Consideration of Proposed Amendments to 22 Tex. Admin. Code §217.20, Pertaining to Safe Harbor Nursing Peer Review and Whistleblower Protections

Background: House Bill (HB) 2410 was enacted during the 86th Legislative Session and will become effective September 1, 2019. Under current law, if a nurse believes he/she is requested to engage in conduct that violates the nurse’s duty to a patient, the nurse may request a peer review committee to determine if the requested conduct violates the nurse’s duty to the patient. HB 2410 amends the Occupations Code Chapter 303 by permitting a nurse who is unable to complete a form due to immediate patient care needs to orally request this peer review determination. Upon receiving the oral notification, HB 2410 requires the nurse’s supervisor to record the request in writing. The proposed amendments are necessary to conform to these statutory changes.

Board Action: Move to approve the proposed amendments to 22 Texas Administrative Code §217.20, pertaining to Safe Harbor Nursing Peer Review and Whistleblower Protections, as set out in Attachment “A”, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the Texas Register. If no negative comments and no request for a public hearing are received, move to adopt the proposed amendments to 22 Texas Administrative Code §217.20, pertaining to Safe Harbor Nursing Peer Review and Whistleblower Protections, as proposed.
§217.20. Safe Harbor Nursing Peer Review and Whistleblower Protections

(a) – (c) (No change.)

(d) Invoking Safe Harbor.

(1) (No change.)

(2) Notification Requirements.

(A) The nurse must notify the supervisor requesting the conduct or assignment in writing that the nurse is invoking safe harbor. The content of this notification must meet the requirements for a Safe Harbor Quick Request described in paragraph (3) of this subsection. If a nurse is unable to complete a Safe Harbor Quick Request or other written form meeting the requirements for a Safe Harbor Quick Request due to immediate patient care needs, the nurse may orally invoke safe harbor by notifying the nurse’s supervisor of the request. A detailed written account of the safe harbor request that meets the requirements of the Comprehensive Written Request for Safe Harbor Nursing Peer Review described in paragraph (4) of this subsection must be completed before leaving the work setting at the end of the work period.

(B) After receiving oral notification of a request, the nurse’s supervisor must record in writing the requirements described in paragraph (3) of this subsection, which must be signed and attested to by the requesting nurse and the nurse’s supervisor who prepared the written record.

[(2) The nurse must notify the supervisor requesting the conduct or assignment in writing that the nurse is invoking safe harbor. The content of this notification must meet the requirements for a Safe Harbor Quick Request described in paragraph (3)
of this subsection. A detailed written account of the safe harbor request that meets the minimum requirements for the Comprehensive Written Request for Safe Harbor Nursing Peer Review described in paragraph (4) of this subsection must be completed before leaving the work setting at the end of the work period.]

(3) Safe Harbor Quick Request. The BON Safe Harbor Quick Request Form may be used to initially invoke safe harbor, but use of the form is not required. The initial request may be in any written format, but must include the following information:

1. the name of the nurse making the request and his/her signature;
2. the date and time of the request;
3. the location where the conduct or assignment that is the subject of the request occurred;
4. the name of the person who requested the nurse engage in the conduct or made the assignment that is the subject of the request;
5. the name of the supervisor recording the request, if applicable;
6. a brief explanation of why the nurse is requesting a nursing peer review committee determination; and
7. a description of the collaboration between the nurse and the supervisor, if applicable.

[(3) Safe Harbor Quick Request.]

[(A) A nurse wishing to invoke safe harbor must make an initial request in writing that at a minimum includes the following:]

[(i) the nurse(s) name making the safe harbor request and his/her signature(s);]
[(ii) the date and time of the request;]  
[(iii) the location of where the conduct or assignment is to be completed;]  
[(iv) the name of the person requesting the conduct or making the assignment; and]  
[(v) a brief explanation of why safe harbor is being requested.]  
[(B) The BON Safe Harbor Quick Request Form may be used to invoke the initial request for safe harbor, but use of the form is not required. The initial request may be in any written format provided the above minimum information is provided.]  

(4) Comprehensive Written Request for Safe Harbor Nursing Peer Review.  

(A) A nurse who invokes safe harbor must supplement the initial written request under paragraph (2) [(3)(A)] of this subsection by submitting a comprehensive request in writing before leaving the work setting at the end of the work period. This comprehensive written request must include [a minimum of] the following information:  

(i) –(vi) (No change.)  

(B) The BON Comprehensive Written Request for Safe Harbor Nursing Peer Review Form may be used when submitting the detailed request for safe harbor, but use of the form is not required. The request may be in any written format provided the [above minimum] information specified in subparagraph (A) of this paragraph is included.  

(5) – (6) (No change.)  

(e) Safe Harbor Protections.  

(1) To activate protections outlined in TOC §303.005(c) and paragraph (2) of
this subsection, the nurse shall:

(A) invoke safe harbor in good faith;

(B) notify the supervisor [in writing] that he/she intends to invoke safe harbor in accordance with subsection (d) of this section. This must be done prior to engaging in the conduct or assignment for which safe harbor is requested and at any of the following times:

(i) – (iii) (No change.)

(2) - (4) (No change.)

(f) – (l) (No change.)
H.B. No. 2410

AN ACT
relating to a request for a nursing peer review committee
determination.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 303.005, Occupations Code, is amended by
amending Subsections (b) and (d) and adding Subsections (b-1) and
(b-2) to read as follows:

(b) Unless as provided by Subsection (b-1), if a person
who is required to establish a nursing peer review committee under
Section 303.007 requests a nurse to engage in conduct that the
nurse believes violates a nurse's duty to a patient, the nurse may
request, on a form developed by the board or on
another form that meets standards developed by the board, a
determination by a nursing peer review committee under this chapter
of whether the conduct violates a nurse's duty to a patient.
(b-1) If a nurse is unable to complete a form required by
Subsection (b) due to immediate patient care needs, the nurse may
request a nursing peer review committee determination by orally
notifying the nurse's supervisor of the request. After receiving
oral notification of a request, the nurse's supervisor shall record
in writing:

(1) the name of the nurse making the request;
(2) the date and time of the request;
(3) the location where the conduct or assignment that
is the subject of the request occurred;
(4) the name of the person who requested the nurse
ell the conduct or made the assignment that is the subject of
the request;
(5) the name of the supervisor recording the request;
(6) a brief explanation of why the nurse is requesting
a nursing peer review committee determination; and
(7) a description of the collaboration between the
nurse and the supervisor.

(b-2) To be a valid request for a nursing peer review
committee determination, the written record prepared under
Subsection (b-1) must be signed and attested to by the requesting
nurse and the nurse's supervisor who prepared the written record.

(d) If a nurse requests a peer review determination under
Subsection (b) or (b-1) and refuses to engage in the requested
conduct pending the peer review, the determination of the peer
review committee shall be considered in any decision by the nurse's
employer to discipline the nurse for the refusal to engage in the
requested conduct, but the determination is not binding if a nurse
administrator believes in good faith that the peer review committee
has incorrectly determined a nurse's duty. This subsection does
not affect the protections provided by Subsection (c)(1) or Section
301.352.

SECTION 2. The changes in law made by this Act apply only to
conduct that occurs on or after the effective date of this Act.
Conduct that occurs before the effective date of this Act is
governed by the law in effect on the date the conduct occurs, and
1 the former law is continued in effect for that purpose.

2 SECTION 3. This Act takes effect September 1, 2019.
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President of the Senate

Speaker of the House

I certify that H.B. No. 2410 was passed by the House on May 7, 2019, by the following vote: Yeas 146, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2410 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: __________________________

Date

Governor