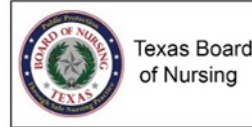




Texas Department of State  
Health Services



## DSHS-School Nurse Notes | February 2018

### Peer Review Process

To address the needs of school nurses, the Texas Department of State Health Services (DSHS)–School Health Program has developed this repository of information. With each issue of *DSHS-School Nurse Notes* (DSHS-SNN), professionals receive the latest research, evidence-based practices, and resources in school nursing related to a topic of interest. The School Health Program wishes to thank the Texas Board of Nursing for their collaboration on this publication, in particular Stacey Cropley, D.N.P., R.N., L.N.C.C. for her contributions. If you have any questions or comments about this issue of DSHS-SNN, please contact School Nurse Consultant Anita Wheeler, M.S.N., R.N. at (512) 776-2909 or at [anita.wheeler@DSHS.texas.gov](mailto:anita.wheeler@DSHS.texas.gov).

### Background

Peer review is the evaluation of nursing services, the qualifications of a nurse, the quality of care rendered by nurses, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. A Peer Review Committee (PRC) is one established to conduct nursing peer review. The committee is established under the authority of the governing body of a national, state, or local nursing association; a school of nursing; the nursing staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health care facility; or a state agency or political subdivision. The peer review process is one of fact-finding, analysis, and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. <sup>1</sup>

### Safe Harbor Peer Review (SHPR)

Safe Harbor is a nursing peer review process that a nurse may initiate when asked to engage in an assignment or conduct that the nurse believes in **good faith** would potentially result in a violation of Board Statutes or Rules. Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at any time during the work period when the initial assignment changes. When invoked in this way, Safe Harbor protects a nurse from employer retaliation and from licensure sanction by the BON.<sup>1</sup>

## Incident-Based Peer Review (IBPR)

More common to the BON is peer review that is initiated by a facility, association, school, agency, or any other setting that utilizes the services of nurses. The nurse being peer reviewed must receive notification of the peer review process as well as other components that are part of the nurse's minimum **due process** rights. The role of peer review is to determine if licensure violations have occurred and, if so, if the violations require reporting to the BON. In cases where a report to the BON is already required, the role of the PRC is to investigate whether external factors impacted the error or situation. If the PRC determines there were external factors impacting the nurse's actions, then the PRC must report their findings to a patient safety committee.<sup>1</sup>

IBPR is particularly relevant because the 85<sup>th</sup> Texas Legislature, 2017, Regular Session, passed House Bill (HB) 3296. This lowers the number of nurses required for nursing peer review. HB 3296 requires a person to establish a nursing PRC to conduct nursing peer review if the person regularly employs, hires, or contracts for the services of 8 or more vocational nurses, and for professional nurses, if the person employs, hires, or contracts for the services of 8 or more nurses, at least 4 of whom are registered nurses.<sup>2</sup>

## Nursing Standards and License Considerations

The next section addresses federal and state statutes and professional guidelines related to the peer review process.

### Texas Board of Nursing (BON)

Peer review is the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by nurses, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint including:

- the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;
- a report made to a nursing peer review committee concerning an activity under the committee's review authority;

- a report made by a nursing peer review committee to another committee or to the Board as permitted or required by law; and
- implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee.

A Peer Review Committee (PRC) may review the nursing practice of an LVN, RN, or APRN (RN with advanced practice authorization). As discussed in the Background section, there are two kinds of nursing peer review.

1. **Incident-based peer review (IBPR)** is initiated by a facility, association, school, agency, or any other setting that utilizes the services of nurses.

Employment and licensure issues are separate. An employer may take disciplinary action before review by the PRC is conducted, as peer review cannot determine issues related to employment. The role of peer review is to determine if licensure violations have occurred and, if so, if the violations require reporting to the board. If a report to the BON is already required under §301.405(c) of the Nursing Practice Act (NPA), then the role of the PRC is to investigate whether external factors impacted the error or situation. If the PRC determines there were external factors that mitigated or aggravated the circumstances impacting the nurse's actions, then the PRC must report its findings to the risk manager or other appropriate committee that supports student safety.

The nursing PRC does not have authority to make employment or disciplinary decisions. The employer must make their own decision about appropriate disciplinary actions; however, the employer may choose to utilize the decisions of the PRC in determining what action they wish to take with regard to the nurse's employment. In addition, an employer may not prohibit a PRC from filing a report to the BON if the PRC has determined in good faith that a nurse's practice must be reported to the BON in compliance with NPA (§301.403), Board Rules [217.11\(1\)\(K\)](#) and [217.19](#).

2. **Safe harbor peer review (SHPR)** may be initiated by an LVN, RN, or APRN prior to accepting an assignment or engaging in requested conduct that the nurse believes would place patient(s) at risk of harm, thus potentially causing the nurse to violate his/her duty to the

patient(s). Invoking safe harbor in accordance with Board Rule 217.20 protects the nurse from licensure action by the BON as well as from retaliatory action by the employer.

The NPA, §303.005(d), requires the employer/nurse manager to consider the decision of the SHPR Committee “in any decision to discipline the nurse.” The “non-binding” provision in this statute means that if the Nurse Administrator/Nurse Manager believes the SHPR was conducted in “bad faith,” or otherwise made an incorrect determination, the Nurse Administrator must document his/her rationale for disagreeing with the SHPR Committee determination, and this must be retained with the SHPR records. In addition, if the Nurse Administrator believes the SHPR was done in bad faith, she/he has a duty to report the nurses who participated on the PRC to the BON [see Board Rule 217.20(j)(4)(C)].

The BON encourages Nurse Administrators to remember that each nurse has a duty to advocate for patient/client safety. This is expressed in [Board Rule 217.11\(1\)\(B\)](#) and explained in Position Statement [15.14 Duty of a Nurse in Any Setting](#). Other relevant documents include the BON’s [Six-Step Decision-Making Model for Determining Nursing Scope of Practice](#) and [Six-Step Decision-Making Model for Determining the LVN Nursing Scope of Practice](#). Step 3 asks if there is nursing literature, research, or guidance documents from national specialty nursing organizations related to the nursing issue in question. National patient safety organizations, such as the Institute for Safe Medication Practices, would also be applicable with regard to “best practices” in a given area of nursing and patient safety. SHPR can be an opportunity to take stock of how nursing and support departments surrounding nursing are organized, and how safe patient care is helped or hindered by those systems.

- [Nursing Practice Act](#), Nursing Peer Review & Nurse Licensure Compact: Occupations Code and Statutes Regulating the Practice of Nursing. As Amended September 2017.
- [Rules & Regulations](#) relating to Nurse Education, Licensure and Practice. Published October 2017.
- [Practice – Peer Review: Incident-Based or Safe Harbor](#)
  - Due Process: formal and confidential

- Whistleblower protections
- Safe Harbor timeline
- IBPR & SBPR Statute and Rule References
- Safe Harbor Statutes and Rule References
- [Frequently Asked Questions](#)
  - General Peer Review Information
  - Incident-Based Nursing Peer Review (IBPR)
  - Safe Harbor Peer Review (SHPR)
- [Safe Harbor Forms](#)
  - Quick Request
  - Comprehensive Request
  - Request to Question Reasonableness of a Physician's Order
- [Position Statement:](#)
  - *15.14 Duty of a Nurse in any Practice Setting*

#### National Association of School Nurses (NASN)

- [Code of Ethics](#)

#### Texas School Nurses Organization (TSNO)

- School Nursing: [Scope and Standards of Practice](#)

#### National Council of State Boards of Nursing (NCSBN)

- Disciplinary Resources Committee (video or PDF): [Board of Nursing Complaint Process: Investigation to Resolution](#)

## Research

Because the concept of peer review is so closely linked to state law, the current issue of DSHS-SNN lacks research on a national level. The aim is not to compare Texas's model to that of other states but rather to ensure that school nurses understand how to protect their practice by invoking safe harbor and, when necessary, how disciplinary actions are managed within the state of Texas.

For assistance in obtaining an article, please contact the DSHS Library at [library@DSHS.texas.gov](mailto:library@DSHS.texas.gov) and mention inclusion of the requested article in the *DSHS-School Nurse Notes*. Following each citation is a portion of the article's abstract or a summary of the article.

1. Thomas MB, Willmann J. **Why nurses need whistleblower protection.** *J Nurs Regul.* 2012;3(3):19-23.

Boards of nursing and professional associations have a strong belief that nursing practice must emphasize patient advocacy and the importance of the nurse's role in the protection and safety of patients. Though nurses are educated about their responsibilities regarding advocacy and safety, many have difficulty navigating workplace impediments that restrict their duty to advocate for patients. This was not the issue for two Winkler County, Texas, nurses who reported concerns about a physician's dangerous medical practice to the Texas Board of Medicine. Not only were the nurses fired from their long-standing jobs for reporting the physician's unsafe practice, they were also criminally indicted for a third-degree felony. This article reviews the case of these nurses and the subsequent legislation initiated by the Texas Nurses Association and supported by the Texas Board of Nursing to prevent such occurrences in the future.

2. Bearden MM, Shelton A, Brown & Fortunato, P.C. **Rights every nurse should know: Incident-based nursing peer review.** [Houston Medical Journal](#). 2013. Accessed October 6, 2017.

The statutory and regulatory procedures governing incident-based peer review are the focus of this legal affairs column. Under the hospital licensing rules, the Texas Department of State Health Services requires hospitals to implement a program for incident-based peer review and compliance with the reporting requirements established by the Texas Board of Nursing (BON). A hospital's program for incident-based peer review should provide certain due process rights to nurses under review. Such due process rights are required by the Nursing Practice Act and BON Rule 217.19.

## Resources

### General Information

- Texas Legislature Online: [House Bill 3296](#) (Enrolled Bill Summary)
  - House Bill 3296 amends the Occupations Code to decrease the minimum number of nurses regularly employed, hired, or contracted for services by a person that triggers the requirement for the person to establish a nursing peer review committee.
  - House Bill 3296 became effective September 1, 2017.
- Texas Guide to School Health Services: [Professional School Nursing—Peer Review](#) (Includes five bulleted items.)
- Informal Survey Results for School Nurses
  - Data gathered by DSHS in 2015 from 3 Regional Education Service Centers (ESCs)
  - Includes examples of Peer Review Committee (PRC) work from the previous five years

- In each of 8 categories, shows number of cases reported to BON, of the total cases reviewed by PRC.
  - ✓ Medication Administration: 7 reported, of 9 total
  - ✓ Documentation: 5 reported, of 8 total
  - ✓ Failure to Appropriately Assess: 2 reported, of 2 total
  - ✓ Failure to Appropriately Intervene to Prevent Complications: 6 reported, of 6 total
  - ✓ Unprofessional Conduct or Professional Boundary Violation: 2 reported, of 3 total
  - ✓ Failure to Appropriately Monitor a Condition: 4 reported, of 4 total
  - ✓ Failure to Appropriately Follow a Provider's Order: 5 reported, of 5 total
  - ✓ Failure to Communicate with School Staff, Parents, or Providers: 2 reported, of 2 total
- From this data, DSHS enhanced the Nursing Jurisprudence and Ethics continuing education course.

### Continuing Education\*

- Texas Board of Nursing (BON)—[Interactive Online Course: Nursing Regulations for Safe Practice](#)
  - 2.0 contact hours meeting requirement for nursing jurisprudence and ethics
  - 21 days of access to course
- BON Workshop: [Protecting Your Patients and Your Practice, Nursing Jurisprudence and Ethics](#)
  - 8.4 contact hours
- National Council of State Boards of Nursing (NCSBN): Self-paced courses with unlimited online access for 3 weeks
  - [Disciplinary Actions: What Every Nurse Should Know](#) (4.8 contact hours)
  - [Righting A Wrong: Ethics & Professionalism in Nursing](#) (3.0 contact hours)

\*Fees apply.

### Books for Purchase

- National Association of School Nurses (NASN) and American Nurses Association (ANA) (2017): [School Nursing: Scope and Standards of Practice, 3<sup>rd</sup> Edition](#)
- Texas Nurses Association (2017): [Annotated Guide to the Texas Nursing Practice Act, 13<sup>th</sup> Ed.](#)

- Harrington L, Smith M. [\*Nursing Peer Review, Second Edition: A Practical, Nonpunitive Approach to Case Review\*](#). Danvers, MA: HCPro, Inc., 2015.

## References

For assistance in obtaining any resources, please contact the DSHS Library at [library@DSHS.texas.gov](mailto:library@DSHS.texas.gov) and mention inclusion of the requested resource in the *DSHS-School Nurse Notes*.

1. Texas Board of Nursing. [Practice – Peer Review: Incident-Based or Safe Harbor webpage](#). (Accessed December 18, 2017)
2. Texas Legislature Online. [HB 3296: Enrolled Bill](#). (Accessed December 18, 2017)

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