionals who bring their own masks or respirators to wear at work when faced with PPE shortages at their workplace.<sup>ii</sup> Providers lack guidance regarding action to take when faced with a lack of appropriate PPE. TAANA recommends the following actions:

**1. TAANA Urges the Federal Government Under the Direction of President Trump to Exercise Its Full Authority Under the Defense Production Act.**

TAANA urges the full utilization of the Defense Production Act (DPA) to ensure the manufacture and supply of adequate PPE and other medical supplies. TAANA supports the President's March 27 Executive Order invoking the DPA "to expand [the] domestic production of health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators."<sup>iii</sup> TAANA also supports the President's March 27 Memorandum which directs the Secretary of Health Human and Services ("Secretary") to use all authority under the DPA to increase the manufacturing of ventilators.<sup>iv</sup> TAANA joins others, including the American Hospital Association, American Nursing Association, and American Medical Association in urging the President to continue using the DPA to increase the domestic production of PPE and other medical supplies.<sup>v</sup> In particular, TAANA urges the President to release an additional Memorandum to the Secretary regarding the increased production of N95 respirators and other PPE for healthcare professionals.

**2. TAANA Urges CDC to Maintain Strict COVID-19 PPE Regulations and Guidelines that are Science Based and Data Driven, Not Supply Chain Driven.**

CDC is the "Nation's leading **science-based, data-driven** service organization that protects the public's health."<sup>vi</sup> However, on March 10, CDC loosened its guidelines stating that "the supply chain of respirators (N95) cannot meet demand" and that looser fitting surgical face masks "are an acceptable alternative."<sup>vii</sup> These loosened guidelines place healthcare professionals at risk of COVID-19 infection and will most likely result in the increased spread of the virus. Referencing conflicting studies, the Joint Commission stated "it is understandable why healthcare workers who come in close contact with COVID-19 patients ... would have concerns about the adequacy of surgical masks."<sup>viii</sup> TAANA agrees with this statement and opposes the loosened CDC guidelines because they were prompted by a supply chain shortage as opposed



to science-based data. TAANA urges CDC to revise its COVID-19 PPE guidelines consistent with the Agency's mission and statutory directives.

### **3. TAANA Urges NCSBN, State Professional Licensing Boards, and Professional Nursing Organizations to Develop Protocols that are Protective of Healthcare Professionals Faced with Inadequate PPE.**

The unfortunate reality of inadequate PPE is that providers are faced with risk of disease and death on the one hand or allegations of patient abandonment on the other. Immediate action is necessary to protect the lives of healthcare professionals and to ensure the virus is not spread from health professionals to their family and friends. The OSHA general duty clause, Section 5(a)(1) of the Occupational Safety and Health Act,<sup>ix</sup> requires that each employer furnish to each of its employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. Put another way, employers are obligated by law to ensure that employees leave the workplace in the same state and condition that they arrived in. Adequate PPE is essential to fulfillment of the general duty clause.

Moreover, inadequate PPE can often be a root cause of nosocomial outbreaks, such as when healthcare providers without adequate PPE inadvertently spread an infectious disease from an infected patient to an uninfected patient (e.g. from re-utilizing the same PPE/facemask between patients). Because of this, inadequate PPE not only compromises worker safety, it compromises patient safety as well. Therefore, all professional nursing organizations, NCSBN, and each state professional licensing board should develop protocols and guidelines which address situations wherein a provider is faced with inadequate PPE. Such protocols should take into consideration those who wish to delay or decline patient care until they have adequate PPE.

## **B. Inadequate COVID-19 Testing Guidelines for Healthcare Professionals and Their Families**

It is imperative that all frontline healthcare professionals have immediate access to COVID-19 testing. This testing will mitigate the rapid spread of this disease. CDC has set forth guidelines for COVID-19 testing. However, it has been reported that COVID-19 testing is woefully inadequate due to a lack of testing kits and/or individuals not exhibiting all required symptoms. Further, some healthcare professionals that have been tested did not receive test results for more than one week. In many instances, these same healthcare workers have been required to continue to work. This practice is unacceptable, has a strong negative impact on patient safety, and will contribute to a shortage of frontline personnel during a dire situation while compromising their health and well-being. TAANA urges federal and/or state officials to provide healthcare



professionals with COVID-19 testing with rapid results. TAANA also opposes any mandate that requires healthcare professionals to continue working when they have exhibited symptoms of COVID-19 or tested positive for the virus. TAANA urges federal and/or state officials to provide healthcare professionals with any symptom of illness with COVID-19 testing with rapid results.

### C. Professional License/Employment Issues

TAANA understands in a pandemic it is necessary for professional licensing boards to coordinate with state and federal governments to ensure that proper medical care is given to those affected. The lack of clear policy may result in termination or discipline of healthcare professional or unresolved ethical dilemmas based upon inconsistent rules, regulations, standards of practice and circumstances. TAANA urges every state professional licensing board to release position statements which offer guidance and support to healthcare professionals regarding practice and ethical issues during this unprecedented time. For example, there are several mitigating factors that should be considered in any future disciplinary complaints that arise as a result of the pandemic, including but not limited to ethical dilemmas, involuntary resignations/terminations, reasonable accommodation requests, PPE concerns, personal safety concerns, HIPAA concerns, and mental health issues. TAANA is aware that many states have asked retired or inactive healthcare professionals to volunteer or return to the workforce during this crisis. In addition to this effort, where appropriate, TAANA requests that state professional licensing boards consider modifying disciplinary agreements to return healthcare professionals who are willing serve to the workplace during this pandemic.

### III. Resources

Federal, state, and local COVID-19 regulations and guidelines are constantly changing. This Position Statement was written based on regulations and guidelines that were in place at the time of publication. For up to date information about COVID-19, readers should visit the following websites and stay abreast of changes in federal, state, and local regulations and guidelines.

1. Centers for Disease Control and Prevention  
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>
2. The White House  
<https://www.whitehouse.gov/>
3. World Health Organization  
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>



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- <sup>i</sup> Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings available at <https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html> (last accessed March 28, 2020)
- <sup>ii</sup> The Joint Commission, Position Statement: Staff Use of Their Own Personal Protective Equipment in Healthcare Settings, March 31, 2020 available at [https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/infection-prevention-and-hai/covid19/public\\_statement\\_on\\_masks\\_from\\_home.pdf](https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/infection-prevention-and-hai/covid19/public_statement_on_masks_from_home.pdf) (last accessed April 2, 2020)
- <sup>iii</sup> Executive Orders, EO on Delegating Additional Authority Under the DPA with Respect to Health and Medical Resources to Respond to the Spread of COVID-19, March 27, 2020 available at <https://www.whitehouse.gov/presidential-actions/eo-delegating-additional-authority-dpa-respect-health-medical-resources-respond-spread-covid-19/> (last accessed March 28, 2020)
- <sup>iv</sup> Presidential Memoranda, Memorandum on Order Under the Defense Production Act Regarding General Motors Company, March 27, 2020 available at <https://www.whitehouse.gov/presidential-actions/memorandum-order-defense-production-act-regarding-general-motors-company/> (last accessed March 28, 2020)
- <sup>v</sup> American Hospital Association, American Medical Association, and American Nurses Association, Joint Letter to President Trump, March 21, 2020 available at <https://www.aha.org/lettercomment/2020-03-21-aha-ama-and-ana-letter-president-use-dpa-medical-supplies-and-equipment> (last accessed March 28, 2020)
- <sup>vi</sup> Centers for Disease Control and Prevention, A Bold Promise to the Nation, available at <https://www.cdc.gov/about/24-7/index.html> (last accessed March 28, 2020)
- <sup>vii</sup> Centers for Disease Control and Prevention, Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19), March 10, 2020 available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html> (last accessed March 28, 2020)
- <sup>viii</sup> i29 USC § 654
- <sup>ix</sup> The Joint Commission, Position Statement: Staff Use of Their Own Personal Protective Equipment in Healthcare Settings, March 31, 2020 available at [https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/infection-prevention-and-hai/covid19/public\\_statement\\_on\\_masks\\_from\\_home.pdf](https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/infection-prevention-and-hai/covid19/public_statement_on_masks_from_home.pdf) (last accessed April 2, 2020)