

**Charge to Nursing Practice Advisory Committee (NPAC): SB993/Peer Review Rules**

**Summary of Request:**

This report is to request that a charge be made to the Nursing Practice Advisory Committee to review and recommend revisions to Rules 217.19 and 217.20 relating to incident-based and safe harbor peer review. This request is made due to (1) the rules last underwent review/revision by NPAC in 2002 and (2) SB 993 amending reporting criteria and peer review goes into effect 9/1/07.

**Historical Perspective:**

Peer Review has existed in Texas since 1987. "Parity of Counsel" was added to the rule in 1995, as was the provision that LVNs be included in incident-based peer review. Safe harbor peer review (for RNs) was added in 1997. From 1997-2002, the peer review rule was §217.17, and provisions for safe harbor were contained in one section of the rule that otherwise largely addressed incident-based peer review. In 2002, Incident-Based and Safe Harbor peer review became separate rules in order to clarify differences in the two processes. To keep the related rules sequentially numbered, the revised rules were re-allocated to 217.19 for Incident-Based Peer Review and 217.20 for Safe Harbor Peer Review. The last major review and revision of these rules was May 12, 2002. Revisions incorporating LVNs into both rules, which gave LVNs the ability to invoke Safe Harbor, were adopted July 5, 2004.

This year's 80<sup>th</sup> Legislative Session included the passage of Senate Bill 993 (Nelson) which amends Texas Occupations Code Chapters 301, related to reportable conduct, and 303, related to nursing peer review.

A task force under Texas Nurse's Association initiated the SB 993 bill language in an effort to implement recommendations that came out of the first two Institute of Medicine (IOM) reports: TO ERR IS HUMAN (2000) and KEEPING PATIENT SAFE: Transforming the Work Environment of Nurses (2003). These reports advocated shifting from "cultures of blame" to "cultures of safety" in order to create systems that both diminish the likelihood of an error occurring and promote "catching" of errors before they reach the patient.

In order to accomplish the goal of improved patient safety, the IOM determined that practitioners needed to be able to report their own errors without fear of punishment, especially when systems factors beyond the nurse's control contributed to the error. One provision of SB 993 requires a peer review committee that determines there may be systems factors involved in a reported deficiency of a nurse's care to report the incident(s) to a facility's Patient Safety Committee. In the absence of a patient safety committee, the peer review committee would be required to report their findings to the Chief Nursing Officer (CNO). However, neither a Patient Safety Committee or CNO would impact the peer review committee's determination with regard to reporting or not reporting the nurse to the Board. [Rule 217.16 Minor Incidents, revised 5/17/06, already permits a peer review committee to determine a minor incident and to remediate the nurse internally vs. reporting to the board].

Another concern with the growing national nursing shortage combined with the financial constraints placed on health care agencies and facilities is that nurse's anecdotally report fearing retaliation from their employers when the nurses try to be advocates for patient safety. Though the provisions prohibiting retaliatory action against a nurse have long been part of the NPA, SB 993 increases the civil remedies available to a nurse who is retaliated against for advocating for his/her patients, including invoking Safe Harbor. The bill language also adds mention of the civil remedies contained in NPA 301.413 to sections 301.352 and 303.005; these sections address the nurse's duty to refuse to engage in conduct that could jeopardize patient safety as well as to request review of the assignment by a peer review committee.

A new section 301.4025 more explicitly spells out a nurse's right to report the nurse's employing agency or facility, or any other healthcare provider that the nurse knows or believes in good faith has engaged in conduct that endangers a patient's safety.

The SB 993 amendments make significant changes in the reporting and peer review statutes such that staff believe NPAC needs to begin working on revisions to the rules prior to the statutes going into effect September 1, 2007.

#### **Pros & Cons:**

**Pros:** Having the practice advisory committee review the 2 peer review rules will provide an opportunity to update and improve on the rules even beyond making conforming changes to comply with the statute amendments of SB 993.

**Cons:** After September 1, 2007, the current rules will not be congruent with the revised statutes. Starting the revision process sooner rather than later will promote timely rule revisions.

#### **Staff Recommendations:**

I move to make a charge to the Nursing Practice Advisory Committee to review and recommend revisions to Rule 217.19, Incident-Based Peer Review, and Rule 217.20, Safe Harbor Peer Review.