



Board Staff at the Texas Board of Nursing (BON or Board) welcome you to this presentation as a brief overview of the new safe harbor forms, created in response to the 2019 legislative session.



## Objectives

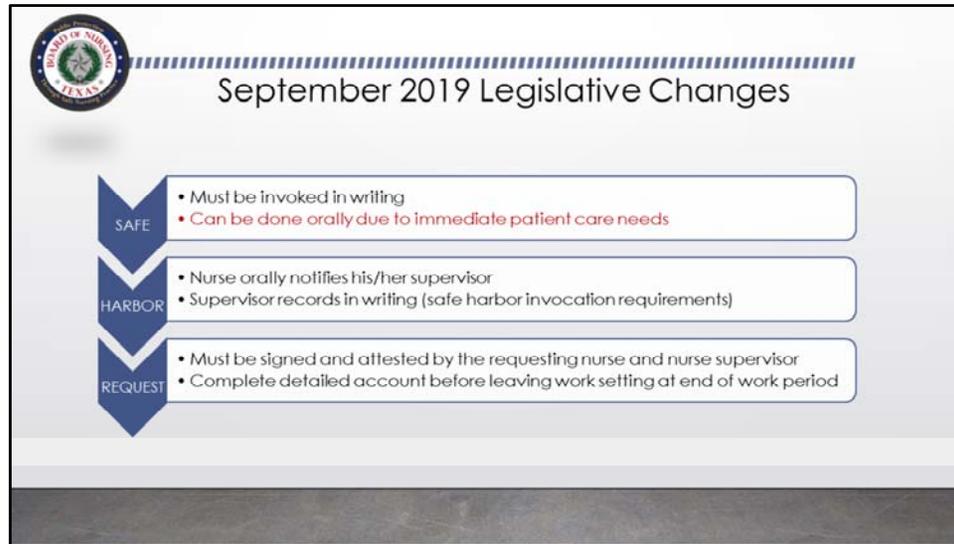
- Define Safe Harbor
- Briefly discuss the new legislative changes that impact Safe Harbor [Nursing Peer Review (NPR) Law [§303.005](#); and [Board Rule 217.20\(a\)\(15\)](#)].
- Identify the location of the updated Safe Harbor forms on the Texas Board of Nursing (BON or Board) Website.
- Review of the Safe Harbor Forms.
- Identify additional resources for Safe Harbor Nursing Peer Review on BON Website.

Before we begin, it is important to briefly define Safe Harbor. Safe harbor is a process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination, and licensure sanction when a nurse makes a good faith request for nursing per review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NPA or Board rules [Board Rule 217.20(a)(15)].

Safe Harbor affords protection to a nurse who believes that he or she has been asked to engage in conduct that violates the nurse's duty to the patient. What is a nurse's "duty to a patient?" A nurse's duty is to always advocate for patient safety, including any nursing action necessary to comply with the standards of nursing practice in Board Rule 217.11 and to avoid engaging in unprofessional conduct in Board Rule 217.12 this includes administrative decisions directly affecting a nurse's ability to comply with that duty.

At times, there may be assignments, patient care developments, staffing issues, or other situations which may compromise the nurse's duty to a patient, and as we know, the nurse must always advocate for the patient, promoting a safe patient care environment in compliance with the Board's rules and regulations, along with other laws and rules. As such, the request for Safe Harbor (prior to engaging in the conduct or the assignment) must be completed in good faith

and the nurse must have a belief that to continue to engage in the conduct would violate the NPA or Board Rules.



As discussed Board Staff will provide you with more resources for a subject matter that extends beyond this presentation. If you have questions, or would like to know more about Safe Harbor Nursing Peer Review, please see the provided resources at the end of this presentation. In September of 2019, a bill was passed that allows for the verbal invocation of safe harbor in certain circumstances.

It's all about timing! Safe harbor must be invoked prior to engaging in the conduct or assignment, this can be when the conduct is requested or the assignment is made, or when changes in the request or assignment occur. This is critical. Safe harbor cannot be invoked after the fact, for example, after the nurse has left the shift.

Safe Harbor must be invoked in writing and meet the requirements of the Safe Harbor Quick Request. However, if the nurse is unable to complete a written request due to immediate patient care needs, the nurse may orally notify his/her supervisor that he/she is invoking safe harbor and the nurse's supervisor must record in writing the Safe Harbor invocation requirements, which must then be signed and attested to by the requesting nurse and the nurse's supervisor who prepared the written record. A detailed written account of the safe harbor request that meets the requirements of the Comprehensive Written Request for Safe Harbor Nursing Peer Review must be completed before leaving the work

setting at the end of the work period.

As you can see, although there is an option for invoking safe harbor verbally, there still is a requirement of writing/documenting all of the required information both accurately and completely. The Texas Board of Nursing has both quick request and comprehensive request forms and they were created by Board Staff to help ensure that all of the required procedural elements are captured. Please do note, that it is not required to use the BON's forms, and we also ask that you do not submit these forms to the Board.

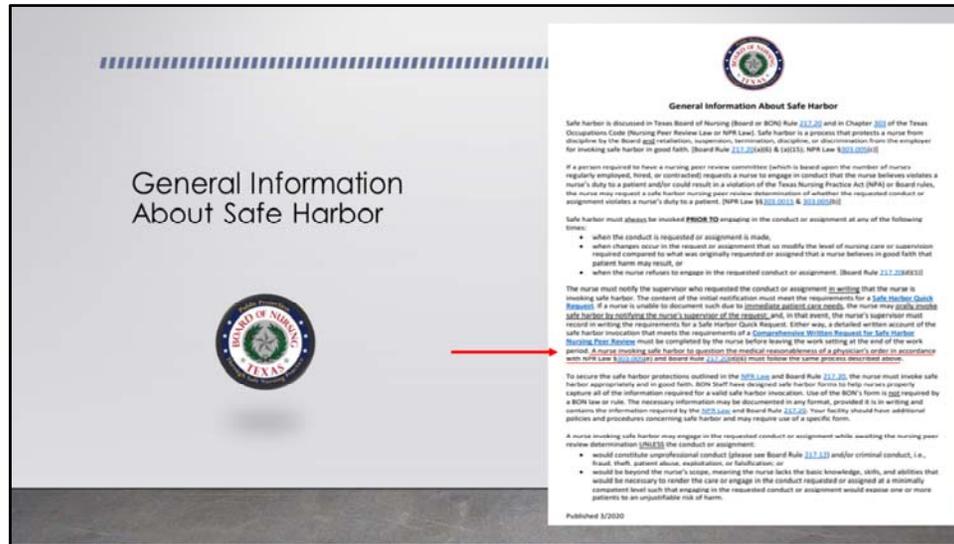


To locate the Safe harbor forms on the Board website. On the main page you will note several headings under the Texas Board of Nursing banner. You will hover over the Forms heading and a drop down menu will appear. On this drop down menu you will select Safe Harbor.



This is how the updated Safe Harbor Forms-Nursing Peer Review page appears at a glance, after you have followed the steps on the previous slide. You can access each of the 4 new safe harbor nursing peer review forms by clicking on the blue hyperlinks. A description of each form is located underneath the hyperlinks.

The Board has both quick and comprehensive request forms that a nurse could use when invoking safe harbor. These forms are designed to capture the requirements of the safe harbor rule but use of the Board's form is not required. From the Board's perspective, you could use any form or format desired or allowed by your policy as long as the information required by the rule is captured. Safe harbor is facility based, a person required to have a nursing peer review committee (which is based upon the number of nurses regularly employed, hired, or contracted), is required to have a safe harbor policy and procedure. Familiarize yourself with your policy and procedure to the need to invoke safe harbor as you may have a form within your facility.



The *General Information About Safe Harbor* form was created to provide basic and general information about safe harbor that is also accessible throughout the use of the following forms for reference. A most recent update to the BON Safe Harbor forms includes the section here, underlined in red. When a nurse has questions about an order, nurses have a duty to advocate for patients, and speak up when they believe an order needs clarifying, may be inaccurate, contraindicated, or pose a risk of harm to the patient. Although nurses are encouraged to speak directly with the ordering provider to discuss the situation and also notify him/her if the nurse makes the decision to not carry out the order, it may be after that collegial discussion that the nurse may wish to invoke safe harbor. A nurse invoking safe harbor to question the medical reasonableness of a physician's order, must follow the same process for the invocation of safe harbor, which we will discuss next.

The *BON Safe Harbor Quick Request Form* can be used at the time the conduct is requested or when the assignment is made. This form contains the basic initial elements. Only the elements contained on these forms are required. Essentially, the nurse engages in a collaborative discussion with the supervisor expressing the concern and fills out this form. The form must be filled out and given to the supervisor before engaging in the conduct or accepting the assignment. To discuss the updates after the most recent legislative changes in 2019, safe harbor must be invoked in writing, or if the nurse is unable to complete the written request due to immediate patient care needs, the nurse may orally notify his/her supervisor that he/she is invoking safe harbor and the nurse's supervisor must record in writing the safe harbor invocation requirements, which must be signed and attested to by the requesting nurse and the nurse's supervisor who prepared the written record. A detailed written account of the safe harbor request that meets the requirements of the Comprehensive Quick Request for Safe Harbor Nursing Peer Review (which we will discuss next) must be completed before leaving the work setting at the end of the work period.

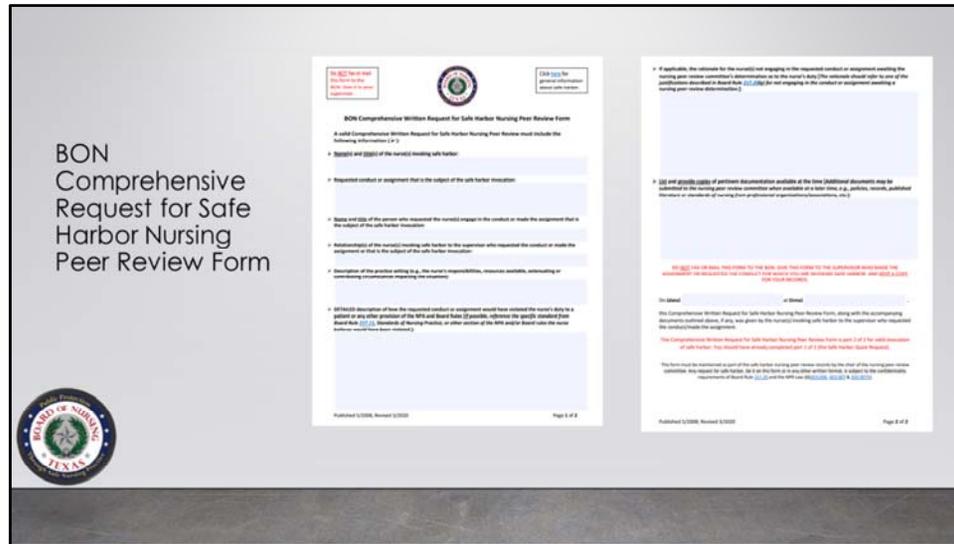
One of the first things you may notice is the blue hyperlink up at the top right of page one that links back to the

general information about safe harbor form for your reference and convenience. There is a new section for the name of the supervisor who is filling out the form for the nurse orally invoking safe harbor due to immediate patient care needs toward the top of page one. At the bottom of page one, we also see a space for the signature of the supervisor recording the nurse's safe harbor invocation, and a place for the nurse invoking safe harbor directly above that.

The next part, on page 2, only needs to be completed if the nurse(s) refuse(s) to engage in the requested conduct or assignment pending the safe harbor nursing peer review determination and provides a check box to acknowledge that: He/she/they believes that by engaging in the requested conduct or assignment would constitute unprofessional conduct and/or criminal conduct (i.e., fraud, theft, patient abuse, exploitation, or falsification), OR that he/she/they lack the basic knowledge, skills, and abilities that would be necessary to render the care such that engaging in the requested conduct or assignment would expose one or more patients to an unjustifiable risk of harm.

If the nurse(s) refuse(s) to engage in the requested conduct or assignment pending the nursing peer review committee's determination because it is beyond the nurse's scope, the nurse(s) and supervisor must collaborate in an attempt to identify an acceptable assignment that is within the nurse's scope and enhances the delivery of safe patient care; and, a written description of the collaboration is required. In other words, a nursing leader may be capable of mitigating the situation (such as correcting staffing rations, or reassigning the nurse) and these actions can be documented on this form. It is important for nursing leaders to understand that just because a nurse requests safe harbor, it does NOT mean that the nursing leader cannot take immediate action to correct the situation that has the nurse concerned about patient safety or his or her duty to the patient. Immediate intervention is best for both the patient and the nurse.

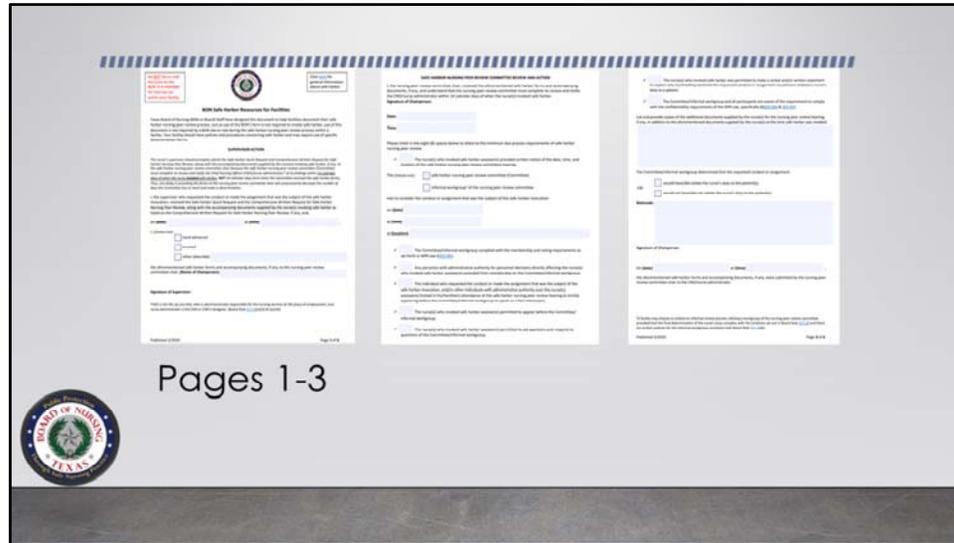
After the collaboration, the nurse can either sustain or withdraw the safe harbor invocation, as you can see here, at the bottom of page 2. Even if a satisfactory solution and appropriate assignment is arranged as a result of the collaboration between the nurse(s) and the supervisor, the nurse(s) who invoked safe harbor still has(have) the option to proceed with the request for a nursing peer review determination of whether the requested conduct or assignment would have violated a nurse's duty to a patient. However, if the conduct or assignment that was the subject of the safe harbor invocation is resolved/mitigated, the nurse(s) may choose to withdraw his/her(their) request for safe harbor.



Here is the *BON Comprehensive Written Request for Safe Harbor Nursing Peer Review Form* that may be used to document the more in-depth information that the nurse **must put in writing before leaving the work setting at the end of the work period**. The nurse keeps a copy of the completed comprehensive form and gives a copy to the supervisor. The forms will travel through the process to the Nursing Peer Review Committee, the Chief Nurse Officer (CNO), then back to the nurse for the final section and signatures. This is a closed loop process.

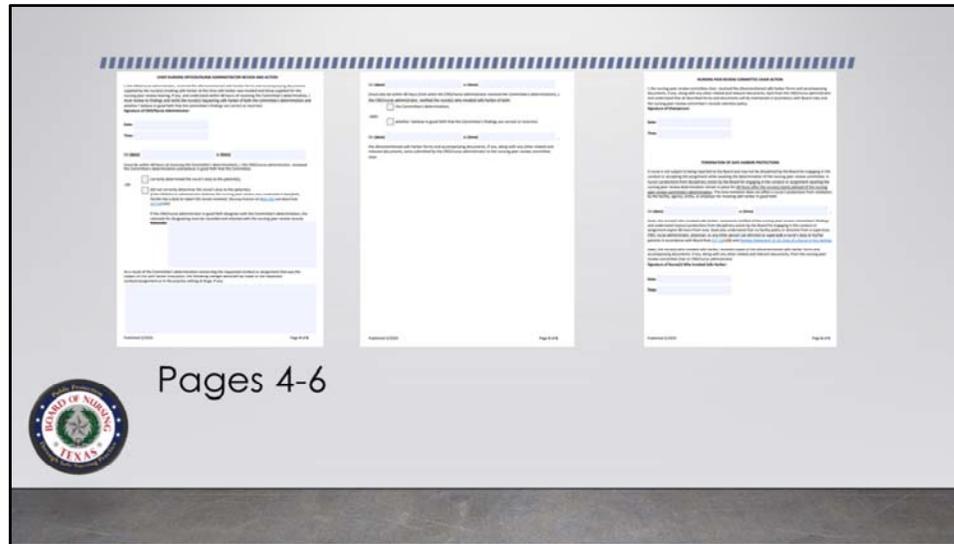


The next form we will discuss is *the BON Safe Harbor Resources for Facilities* that Board Staff have designed to help facilities document their safe harbor nursing peer review process. Just as use of the BON's form is not required to invoke safe harbor, use of this document is not required by a BON law or rule during the safe harbor nursing peer review process within a facility. Your facility should have policies and procedures concerning safe harbor and may require use of specific documentation forms. This form consists of 6 pages.



The nurse's supervisor should promptly submit the Safe Harbor Quick Request and Comprehensive Written Request for Safe Harbor Nursing Peer Review, along with the accompanying documents supplied by the nurse(s) invoking safe harbor, if any, to the safe harbor nursing peer review committee chair because the safe harbor nursing peer review committee (Committee) must complete its review and notify the Chief Nursing Officer (CNO)/nurse administrator of its findings within 14 calendar days of when the nurse invoked safe harbor, NOT 14 calendar days from when the Committee received the safe harbor forms. Thus, any delay in providing the forms to the nursing peer review committee chair will unnecessarily decrease the number of days the Committee has to meet and make a determination. The following information on page one of this form provides the supervisor who received the SH Quick Request and Comprehensive Request an opportunity to fill out the appropriate date, time, signature, and the name of the committee chair person to which this information was provided.

Pages two to three includes the documentation associated with the Safe Harbor Nursing Peer Review Committee review and action. The form is helpful in providing the committee with what information is required by the Board, although recall, that this form is not a requirement, but was created as a guide.



Pages four through five include the CNO and/or Nurse administrator review and action that follows the NPR committee's review and action (which is what we saw on the previous slide). The final page, page six, loops back to the nursing peer review committee chair and informs of the CNO's and/or nurse administrator's actions along with all of the other forms from the initial request for invocation of safe harbor. Then, all of the information from the initial forms submitted by the nurse, to the nursing peer review committee's review and action, and the CNO and/or Nurse administrator's review and action are then provided back to the nurse who invoked safe harbor. Thus, a closed loop process.

## Additional Safe Harbor nursing peer review resources

- On the BON website
  - Practice tab:
    - Nursing Peer Review/ Incident-Based and Safe Harbor
    - Information on both types of nursing peer review
    - Links to additional resources
      - Rule 217.20, Safe Harbor Nursing Peer Review and Whistleblower Protections
      - Safe Harbor Nursing Peer Review Forms
      - Nursing Peer Review Frequently Asked Questions (FAQs)
  - FAQs tab:
    - Nursing Peer Review



Here are some of the resources the Board offers in relation to Safe Harbor Nursing Peer Review:

On the Board website under the Texas Board of Nursing banner, if you hover your mouse over the Practice tab a drop down menu will appear. If you scroll down and select Nursing Peer Review/Incident-Based and Safe Harbor. There are several resources for both types of nursing peer review that can be found here. If you scroll down this page, about half way down you will find information addressing Safe Harbor Nursing Peer Review along with hyperlinks at the very end of the page to Board Rule 217.20 and Nursing Peer Review Frequently Asked Questions (FAQs). These same FAQs can be found by going to the BON main page, finding the FAQ tab, hovering over it and choosing Nursing Peer Review from the drop down menu.

Board staff are working on the final steps of Nursing Peer Review online courses, one for Incident-Based and one for Safe Harbor. Hopefully, these will soon be found on the main page of the BON website on the right hand side of the page by clicking on the CNE course catalog.

Thank for your time and for viewing our presentation on the new Safe Harbor form updates.