

**NURSING PRACTICE ACT  
&  
NURSING PEER REVIEW ACT**

**TEXAS OCCUPATIONS CODE AND  
STATUTES REGULATING THE  
PRACTICE OF NURSING  
As Amended September 2003**

**BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS**

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## **AGENCY MISSION**

The mission of the Board of Nurse Examiners for the State of Texas (BNE) is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a registered professional nurse in the State of Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of professional nursing and the accreditation of schools of nursing. This mission, derived from Chapters 301, 303 & 304 of the Texas Occupations Code, supercedes the interest of any individual, the nursing profession, or any special interest group.

## **NOTICE**

The 78<sup>th</sup> Regular Texas Legislature passed House Bill (HB) 1483 which combines the jurisdiction of the Board of Nurse Examiners (BNE) and the Board of Vocational Nurse Examiners (BVNE) under a single Board of Nursing. HB 1483 creates a single licensing act for registered nurses (RNs) and licensed vocational nurses (LVNs). This Nursing Practice Act (NPA) includes the changes included in HB 1483 as well as changes from the six other bills that amended the NPA. Those bills were: HB 2131, HB 2208, HB 2376, HB 3126, Senate Bill (SB) 144 and SB 718.

HB 2131 allows RNs in hospital settings to directly assist in surgery until 2007 with provisions for nurses working in rural hospitals to continue beyond that date. HB 2208 authorizes criminal background checks for candidates for Texas RN licensure and current licensees. HB 2376 removes obsolete statute references regarding the surety bonds of state officers and employees. HB 3126 authorizes larger grants to nursing students and increased renewal fees to fund the Nursing Workforce Data Center (to be operated by the Statewide Health Coordinating Council at the Texas Department of Health) established by passage of SB 572 enacted, but not funded, during the 77<sup>th</sup> Texas Legislative Session. Senate Bill 144 mandates that, once each biennium, the BNE is to provide license holders information regarding Schedule II and III controlled substances and poison control centers. Senate Bill 718 authorizes the BNE to conduct competency related pilot studies and examine reporting of errors. Senate Bill 718 also changes the NPA concerning: minor incidents; RN insignias; usage of nurse title; evaluation of system errors; and safe harbor.

Additions, deletions and amendments to the NPA are identified by reference information immediately after each section where changes occurred. The originating bill and implementation or effective date is included. Readers should be aware that HB 1483 and HB 2131 include multiple implementation and/or effective dates. HB 1483 includes continuing education requirements relating to bioterrorism taking effect in 2006, and HB 2131 includes requirements taking effect in 2007.



## INTRODUCTION

Welcome to the practice of nursing in the State of Texas. As you continue to practice as a nurse in Texas, it is your responsibility to be aware of changes to the law and the Board's rules and regulations. Changes are reported in the Board's quarterly newsletter mailed to all nurses in Texas. It is important that you keep the Board informed of your current address so that you receive all communications from the Board. To assist you in understanding the Act, the Board of Nurse Examiners offers the following information and detailed table of contents.

Chapter 301 of the Texas Occupations Code (Code) contains the law which creates the Board of Nurse Examiners and defines its responsibility for regulating nursing education, licensure and practice. Chapter 303 relates to Nursing Peer Review and Chapter 304 relates to the Nurse Licensure Compact. These chapters of the Code define nursing practice and give the Board the authority to make rules which implement and interpret the Act. The Act and the Rules are equally enforceable. Licensees are required to comply with both. The Act and the Rules are amended from time to time. Only the Legislature can change the Act, so statutory changes can be presented every two years. The Board makes rule changes as needed to assist in the application of the Act to evolving practice conditions and settings. It is therefore necessary that you keep up with the changes. You may obtain copies of this pamphlet at a nominal cost by writing to the Board's office at: 333 Guadalupe, Ste. 3-460, Austin, Texas 78701; or calling 512/305-7400; or by accessing our Web page at: <http://www.bne.state.tx.us>.

Any person practicing or offering to practice nursing in this state for compensation is required to have a license. Your license must be renewed every two years in order to continue practicing in Texas. Once licensed, you are authorized to use the title "RN" or "LVN" and are required to wear a name tag identifying yourself as a RN or LVN while providing patient care.

You must keep the Board informed of your current address at all times. Do this by sending written notice, clearly marked "change of address" to the Board's office any time you move. Failure to do so can result in a lapse of your license and potential disciplinary action.

It is essential that you know and practice in compliance with Chapters 301, 303, & 304 of the Occupations Code and Board Rules. Please refer to the following "Quick Reference" section, as well as the rules and excerpts printed in the back of this booklet which we think all practicing nurses need to have available for ready reference. As a nurse in Texas, you are required to know and follow the law and these rules. A complete set of the Board's Rules and Regulations Relating to Nurse Education, Licensure and Practice can be found at our web site or purchased from the Board office.

## QUICK REFERENCE

### *Sections of the Act:*

<b>Sec. 301.002(2)</b>	<b>Definition of Nursing</b>
<b>Sec. 301.004</b>	<b>Exceptions to the Code</b>
<b>Sec. 301.303</b>	<b>Continuing Competency</b> Describes the required types and number of hours of CE to keep your license current.
<b>Sec. 301.301</b>	<b>Renewal</b> Procedure to renew your license every two years.
<b>Sec. 301.304</b>	<b>Hepatitis C Component in Continuing Education</b> Describes the new requirements for hepatitis C continuing education credit to be effective from June 1, 2002 to June 1, 2004.
<b>Sec. 301.305</b>	<b>Bioterrorism Response Component in Continuing Education</b> New continuing education requirement relating to Bioterrorism.
<b>Sec. 301.351</b>	<b>Designations</b> Requirement to wear an insignia identifying one as a RN or LVN.
<b>Sec. 301.401- .402</b>	<b>Nurse Reporting</b> Your duty to report colleagues who may expose others to risk of harm.
<b>Sec. 301.601</b>	<b>Anesthesia in Outpatient Setting</b> Describes requirements for anesthesia services provided in an outpatient setting by a person licensed by the Board.
<b>Sec. 301.1525</b>	<b>RN First Assistants</b> Describes requirements for recognition as "nurse first assistant."
<b>Sec. 301.1526</b>	<b>Certain Nurses Assisting in Surgery</b> Describes conditions where RNs can assist with performance of surgery in certain settings. Effective September 1, 2003 to January 1, 2007.
<b>Sec. 301.1527</b>	<b>Certain Nurses Directly Assisting in Surgery in Small Hospitals</b> Describes conditions where RNs can assist with performance of surgery in hospitals with less than 100 beds. Effective January 1, 2007.
<b>Sec. 301.2511</b>	<b>Criminal History Record Information for License Applicants</b> Requirement to provide criminal history record as prerequisite for RN licensure.
<b>Sec. 304.001-.010</b>	<b>Nurse Licensure Compact</b> Issuance & limitations of multistate licensure privilege for Texas Nurses.
<b>DISCIPLINE:</b>	
<b>Sec. 301.452</b>	<b>Grounds for Disciplinary Action</b>
<b>Sec. 301.453</b>	<b>Disciplinary Authority of Board; Methods of Discipline</b>
<b>Sec. 301.458</b>	<b>Initiation of Formal Charges; Discovery</b>
<b>Sec. 301.466</b>	<b>Confidentiality</b>
<b>Sec. 301.467</b>	<b>Reinstatement</b>
<b>Sec. 301.469</b>	<b>Notice of Final Action</b>
<b>Chapter 303</b>	<b>Peer Review</b>
303.001	Definition
<b>Sec. 303.005</b>	<b>Request for Peer Review Committee Determination</b> Describes Safe Harbor Provisions.
303.006	Confidential Proceedings
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303.010	Immunity/Protection from Liability

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[Repealed by Acts 2003 (H.B. 3126), 78th Leg., eff. June 20, 2003.]

## **Chapter 301. Nurses**

### **Subchapter A. General Provisions**

#### **Sec. 301.001. Short Title.**

This chapter may be cited as the Nursing Practice Act.

#### **Sec. 301.002. Definitions.**

In this chapter:

- (1) "Board" means the Board of Nurse Examiners.
- (2) "Professional nursing" means the performance for compensation of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or prescription of therapeutic or corrective measures. Professional nursing involves:
  - (A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes;
  - (B) the maintenance of health or prevention of illness;
  - (C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist;
  - (D) the supervision or teaching of nursing;
  - (E) the administration, supervision, and evaluation of nursing practices, policies, and procedures;
  - (F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at sites in which a registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157; and
  - (G) the performance of an act delegated by a physician under Section 157.052, 157.053, 157.054, 157.0541, 157.0542, 157.058, or 157.059.
- (3) "Nurse" means a person required to be licensed under this chapter to engage in professional or vocational nursing.
- (4) "Nursing" means professional or vocational nursing.
- (5) "Vocational nursing" means nursing, other than professional nursing, that generally requires experience and education in biological, physical, and social sciences sufficient to qualify as a licensed vocational nurse.

[Sections (3), (4), and (5) added by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.003. Application of Sunset Act.**

The Board of Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the Board is abolished September 1, 2007.

[Abolition date amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.004. Application of Chapter.**

- (a) This chapter does not apply to:
- (1) gratuitous nursing care of the sick that is provided by a friend;
  - (2) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a nurse unless the person is licensed in another state;
  - (3) nursing care in which treatment is solely by prayer or spiritual means;
  - (4) an act performed by a person under the delegated authority of a person licensed by the Texas State Board of Medical Examiners;
  - (5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed;
  - (6) the practice of nursing that is incidental to a program of study by a student enrolled in a board-approved nursing education program leading to an initial license as a nurse; or
  - (7) the practice of nursing by a person licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:
    - (A) provide care to a patient being transported into, out of, or through this state;
    - (B) provide nursing consulting services; or
    - (C) attend or present a continuing nursing education program.
- (b) This chapter does not authorize the practice of medicine as defined by Chapter 151.

[Section (a) amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.005. Occupation Tax and Fee Exemption.**

A vocational nurse organization that operates a nonprofit registry to enroll members to provide nursing to the public is not liable for the payment of an occupation tax or license fee unless the law imposing the tax or fee specifically imposes the tax or fee on vocational nurse organizations that operate nonprofit registries.

[Added by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

## **Subchapter B. Board of Nurse Examiners**

### **Sec. 301.051. Board Membership.**

- (a) The Board of Nurse Examiners consists of 13 members appointed by the governor with the advice and consent of the senate as follows:
  - (1) six nurse members, including:
    - (A) one advanced practice nurse;
    - (B) two registered nurses who are not advanced practice nurses or members of a nurse faculty; and
    - (C) three vocational nurses who are not members of a nurse faculty;
  - (2) three members who are nurse faculty members of schools of nursing:
    - (A) one of whom is a nurse faculty member of a school of nursing offering a baccalaureate degree program in preparing registered nurses;
    - (B) one of whom is a nurse faculty member of a school of nursing offering an associate degree program in preparing registered nurses; and
    - (C) one of whom is a nurse faculty member of a school of nursing at an institution of higher education preparing vocational nurses; and
  - (3) four members who represent the public.
  
- (b) Appointments to the Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., Implementation date: February 1, 2004]

### **Sec. 301.052. Member Eligibility.**

- (a) A person is not eligible for appointment as a registered nurse or vocational nurse member of the board unless the person has practiced nursing in the role for which the member was appointed for at least three of the five years preceding the date of appointment.
  
- (b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:
  - (1) is licensed by an occupational regulatory agency in the field of health care;
  - (2) is employed by or participates in the management of a business entity or other organization that:
    - (A) provides health care services; or
    - (B) sells, manufactures, or distributes health care supplies or equipment;
  - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:
    - (A) provides health care services; or
    - (B) sells, manufactures, or distributes health care supplies or equipment; or

- (4) uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.053. Membership and Employee Restrictions.**

- (a) In this section, "Texas Trade Association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.
- (c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.
- (d) A person may not serve as a board member or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the Board's operation.

**Sec. 301.054. Terms.**

Members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible expiring on January 31 of each odd-numbered year.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., Implementation date: February 1, 2004]

**Sec. 301.055. Grounds for Removal.**

- (a) It is a ground for removal from the Board that a member:
  - (1) does not have at the time of appointment the qualifications required by Section 301.051(a);
  - (2) does not maintain during service on the board the qualifications required by Section 301.051(a);

- (3) violates a prohibition established by Section 301.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the Board.

- (b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the Board of the potential ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

**Sec. 301.056. Per Diem; Reimbursement.**

- (a) Each board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the Board.
- (b) A board member is not entitled to reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

**Sec. 301.057. Officers.**

- (a) The Governor shall designate a member of the Board as presiding officer to serve in that capacity at the pleasure of the governor.
- (b) The Board shall elect other officers from its members.

**Sec. 301.058. Meetings.**

The presiding officer shall call a special Board meeting on the written request of at least two board members.

**Sec. 301.059. Training.**

- (a) Before a board member may assume the member's duties and before the member may be confirmed by the Senate, the member must complete at least one course of a training program established by the Board under this section.
- (b) The training program shall provide information to a participant regarding:
  - (1) this chapter;

- (2) the programs operated by the Board;
- (3) the role and functions of the Board;
- (4) the rules of the Board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the Board;
- (6) the results of the most recent formal audit of the Board;
- (7) the requirements of Chapters 551, 552, 2001, and 2002, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(c) In developing the training program, the Board shall consult with the Governor's Office, the Attorney General's Office, and the Texas Ethics Commission.

(d) If another state agency or entity is given the authority to establish the training requirements for board members, the Board shall allow that training instead of developing its own program.

### **Subchapter C. Executive Director and Personnel**

#### **Sec. 301.101. Executive Director.**

(a) The Board shall employ an executive director. The Executive Director may not be a member of the Board.

(b) Under the direction of the Board, the Executive Director shall perform the duties required by this chapter or designated by the Board.

#### **Sec. 301.102. Surety Bond.**

Repealed by Acts 2003 (H.B. 2376), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

#### **Sec. 301.103. Public Records; Registry.**

(a) The Executive Director shall keep:

- (1) a record of each meeting of the Board; and
- (2) a registry of the name of each nurse registered under this chapter.

(b) Information maintained under this section is open to public inspection at all times.

#### **Sec. 301.104. Personnel; Employment Practices.**

The Board shall employ persons as necessary to carry on the work of the Board.

**Sec. 301.105. Division of Responsibilities.**

- (a) The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.
- (b) The Board shall determine the salaries and compensation to be paid to employees and persons retained by the Board.

**Sec. 301.106. Qualifications and Standards of Conduct Information.**

The Board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

**Sec. 301.107. Career Ladder Program; Performance Evaluations.**

- (a) The Executive Director or the Executive Director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all non-entry level positions concurrently with any public posting.
- (b) The Executive Director or the Executive Director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

**Sec. 301.108. Equal Employment Opportunity Policy; Report.**

- (a) The Executive Director or the Executive Director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:
  - (1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;
  - (2) a comprehensive analysis of the Board workforce that meets federal and state guidelines;
  - (3) procedures by which a determination can be made of significant under use in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
  - (4) reasonable methods to appropriately address those areas of under use.

- (c) A policy statement prepared under Subsection (a) must:
  - (1) cover an annual period;
  - (2) be updated annually;
  - (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
  - (4) be filed with the Governor.
  
- (d) The Governor shall deliver a biennial report to the Legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

## **Subchapter D. General Powers and Duties of Board**

### **Sec. 301.151. General Rulemaking Authority.**

The Board may adopt and enforce rules consistent with this chapter and necessary to:

- (a) perform its duties and conduct proceedings before the Board;
- (b) regulate the practice of professional nursing and vocational nursing;
- (c) establish standards of professional conduct for license holders under this chapter;  
and
- (d) determine whether an act constitutes the practice of professional nursing or vocational nursing.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

### **Sec. 301.152. Rules Regarding Specialized Training.**

- (a) In this section, "advanced practice nurse" means a registered nurse approved by the Board to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."
  
- (b) The Board shall adopt rules to:
  - (1) establish:
    - (a) any specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under Section 157.052;  
and
    - (b) a system for assigning an identification number to a registered nurse who provides the Board with evidence of completing the specialized education and training requirement under Subdivision (1)(A);
  - (2) approve a registered nurse as an advanced practice nurse; and
  - (3) initially approve and biennially renew an advanced practice nurse's authority to carry out or sign a prescription drug order under Chapter 157.

- (c) At a minimum, the rules adopted under Subsection (b)(3) must:
  - (1) require completion of pharmacology and related pathology education for initial approval;
  - (2) require continuing education in clinical pharmacology and related pathology in addition to any continuing education otherwise required under Section 301.303; and
  - (3) provide for the issuance of a prescription authorization number to an advanced practice nurse approved under this section.
  
- (d) The signature of an advanced practice nurse attesting to the provision of a legally authorized service by the advanced practice nurse satisfies any documentation requirement for that service established by a state agency.

**Sec. 301.1525. Nurse First Assistants.**

- (a) In this section, "nurse first assistant" means a registered nurse who:
  - (1) is certified in perioperative nursing by an organization recognized by the Board; and
  - (2) has completed a nurse first assistant educational program approved by an organization recognized by the Board.
  
- (b) The Board may adopt rules governing nurse first assistants.
  
- (c) A health maintenance organization or an insurer, including an insurer offering a preferred provider benefit plan, may not, by contract or any other method, require a physician to use the services of a nurse first assistant.

**Sec. 301.1526. Certain Nurses Directly Assisting In Surgery.**

- (a) This section does not apply to a registered nurse who is a nurse first assistant under Section 301.1525.
  
- (b) A registered nurse to whom this section applies may directly assist a physician, physician's group, podiatrist, or dentist to perform surgery if the nurse:
  - (1) has, before September 1, 2003, directly assisted the physician, physician's group, podiatrist, or dentist to perform surgery for 2,500 or more hours;
  - (2) assists under the direct personal supervision and in the physical presence of the physician, physician's group, podiatrist, or dentist in the same sterile field; and
  - (3) is employed by the physician, physician's group, podiatrist, or dentist or by a hospital licensed under Chapter 241, Health and Safety Code.
  
- (c) In this section, "directly assisting in surgery":
  - (1) includes:

- (A) holding a retractor;
  - (B) grasping tissue;
  - (C) using a suction device;
  - (D) sponging a wound; and
  - (E) following a suture while the physician, physician's group, podiatrist, or dentist sews tissue; and
- (2) does not include:
- (A) making an incision;
  - (B) inserting a laparoscopic trocar;
  - (C) tying a suture; or
  - (D) placing a suture or staple.

(d) A registered nurse, physician, physician's group, podiatrist, or dentist, or the facility at which surgery is performed under this section, may not separately bill the services of the registered nurse to the patient or to any third-party insurer.

(e) A registered nurse to whom this section applies may not use:

- (1) the title "nurse first assistant" or "registered nurse first assistant";
- (2) the abbreviation "R.N.F.A."; or
- (3) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under Section 301.1525.

(f) This section expires January 1, 2007.

[Added by Acts 2003 (H.B. 2131), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.1527. Certain Nurses Directly Assisting In Surgery In Small Hospitals.**

(a) In this section, "small hospital" means a hospital licensed under Chapter 241, Health and Safety Code, that has 100 or fewer beds.

(b) This section does not apply to a registered nurse who is a nurse first assistant under Section 301.1525.

(c) A registered nurse to whom this section applies may directly assist a physician, physician's group, podiatrist, or dentist to perform surgery at a small hospital if the nurse:

- (1) has, before September 1, 2003, directly assisted the physician, physician's group, podiatrist, or dentist to perform surgery for 2,500 or more hours;
- (2) assists under the direct personal supervision and in the physical presence of the physician, physician's group, podiatrist, or dentist in the same sterile field; and
- (3) is employed by the physician, physician's group, podiatrist, or dentist or by the small hospital.

- (d) In this section, "directly assisting in surgery":
  - (1) includes:
    - (A) holding a retractor;
    - (B) grasping tissue;
    - (C) using a suction device;
    - (D) sponging a wound; and
    - (E) following a suture while the physician, physician's group, podiatrist, or dentist sews tissue; and
  - (2) does not include:
    - (A) making an incision;
    - (B) inserting a laparoscopic trocar;
    - (C) tying a suture; or
    - (D) placing a suture or staple.
- (e) A registered nurse, physician, physician's group, podiatrist, or dentist, or the facility at which surgery is performed under this section, may not separately bill the services of the registered nurse to the patient or to any third-party insurer.
- (f) A registered nurse to whom this section applies may not use:
  - (1) the title "nurse first assistant" or "registered nurse first assistant";
  - (2) the abbreviation "R.N.F.A."; or
  - (3) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under Section 301.1525.

[Added by Acts 2003 (H.B. 2131), 78<sup>th</sup> Leg., eff. January 1, 2007]

**Sec. 301.153. Rules Regarding Advertising and Competitive Bidding.**

- (a) The Board may not adopt rules restricting advertising or competitive bidding by a person except to prohibit false, misleading, or deceptive practices by the person.
- (b) The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:
  - (1) restricts the person's use of any medium for advertising;
  - (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
  - (3) relates to the size or duration of an advertisement by the person; or
  - (4) restricts the use of a trade name in advertising by the person.

**Sec. 301.154. Rules Regarding Delegation of Certain Medical Acts.**

- (a) The Board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered

nurses and vocational nurses licensed by the Board. In making a recommendation, the Board may distinguish between nurses on the basis of special training and education.

- (b) A recommendation under Subsection (a) shall be treated in the same manner as a petition for the adoption of a rule by an interested party under Chapter 2001, Government Code.
- (c) The Board in recommending a rule and the Texas State Board of Medical Examiners in acting on a recommended rule shall, to the extent allowable under state and federal statutes, rules, and regulations, act to enable the state to obtain its fair share of the federal funds available for the delivery of health care in this state.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.155. Fees.**

- (a) The Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.
- (b) The Board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under Section 301.158.
- (c) The board shall assess a \$3 surcharge to the fee established by the board under Subsection (a) for a license holder to renew a license under this chapter. The board may use nine cents of the surcharge to cover the administrative costs of collecting and depositing the surcharge. The board quarterly shall transmit \$2.91 of the surcharge to the Texas Department of Health to be used only to implement the nursing resource section under Section 105.002, Health and Safety Code. The board is not required to collect the surcharge if the board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

[Subsection (c) added by Acts 2003 (H.B. 3126), 78<sup>th</sup> Leg., eff. June 20, 2003]

**Sec. 301.156. Gifts and Grants.**

The Board may receive gifts, grants, or other funds or assets.

**Sec. 301.157. Programs of Study and Approval.**

- (a) The Board shall prescribe three programs of study to prepare registered nurses as follows:

- (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing;
  - (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and
  - (3) a diploma program that is conducted by a single purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.
- (b) The board shall:
- (1) prescribe two programs of study to prepare vocational nurses as follows:
    - (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and
    - (B) a program conducted by a hospital;
  - (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses;
  - (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses;
  - (4) approve schools of nursing and educational programs that meet the board's requirements; and
  - (5) deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard.
- (c) A program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.
- (d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of an approved school of nursing or educational program.
- (e) The Board shall give each person, including an organization, affected by an order or decision of the board under this section reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The Board shall hear each protest or complaint from a person affected by a rule or decision regarding:
- (1) the inadequacy or unreasonableness of any rule or order the Board adopts; or
  - (2) the injustice of any order or decision of the Board.
- (f) Not later than the 30th day after the date an order is entered and approved by the Board, a person is entitled to bring an action against the board in a district court of Travis County to have the rule or order vacated or modified, if that person:
- (1) is affected by the order or decision;
  - (2) is dissatisfied with any rule or order of the Board; and
  - (3) sets forth in a petition the principal grounds of objection to the rule or order.

(g) An appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.158. Dissemination of Information.**

The Board shall disseminate, at least twice a year and at other times the Board determines necessary, information that is of significant interest to nurses and employers of nurses in this state, including summaries of final disciplinary action taken against nurses by the Board since its last dissemination of information.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.1581. Information Provided to License Holders.**

At least once each biennium, the board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

[Added by Acts 2003 (S.B. 144), 78<sup>th</sup> Leg., eff. September 1, 2003]

**Sec. 301.1582. Poison Control Center Information.**

The board shall provide to license holders information regarding the services provided by poison control centers.

[Added by Acts 2003 (S.B. 144), 78<sup>th</sup> Leg., eff. September 1, 2003]

**Sec. 301.159. Board Duties Regarding Complaints.**

(a) The board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the board; and
- (2) prescribe information to be provided to a person when the person files a complaint with the Board.

- (b) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

**Sec. 301.160. Pilot Programs.**

- (a) In this section:
  - (1) "Proactive nursing peer review" means peer review that is not initiated to determine culpability with respect to a particular incident.
  - (2) "Targeted continuing nursing education" means continuing education focusing on a skill that would likely benefit a significant proportion of registered nurses in a particular practice area.
- (b) The Board may develop pilot programs to evaluate the effectiveness of mechanisms, including proactive nursing peer review and targeted continuing nursing education, for maintenance of the clinical competency of a registered nurse in the nurse's area of practice and the understanding by registered nurses of the laws, including regulations, governing the practice of professional nursing.
- (c) A pilot program under Subsection (b) must be designed to test the effectiveness of a variety of mechanisms in a variety of practice settings.
- (d) The Board may approve a pilot program under Subsection (b) that is to be conducted by a person other than the board.
- (e) The Board may spend funds to develop or fund a pilot program and may contract with, make grants to, or make other arrangements with an agency, professional association, institution, individual, or other person to implement this section.
- (f) In developing, administering, approving, and funding a pilot program, the Board shall consult with:
  - (1) the Competency Advisory Committee on matters relating to ensuring the maintenance of continued competency of registered nurses; and
  - (2) the Laws and Regulations Advisory Committee on matters relating to ensuring that registered nurses understand the laws, including regulations, governing the practice of professional nursing.
- (g) The Competency Advisory Committee is appointed by the board and consists of the following members:
  - (1) a representative from the Texas Nurses Association;
  - (2) a representative from the Texas Nurses Foundation;
  - (3) a representative from the Texas Organization of Nurse Executives;
  - (4) a registered nurse representative from the Texas Hospital Association;
  - (5) a registered nurse representative from the Texas Health Care Association;

- (6) a registered nurse representative from the Texas Association of Homes and Services for the Aging;
- (7) a registered nurse representative from the Texas Association for Home Care;
- (8) a professional nursing educator;
- (9) a representative from the Consumers Union;
- (10) a representative from the Texas Department of Mental Health and Mental Retardation; and
- (11) any other person appointed by the Board.

(h) The Laws and Regulations Advisory Committee is appointed by the board and consists of the following members:

- (1) a representative of the Texas Nurses Association;
- (2) a representative of the Texas League for Nursing;
- (3) a representative of the Texas Chapter of the American Association of Nurse Attorneys;
- (4) a representative of the Texas Organization of Baccalaureate and Graduate Nursing Educators;
- (5) a representative of the Texas Organization for Associate Degree Nursing;
- (6) a representative of the Texas Organization of Nurse Executives;
- (7) a representative of the American Association of Retired Persons;
- (8) a registered nurse researcher; and
- (9) any other person appointed by the Board.

(i) Except as provided by this subsection, in developing or approving a pilot program under this section the Board may exempt the program from rules adopted under this chapter. Subchapter I and Chapter 303 apply to pilot programs, except that Sections 303.002(e), 303.003, and 303.008(b) do not apply to a pilot program using proactive peer review. The Board may establish alternative criteria for nursing peer review committees conducting proactive peer review.

(j) The Board shall issue an annual report regarding any pilot programs developed or approved and a status report on those programs, including preliminary or final findings concerning their effectiveness. The Board shall mail the report to statewide associations of registered nurses, registered nurse educators, and employers of registered nurses that request a copy. The Board shall issue a final report not later than September 1, 2000.

**Sec. 301.1605. Pilot Programs for Innovative Applications.**

(a) The board may approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of professional nursing.

(b) The board shall specify the procedures to be followed in applying for approval of a pilot

program. The board may condition approval of a program on compliance with this section and rules adopted under this section.

- (c) In approving a pilot program, the board may grant the program an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of professional nursing, including education and reporting requirements for registered nurses. The board may not grant an exception to:
  - (1) the education requirements of this chapter unless the program includes alternate but substantially equivalent requirements; or
  - (2) the mandatory reporting requirements unless the program:
    - (A) is designed to evaluate the efficiency of alternative reporting methods; and
    - (B) provides consumers adequate protection from registered nurses whose continued practice is a threat to public safety.

[Added by Acts 2003 (S.B. 718), 78<sup>th</sup> Leg., eff. June 20, 2003]

**Sec. 301.1606. Pilot Programs on Nurse Reporting Systems.**

- (a) Before January 1, 2004, the board shall solicit proposals for pilot programs designed to evaluate the efficacy and effect on protection of the public of reporting systems designed to encourage identification of system errors.
- (b) The board may grant a pilot program approved under this section an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of professional nursing, including education and reporting requirements for registered nurses. If the board grants an exception, the board may require that the program:
  - (1) provide for the remediation of the deficiencies of a registered nurse who has knowledge or skill deficiencies that unless corrected may result in an unreasonable risk to public safety;
  - (2) provide for supervision of the nurse during remediation of deficiencies under Subdivision (1);
  - (3) require reporting to the board of a registered nurse:
    - (A) who fails to satisfactorily complete remediation, or who does not make satisfactory progress in remediation, under Subdivision (1);
    - (B) whose incompetence in the practice of professional nursing would pose a continued risk of harm to the public; or
    - (C) whose error contributed to a patient death or serious patient injury; or
  - (4) provide for a nursing peer review committee to review whether a registered nurse is appropriate for remediation under Subdivision (1).
- (c) The board may require that the entity conducting a pilot program under this section reimburse the board for the cost of monitoring and evaluating the pilot program.

- (d) The board may contract with a third party to perform the monitoring and evaluation.
- (e) The board may limit the number of pilot programs that it approves under this section.

[Added by Acts 2003 (S.B. 718), 78<sup>th</sup> Leg., eff. June 20, 2003]

**Sec. 301.161. Enforcement.**

- (a) The Board shall aid in the enforcement of this chapter.
- (b) The Board may:
  - (1) issue a subpoena;
  - (2) compel the attendance of a witness;
  - (3) administer an oath to a person giving testimony at hearings; and
  - (4) cause the prosecution of each person violating this chapter.
- (c) The Attorney General shall provide legal assistance necessary to enforce this chapter. This subsection does not relieve a local prosecuting officer of any duty under the law.

**Sec. 301.1615. Obtaining Criminal History Record Information; Hearing.**

- (a) In addition to the information to which the board is entitled under Section 411.125, Government Code, the board may request and receive criminal history record information from the Federal Bureau of Investigation as provided by Section 411.087, Government Code.
- (b) Criminal history record information received by the board may be used only by the board and is privileged. The information may not be disclosed to any person other than:
  - (1) as required under a court order; or
  - (2) to a nursing board that is a member of the nurse licensure compact under Chapter 304.
- (c) If, on the basis of criminal history record information obtained by the board, the board proposes to deny an application for a license, refuse to renew a license, or suspend or revoke a license or temporary permit, the applicant or license holder is entitled to a hearing under Section 301.454.

[Added by Acts 2003 (H.B. 2208), 78<sup>th</sup> Leg., eff. September 1, 2003]

**Sec. 301.162. Legal Counsel.**

The Board may retain legal counsel to represent the Board if first:

- (1) the Board requests the Attorney General to represent the Board; and
- (2) the Attorney General certifies to the Board that the Attorney General cannot provide those services.

**Sec. 301.163. Record of Proceedings; Report.**

The Board shall keep a record of its proceedings under this chapter and make an annual report to the Governor.

**Sec. 301.164. Assistance of Prosecutor.**

A board member may present to a prosecuting officer a complaint relating to a violation of this chapter. The Board, through its members, officers, counsel, or agents, shall assist in the trial of a case involving an alleged violation of this chapter, subject to the control of the prosecuting officers.

**Sec. 301.165. Annual Report.**

- (a) The Board shall file annually with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.
- (b) The report must be in the form and reported in the time provided by the General Appropriations Act.

**Subchapter E. Public Interest Information and Complaint Procedures**

**Sec. 301.201. Public Interest Information.**

- (a) The Board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the Board.
- (b) The Board shall make the information available to the public and appropriate state agencies.

**Sec. 301.202. Complaints.**

- (a) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the board. The Board may provide for that notice:
  - (1) on each registration form, application, or written contract for services of a person regulated by the Board;

- (2) on a sign prominently displayed in the place of business of each person regulated by the Board; or
- (3) in a bill for service provided by a person regulated by the Board.

- (b) The Board shall enter into a memorandum of understanding with each state agency that licenses health care facilities or agencies to coordinate the notification requirement under Subsection (a) with notification requirements that may be imposed on the health care facility or agency by that state agency.
- (c) The Board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

**Sec. 301.203. Records of Complaints.**

- (a) The Board shall keep an information file about each complaint filed with the board. The information file must be kept current and must contain a record for each complaint of:
  - (1) each person contacted in relation to the complaint;
  - (2) a summary of findings made at each step of the complaint process;
  - (3) an explanation of the legal basis and reason for a complaint that is dismissed;
  - (4) the schedule required under Section 301.204 and a notation of any change in the schedule; and
  - (5) other relevant information.
- (b) If a written complaint is filed with the Board that the Board has authority to resolve, the Board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

**Sec. 301.204. General Rules Regarding Complaint Investigation and Disposition.**

- (a) The Board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:
  - (1) distinguish between categories of complaints;
  - (2) ensure that complaints are not dismissed without appropriate consideration;
  - (3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
  - (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
  - (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.

- (b) The Board shall:
  - (1) dispose of all complaints in a timely manner; and
  - (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.
- (c) The Board shall notify the parties of the projected time requirements for pursuing the complaint.
- (d) The Board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.
- (e) The Executive director of the Board shall notify the Board of a complaint that is unresolved after the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.

**Sec. 301.205. Public Participation.**

- (a) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the Board's jurisdiction.
- (b) The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

**Subchapter F. License Requirements**

**Sec. 301.251. License Required.**

- (a) A person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by this chapter.
- (b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:
  - (1) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse";
  - (2) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N."; or
  - (3) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.
- (c) This section does not apply to a person entitled to practice professional nursing or vocational nursing in this state under Chapter 304, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001.

- (d) Unless the person holds a license under this chapter or as a vocational nurse under Chapter 302, a person may not use, in connection with the person's name:
  - (1) the title "nurse"; or
  - (2) any other designation tending to imply that the person is licensed to provide nursing care.

[Amended by Acts 2003 (H.B. 1483, S.B. 718), 78<sup>th</sup> Leg., eff. Sept. 1, 2003, (d)(1)-(2) eff. June 20, 2003]

**Sec. 301.2511. Criminal History Record Information for License Applicants.**

- (a) An applicant for a registered nurse license must submit to the board, in addition to satisfying the other requirements of this subchapter, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.
- (b) The board may deny a license to an applicant who does not comply with the requirement of Subsection (a). Issuance of a license by the board is conditioned on the board obtaining the applicant's criminal history record information under this section.
- (c) The board by rule may develop a system for initiating the process of obtaining criminal history record information for applicants for a license under this chapter by requiring persons who enroll or plan to enroll in an educational program that prepares a person for a license as a registered nurse to submit to the board a set of fingerprints that meets the requirements of Subsection (a). The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

[Added by Acts 2003 (H.B. 2208), 78<sup>th</sup> Leg., eff. September 1, 2003]

**Sec. 301.252. License Application.**

- (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:
  - (1) has good professional character; and
  - (2) has successfully completed an approved program of professional or vocational nursing education.
- (b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:

- (1) a professional nursing school approved by the board; or
- (2) a school of professional nurse education located in another state or a foreign country.

(c) The board by rule shall determine acceptable levels of education under Subsection (b).

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.253. Examination.**

- (a) Except as provided by Section 301.452, an applicant is entitled to take the examination prescribed by the Board if:
  - (1) the Board determines that the applicant meets the qualifications required by Section 301.252; and
  - (2) the applicant pays the fees required by the Board.
- (b) The Board shall give the examination in various cities throughout the state.
- (c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.
- (d) The Board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those required by the majority of the states.
- (e) A written examination prepared, approved, or offered by the Board, including a standardized national examination, must be validated by an independent testing professional.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.254. Examination Results.**

- (a) The Board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination not later than the 14th day after the date the Board receives the results from the testing service.
- (b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day.

- (c) If requested in writing by a person who fails an examination, the Board shall provide to the person an analysis of the person's performance on the examination.

**Sec. 301.255. Reexamination.**

The Board by rule shall establish conditions under which an applicant who fails an examination may retake the examination. For an applicant who fails the examination two or more times, the Board may:

- (1) require the applicant to fulfill additional educational requirements; or
- (2) deny the applicant the opportunity to retake the examination.

**Sec. 301.256. Issuance of License.**

If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the Board under that section, the Board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the Board's Presiding Officer and the Executive Director and attested by the Board's Seal.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.257. Declaratory Order of License Eligibility.**

- (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person:
  - (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; and
  - (2) has reason to believe that the person is ineligible for the license.
- (b) The petition must state the basis for the person's potential ineligibility.
- (c) The Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.
- (d) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.
- (e) If the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's determination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

- (f) The Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.
- (g) The Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the Board for a declaratory order under this section. Instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.
- (h) The information required under Subsection (g) must be submitted in a form approved by the Board.
- (i) If, as a result of information provided under Subsection (g), the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.258. Temporary Permit.**

- (a) Pending the results of a licensing examination, the Board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.
- (b) The Board may not issue a permit under this section to an applicant who has previously failed an examination administered by the Board or another state.
- (c) A permit issued under Subsection (a) expires on the date of receipt of:
  - (1) a permanent license; or
  - (2) a notice from the Board that the permit holder has failed the examination.
- (d) The Board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the Board necessary for:
  - (1) renewal of an expired license;

- (2) reactivation of an inactive license; or
- (3) reissuance of a suspended, revoked, or surrendered license.

(e) A permit issued under Subsection (d) expires on the earlier of:

- (1) the date of receipt of a permanent license; or
- (2) six months after the date the permit is issued.

(f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the Board as a condition of issuing the permit.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.259. Reciprocal License by Endorsement for Certain Foreign Applicants.**

On payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.260. Temporary License by Endorsement.**

(a) An applicant for a license under this chapter who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the Board:

- (1) an endorsement fee as determined by the Board and a completed sworn application in the form prescribed by the Board;
- (2) evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and
- (3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

(b) A holder of a temporary license under this section is entitled to receive a permanent license if the applicant:

- (1) verifies the applicant's academic and professional credentials; and
- (2) satisfies any other requirement established by statute.

(c) The Board shall grant or deny an application for a permanent license not later than the 180th day after the date the Board receives all required forms or information. The Board may extend that deadline to allow for the receipt and tabulation of examination results.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.261. Inactive Status.**

- (a) The Board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the Board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.
- (b) The Board shall maintain a list of each person whose license is on inactive status.
- (c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.
- (d) The Board shall remove a person's license from inactive status if the person:
  - (1) requests that the Board remove the person's license from inactive status;
  - (2) pays each appropriate fee; and
  - (3) meets the requirements determined by the Board.
- (e) The Board by rule shall permit a person whose license is on inactive status and who is 65 years or older to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired."

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Subchapter G. License Renewal**

**Sec. 301.301. License Renewal.**

- (a) The Board by rule may adopt a system under which licenses expire on various dates during the year.
- (b) A person may renew an unexpired license issued under this chapter on payment of the required renewal fee and compliance with any other renewal requirements adopted by the Board.

- (c) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a fee that is equal to one-half the amount charged for examination for the license. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the amount charged for examination for the license.
- (d) The Board by rule shall set a length of time beyond which an expired license may not be renewed. The Board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the Board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.
- (e) At least 30 days before the expiration of the person's license, the Board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the Board.
- (f) A registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.3011. Criminal History Record Information Requirement for Renewal.**

- (a) The board may require that an applicant for renewal of an unexpired license submit to the board, in addition to satisfying any other requirements for license renewal, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.
- (b) The board may refuse to renew the license of a person who does not comply with the requirement of Subsection (a). Renewal of a license by the board is conditioned on the board obtaining the person's criminal history record information under this section.

[Added by Acts 2003 (H.B. 2208), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.302. Renewal of Expired License by Out-of-State Practitioner.**

- (a) The Board may renew without examination the expired license of a person who was licensed to practice professional nursing or vocational nursing in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

- (b) The person must pay to the Board a fee that is equal to the amount of the initial fee for the license and the renewal fee.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.303. Continuing Competency.**

- (a) The board may recognize, prepare, or implement continuing competency programs for license holders under this chapter and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including:
  - (1) completion of targeted continuing education programs; and
  - (2) consideration of a license holder's professional portfolio, including certifications held by the license holder.
  
- (b) The Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period and may not require that more than 10 hours of the continuing education consist of classroom instruction in approved programs. The remaining hours of continuing education may consist of any combination of:
  - (1) classroom instruction;
  - (2) institutional-based instruction; or
  - (3) individualized study.
  
- (c) If the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.
  
- (d) In adopting rules under Subsection (c), the board shall consider, but is not obligated to approve:
  - (1) a program or provider approved or accredited through the American Nurses Credentialing Center; and
  - (2) a nurse in-service program offered by a hospital that is:
    - (A) accredited by the Joint Commission on Accreditation of Healthcare Organizations;
    - (B) certified by Medicare; or
    - (C) maintained or operated by the federal government or the state.
  
- (e) The Board may adopt other rules as necessary to implement this section.
  
- (f) The Board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

[Amended by Acts 2003 (S.B. 718), 78<sup>th</sup> Leg., eff. June 20, 2003]

**Sec. 301.304. Hepatitis C Component in Continuing Education.**

- (a) As part of any continuing education requirements under Section 301.303, a registered nurse shall participate in not less than two hours of continuing education relating to hepatitis C. This subsection applies only to a registered nurse who renews a license on or after June 1, 2002.
- (b) The Board shall recognize, prepare, or administer a hepatitis C training component for use in continuing education for license holders under Subsection (a).
- (c) The training component must provide information relating to the prevention, assessment, and treatment of hepatitis C.
- (d) This section expires June 1, 2004.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.305. Bioterrorism Response Component in Continuing Education.**

- (a) As part of continuing education requirements under Section 301.303, a license holder shall participate during each two-year licensing period in at least two hours of continuing education relating to preparing for, reporting medical events resulting from, and responding to the consequences of an incident of bioterrorism.
- (b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).
- (c) A license holder who does not comply with the continuing education required under Subsection (a) is subject only to one or both of the following sanctions:
  - (1) completion of the instruction in a period set by the board of 30 days or less; or
  - (2) an administrative penalty imposed under Subchapter K.
- (d) A license holder who fails to comply with a sanction imposed under Subsection (c) is subject to any sanction imposed under Section 301.453 or Subchapter K.
- (e) The board, in consultation with the Texas Department of Health, shall adopt rules establishing the content of the continuing education required under Subsection (a). The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.
- (f) The board may divide the content of the continuing education required under Subsection (a) into one-hour segments and may require that those segments be taken in a certain sequence.

(g) This section expires September 1, 2007.

[Added by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

## **Subchapter H. Practice by License Holder**

### **Sec. 301.351. Designations.**

*NOTE: H.B. 1483 and S.B. 718 both amended Sec. 301.351. Both versions are set out below. Both versions are legal and binding.*

#### *H.B. 1483*

- (a) A person who holds a license as a registered nurse under this chapter:
  - (1) is referred to as a registered nurse; and
  - (2) may use the abbreviation "R.N."
- (b) A person who holds a license as a vocational nurse under this chapter:
  - (1) is referred to as a licensed vocational nurse or vocational nurse; and
  - (2) may use the abbreviation "L.V.N." or "V.N."
- (c) While on duty providing direct care to a patient, each licensed registered nurse shall wear an insignia identifying the nurse as a registered nurse and each licensed vocational nurse shall wear an insignia identifying the nurse as a vocational nurse.

#### *S.B. 718*

- (a) A person who holds a license under this chapter:
  - (1) is referred to as a registered nurse; and
  - (2) may use the abbreviation "R.N."
- (b) While interacting with the public in a professional nursing role, each licensed registered nurse shall wear a clearly legible insignia identifying the nurse as a registered nurse. The insignia may not contain information other than:
  - (1) the registered nurse designation;
  - (2) the nurse's name, certifications, academic degrees, or practice position;
  - (3) the name of the employing facility or agency, or other employer;
  - (4) a picture of the nurse; or
  - (5) any other information authorized by the board.
- (c) The board may adopt rules establishing specifications for the insignia.

[Amended by Acts 2003 (H.B. 1483 & S.B. 718), 78<sup>th</sup> Leg., S.B. 718 eff. June 20, 2003, H.B. 1483 eff. Sept. 1, 2003]

**Sec. 301.352. Protection for Refusal to Engage in Certain Conduct.**

- (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board under Subchapter I if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:
  - (1) constitutes grounds for reporting the nurse to the Board; or
  - (2) is a violation of this chapter or a rule of the Board.
  
- (b) An act by a person under Subsection (a) does not constitute a violation of this section if a nursing peer review committee under Chapter 303 determines:
  - (1) that the act or omission the nurse refused to engage in was not conduct reportable to the Board under Section 301.403; or
  - (2) that:
    - (A) the act or omission in which the nurse refused to engage was conduct reportable to the Board; and
    - (B) the person:
      - (i) rescinds any disciplinary or discriminatory action taken against the nurse;
      - (ii) compensates the nurse for lost wages; and
      - (iii) restores to the nurse any lost benefits.
  
- (c) A nurse's rights under this section may not be nullified by a contract.
  
- (d) An appropriate licensing agency may take action against a person who violates this section.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Subchapter I. Duty to Report Violation**

**Sec. 301.401. Grounds for Reporting Nurse.**

- (a) Except as provided by Subsection (b), the following are grounds for reporting a nurse under Section 301.402, 301.403, 301.405, or 301.407:
  - (1) unnecessary or likely exposure by the nurse of a patient or other person to a risk of harm;
  - (2) unprofessional conduct by the nurse;
  - (3) failure by the nurse to adequately care for a patient;
  - (4) failure by the nurse to conform to the minimum standards of acceptable professional nursing practice; or
  - (5) impairment or likely impairment of the nurse's practice by chemical dependency.

(b) Subsection (a) does not apply to a minor incident, as defined by Section 301.419, if the incident is not required to be reported under a rule adopted under Section 301.419.

[Amended by Acts 2003 (H.B. 1483 & S.B. 718), 78<sup>th</sup> Leg., S.B. 718 eff. June 20, 2003, H.B. 1483 eff. Sept. 1, 2003]

**Sec. 301.402. Duty of Nurse to Report.**

(a) In this section:

- (1) "Nursing educational program" means a board-approved educational program leading to initial licensure as a registered nurse or vocational nurse.
- (2) "Nursing student" means an individual who is enrolled in a professional nursing or vocational nursing educational program.

(b) A nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:

- (1) another nurse is subject to a ground for reporting under Section 301.401; or
- (2) the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

(c) In a written, signed report to the appropriate licensing board, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing nursing practice.

(d) A report by a nurse under Subsection (b) must:

- (1) be written and signed; and
- (2) include the identity of the nurse or student and any additional information required by the board.

(e) A nurse may make a report required under Subsection (b)(2) to the nursing educational program in which the student is enrolled instead of reporting to the board.

(f) A registered nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional nursing practice. For purposes of this subsection, the employer or entity includes an employee or agent of the employer or entity.

[Amended by Acts 2003 (H.B. 1483 & S.B. 718), 78<sup>th</sup> Leg., S.B. 718 eff. June 20, 2003, H.B. 1483 eff. Sept. 1, 2003]

**Sec. 301.403. Duty of Peer Review Committee to Report.**

A nursing peer review committee operating under Chapter 303 that has a ground for reporting a nurse under Section 301.401 shall file with the Board a written, signed report that includes:

- (1) the identity of the nurse;
- (2) a description of any corrective action taken against the nurse;
- (3) a statement whether the nursing peer review committee recommends that the Board take formal disciplinary action against the nurse; and
- (4) any additional information the Board requires.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.404. Duty of Nursing Educational Program to Report.**

- (a) In this section, "nursing educational program" and "nursing student" have the meanings assigned by Section 301.402(a).
- (b) A nursing educational program that has reasonable cause to suspect that the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the Board a written, signed report that includes the identity of the student and any additional information the Board requires.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.405. Duty of Person Employing Nurse to Report.**

- (a) This section applies only to a person who employs, hires, or contracts for the services of a nurse, including:
  - (1) a health care facility, including a hospital, health science center, nursing home, or home health agency;
  - (2) a state agency;
  - (3) a political subdivision;
  - (4) a school of nursing; and
  - (5) a temporary nursing service.
- (b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the Board, against a nurse because a ground under Section 301.401 exists to report the nurse shall report in writing to the board the identity of the nurse and any additional information the Board requires.
- (c) Except as provided by Subsection (g), each person subject to this section that regularly employs, hires, or otherwise contracts for the services of 10 or more nurses shall

develop a written plan for identifying and reporting a nurse in its service against whom a ground under Section 301.401 exists. The plan must include an appropriate process for the review by a nursing peer review committee established and operated under Chapter 303 of any incident reportable under this section and for the affected nurse to submit rebuttal information to that committee. Review by the committee is only advisory.

- (d) The review by the peer review committee must include a determination as to whether a ground under Section 301.401 exists to report the nurse undergoing review. The peer review committee's determination must be included in the report made to the Board under Subsection (b).
- (e) The requirement that a report to the Board be reviewed by a nursing peer review committee:
  - (1) applies only to a required report; and
  - (2) does not subject a person's administrative decision to discipline a nurse to the peer review process or prevent a person from taking disciplinary action before review by the peer review committee is conducted.
- (f) The Board shall enter into memoranda of understanding with each state agency that licenses, registers, or certifies a health care facility or agency or surveys that facility or agency with respect to nursing care as to how that state agency can promote compliance with Subsection (c).
- (g) A person is not required to develop a written plan under Subsection (c) for peer review of:
  - (1) a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses; or
  - (2) a vocational nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five vocational nurses.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.406. Duty of Certain Professional Associations and Organizations to Report.**

A professional association of nurses or an organization that conducts a certification or accreditation program for nurses and that expels, decertifies, or takes any other substantive disciplinary action, as defined by the Board, against a nurse as a result of the nurse's failure to conform to the minimum standards of acceptable nursing practice shall report in writing to the Board the identity of the nurse and any additional information the Board requires.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.407. Duty of State Agency to Report.**

- (a) This section applies only to a state agency that:
  - (1) licenses, registers, or certifies:
    - (A) a hospital;
    - (B) a nursing home;
    - (C) a health science center;
    - (D) a home health agency; or
    - (E) another health care facility or agency; or
  - (2) surveys a facility or agency listed in Subdivision (1) regarding the quality of nursing care provided by the facility or agency.
  
- (b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe a ground for reporting a nurse exists under Section 301.401 shall report in writing to the Board the identity of that nurse.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.408. Duty of Liability Insurer to Report.**

- (a) Each insurer that provides to a nurse liability insurance that covers claims arising from providing or failing to provide nursing care shall submit to the Board the report or data required by this section at the time prescribed.
  
- (b) The report or data must be provided for:
  - (1) a complaint filed in court against a nurse that seeks damages related to the nurse's conduct in providing or failing to provide nursing care; and
  - (2) a settlement of a claim or lawsuit made on behalf of a nurse.
  
- (c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the Board:
  - (1) the name of the nurse against whom the claim is filed;
  - (2) the policy number;
  - (3) the policy limits;
  - (4) a copy of the petition;
  - (5) a copy of the answer; and
  - (6) other relevant information known by the insurer, as required by the Board.
  
- (d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the Board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:
  - (1) whether an appeal has been taken from the judgment and by which party;
  - (2) the amount of the settlement or judgment against the nurse; and

(3) other relevant information known by the insurer, as required by the Board.

(e) A nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide nursing care and the nurse:

- (1) does not carry or is not covered by liability insurance; or
- (2) is insured by a non-admitted carrier.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.409. Duty of Prosecuting Attorney to Report.**

(a) The attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the Board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:

- (1) a person known to be a nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:
  - (A) a felony;
  - (B) a misdemeanor involving moral turpitude;
  - (C) a violation of a state or federal narcotics or controlled substance law; or
  - (D) an offense involving fraud or abuse under the Medicare or Medicaid program; or
- (2) a court finds that a nurse is mentally ill or mentally incompetent.

(b) A prosecuting attorney shall comply with Subsection (a) even if the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state.

(c) The abstract required under Subsection (a) must include:

- (1) the name and address of the nurse or applicant;
- (2) a description of the nature of the offense committed, if any;
- (3) the sentence, if any; and
- (4) the judgment of the court.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.410. Report Regarding Impairment by Chemical Dependency or Mental Illness.**

A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the Board under Chapter 467, Health and Safety Code, instead of reporting to the Board or requesting review by a nursing peer review committee.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.411. Effect of Failure to Report.**

- (a) A person is not liable in a civil action for failure to file a report required by this subchapter.
- (b) The appropriate state licensing agency may take action against a person regulated by the agency for a failure to report as required by this subchapter.

**Sec. 301.412. Reporting Immunity.**

A person who, without malice, makes a report required or authorized, or reasonably believed to be required or authorized, under this subchapter:

- (1) is immune from civil liability; and
- (2) may not be subjected to other retaliatory action as a result of making the report.

**Sec. 301.413. Retaliatory Action.**

- (a) A person named as a defendant in a civil action or subjected to other retaliatory action as a result of filing a report required, authorized, or reasonably believed to be required or authorized under this subchapter may file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.
- (b) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this subchapter.
- (c) A person who reports under this subchapter has a cause of action against a person who violates Subsection (b), and may recover:
  - (1) the greater of:
    - (A) actual damages, including damages for mental anguish even if no other injury is shown; or
    - (B) \$1,000;
  - (2) exemplary damages;
  - (3) court costs; and
  - (4) reasonable attorney's fees.
- (d) In addition to the amount recovered under Subsection (c), a person whose employment is suspended or terminated in violation of this section is entitled to:
  - (1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and
  - (2) compensation for wages lost during the period of suspension or termination.

- (e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting under this subchapter if:
  - (1) the person was suspended or terminated within 60 days after the date the report was made; and
  - (2) the Board or a court determines that the report that is the subject of the cause of action was:
    - (A) authorized or required under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and
    - (B) made without malice.
- (f) An action under this section may be brought in a district court of the county in which:
  - (1) the plaintiff resides;
  - (2) the plaintiff was employed by the defendant; or
  - (3) the defendant conducts business.

**Sec. 301.414. Notice and Review of Report.**

- (a) The Board shall notify each nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.
- (b) The nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The Board may not reveal the identity of the person making or signing the report.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.415. Rebuttal Statement.**

- (a) A nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the Board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the Board.
- (b) The statement made under Subsection (a) must accompany the part of the report being rebutted.
- (c) In investigating the report, the board shall:
  - (1) review the statement made under Subsection (a); and
  - (2) evaluate each reason asserted by the nurse to justify the nurse's conduct.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.416. Investigation.**

- (a) Except as provided by Subsections (b) and (c), a report under this subchapter shall be treated as a complaint under Section 301.457.
- (b) If the Board determines that the reported conduct does not indicate that the continued practice of nursing by the nurse poses a risk of harm to a client or other person, the Board, with the written consent of the nurse and the person making the report, may elect not to proceed with an investigation or to file formal charges. The Board shall:
  - (1) maintain a record of the report; and
  - (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.
- (c) The Board is not required to investigate a report filed by an insurer under Section 301.408, but shall:
  - (1) maintain a record of the report; and
  - (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.417. Confidentiality Requirements; Disclosure of Information.**

- (a) A report required or authorized under this subchapter and the identity of the person making the report are confidential and may not be disclosed except as provided by this section and Section 301.414.
- (b) The Board may use the information in connection with an investigation or disciplinary action against a license holder or in the subsequent trial or appeal of a board action or order. The Board may disclose the information to:
  - (1) a licensing or disciplinary authority of another jurisdiction;
  - (2) a peer assistance program approved by the Board under Chapter 467, Health and Safety Code; or
  - (3) a person engaged in bona fide research or another educational purpose if all information identifying any specific individual is first deleted.
- (c) On the request of a person required to report under Section 301.405, the Board shall provide to the person information about:
  - (1) each allegation contained in the report;
  - (2) the determination of a peer review committee; and
  - (3) the status of the Board's investigation.

- (d) In addition to the other authorizations of this section, the information may be disclosed in:
  - (1) a civil action in which a reporting person is named as a defendant as a result of making the report; or
  - (2) the prosecution of a cause of action based on a claim that the reporting person was subject to retaliatory action as a result of making the report.

**Sec. 301.418. Disclosure of Charges or Disciplinary Action.**

- (a) This subchapter does not prevent disclosure under Section 301.466 of formal charges filed by the Board or a final disciplinary action taken by the board as a result, in whole or in part, of submission of a report under this subchapter.
- (b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide nursing services may not be made available in a liability action for:
  - (1) discovery;
  - (2) court subpoena; or
  - (3) introduction into evidence.
- (c) A person is not prevented from taking disciplinary action against a nurse by:
  - (1) the filing of a report under this subchapter with the Board;
  - (2) an investigation by the Board; or
  - (3) the disposition of a matter by the Board.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.419. General Provisions Regarding Duty to Report; Minor Incidents.**

- (a) In this section, "minor incident" means conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to a client or other person.
- (b) The Board shall adopt rules governing reporting required under this subchapter to minimize:
  - (1) unnecessary duplicative reporting; and
  - (2) the reporting of a minor incident.
- (c) If the Board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the nurse's file.
- (d) The Board shall inform, in the manner the board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this subchapter.

- (e) The reporting required under this subchapter does not constitute state action on behalf of the person reporting.
- (f) The duty to report or any other requirement of this subchapter may not be nullified by a contract.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

## **Subchapter J. Prohibited Practices and Disciplinary Actions**

### **Sec. 301.451. Certain Prohibited Practices.**

A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice nursing under a diploma, license, or record that was:
  - (A) obtained unlawfully or fraudulently; or
  - (B) signed or issued unlawfully or under false representation; or
- (4) practice nursing in a period in which the person's license is suspended or revoked.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

### **Sec. 301.4515. Use of Certain Nursing Titles.**

Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:

- (1) the title "nurse aide," "nurse assistant," or "nurse technician"; or
- (2) any other similar title.

[Added by Acts 2003 (S.B. 718), 78<sup>th</sup> Leg., eff. June 20, 2003]

### **Sec. 301.452. Grounds for Disciplinary Action.**

- (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.
- (b) A person is subject to denial of a license or to disciplinary action under this subchapter for:
  - (1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

- (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;
- (3) a conviction for a felony or for a misdemeanor involving moral turpitude;
- (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
- (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
- (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;
- (8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;
- (9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;
- (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
- (11) adjudication of mental incompetency;
- (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or
- (13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

(c) The Board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.453. Disciplinary Authority of Board; Methods of Discipline.**

- (a) If the Board determines that a person has committed an act listed in Section 301.452(b), the Board shall enter an order imposing one or more of the following:
  - (1) denial of the person's application for a license, license renewal, or temporary permit;
  - (2) issuance of a written warning;
  - (3) administration of a public reprimand;
  - (4) limitation or restriction of the person's license, including:
    - (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or
    - (B) stipulating periodic board review;
  - (5) suspension of the person's license for a period not to exceed five years;
  - (6) revocation of the person's license; or
  - (7) assessment of a fine.

- (b) In addition to or instead of an action under Subsection (a), the Board, by order, may require the person to:
  - (1) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license;
  - (2) participate in a program of education or counseling prescribed by the Board;
  - (3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or
  - (4) perform public service the Board considers appropriate.
- (c) The Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.
- (d) If the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.454. Notice and Hearing.**

- (a) Except in the case of a temporary suspension authorized under Section 301.455 or an action taken in accordance with an agreement between the board and a license holder, the Board may not initiate a disciplinary action relating to a license unless:
  - (1) the Board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and
  - (2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.
- (b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.
- (c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the Board proposes to:
  - (1) refuse to admit the person to examination;
  - (2) refuse to issue a license or temporary permit;
  - (3) refuse to renew a license; or
  - (4) suspend or revoke the person's license or permit.

- (d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the Board for any sanction imposed as the result of a hearing conducted by that office.
- (e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:
  - (1) fails to submit a renewal application; or
  - (2) submits an application that:
    - (A) is incomplete;
    - (B) shows on its face that the person does not meet the renewal requirements; or
    - (C) is not accompanied by the correct fee.

**Sec. 301.455. Temporary License Suspension.**

- (a) The license of a nurse shall be temporarily suspended on a determination by a majority of the Board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.
- (b) A license may be temporarily suspended under this section without notice or hearing on the complaint if:
  - (1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension; and
  - (2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.
- (c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists.
- (d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.456. Evidence.**

A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

**Sec. 301.457. Complaint and Investigation.**

- (a) The Board or any person may initiate a proceeding under this subchapter by filing with the Board a complaint against a nurse. The complaint must be in writing and signed by the complainant.
- (b) Except as otherwise provided by this section, the Board or a person authorized by the board shall conduct each investigation. Each complaint against a nurse that requires a determination of nursing competency shall be reviewed by a board member, consultant, or employee with a nursing background the Board considers sufficient.
- (c) On the filing of a complaint, the board:
  - (1) may conduct a preliminary investigation into the identity of the nurse named or described in the complaint;
  - (2) shall make a timely and appropriate preliminary investigation of the complaint;
  - and
  - (3) may issue a warning or reprimand to the nurse.
- (d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the Board shall notify the nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the Board shall either attempt an informal disposition of the complaint or file a formal charge against the nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.
- (e) The Board shall conduct an investigation of the complaint to determine:
  - (1) whether the nurse's continued practice of nursing poses a risk of harm to clients or other persons; and
  - (2) whether probable cause exists that a nurse committed an act listed in Section 301.452(b) or that violates other law.
- (f) In making a determination under Subsection (e), the board shall review the evidence to determine the extent to which a deficiency in care by the registered nurse was the result of deficiencies in the registered nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a registered nurse must be based on the extent to which the registered nurse's conduct was the result of a deficiency in the registered nurse's judgment, knowledge, training, or skill.

[Amended by Acts 2003 (H.B. 1483 & S.B. 718), 78<sup>th</sup> Leg., S.B. 718 eff. June 20, 2003, H.B. 1483 eff. Sept. 1, 2003]

**Sec. 301.458. Initiation of Formal Charges; Discovery.**

- (a) Unless there is an agreed disposition of the complaint under Section 301.463, and if probable cause is found under Section 301.457(e)(2), the Board or the Board's Authorized Representative shall initiate proceedings by filing formal charges against the nurse.
- (b) A formal charge must:
  - (1) be written;
  - (2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and
  - (3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.
- (c) A copy of the formal charge shall be served on the nurse or the nurse's counsel of record.
- (d) The Board shall adopt reasonable rules to promote discovery by each party to a contested case.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.459. Formal Hearing.**

- (a) The Board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. The State Office of Administrative Hearings shall conduct a formal hearing.
- (b) In any hearing under this section, a nurse is entitled to appear in person or by counsel.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.460. Access to Information.**

- (e) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the Board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:
  - (1) all known exculpatory information in the Board's possession; and
  - (2) information in the Board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

- (b) The Board is not required to provide:
- (1) Board investigative reports or investigative memoranda;
  - (2) the identity of non-testifying complainants;
  - (3) attorney-client communications;
  - (4) attorney work product; or
  - (5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.
- (c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

**Sec. 301.461. Assessment of Costs.**

The Board may assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

**Sec. 301.462. Voluntary Surrender of License.**

The Board may revoke a nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the Board and executes a sworn statement that the nurse does not desire to be licensed.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.463. Agreed Disposition.**

- (a) Unless precluded by this chapter or other law, the Board may dispose of a complaint by:
- (1) stipulation;
  - (2) agreed settlement;
  - (3) agreed order; or
  - (4) dismissal.
- (b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.
- (c) An agreed order is a public record.
- (d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.464. Informal Proceedings.**

- (a) The Board by rule shall adopt procedures governing:
  - (1) informal disposition of a contested case under Section 2001.056, Government Code; and
  - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) Rules adopted under this section must:
  - (1) provide the complainant and the license holder an opportunity to be heard; and
  - (2) require the presence of a representative of the Board's legal staff or of the Attorney General to advise the Board or the Board's employees.

**Sec. 301.465. Subpoenas; Request for Information.**

- (a) The Board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator and service by certified mail.
- (b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the Board. A request or subpoena may not be refused, denied, or resisted unless the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.
- (c) The Board may pay a reasonable fee for photocopies subpoenaed at the Board's request. The amount paid may not exceed the amount the Board charges for copies of its records.
- (d) The Board shall protect, to the extent possible, the identity of each patient named in information received by the Board.

**Sec. 301.466. Confidentiality.**

- (a) A complaint and investigation concerning a nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation are:
  - (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
  - (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the Board or a board employee or agent involved in license holder discipline.
- (b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:
  - (1) a person involved with the Board in a disciplinary action against the nurse;

- (2) a nursing licensing or disciplinary board in another jurisdiction;
- (3) a peer assistance program approved by the Board under Chapter 467, Health and Safety Code;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a nurse by the Board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the Board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.467. Reinstatement.**

- (a) On application, the Board may reinstate a license to practice nursing to a person whose license has been revoked, suspended, or surrendered.
- (b) An application to reinstate a revoked license:
  - (1) may not be made before the first anniversary of the date of the revocation; and
  - (2) must be made in the manner and form the Board requires.
- (c) If the Board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.468. Probation.**

- (a) The Board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the Board sets as the terms of probation, including a condition:
  - (1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing; or
  - (2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the Board.
- (b) At the time the probation is granted, the Board shall establish the term of the probationary period.
- (c) At any time while the person remains subject to the probation order, the Board may hold a hearing and rescind the probation and enforce the Board's original action in denying or suspending the license. The hearing shall be called by the presiding officer

of the Board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:

- (1) sets the time and place for the hearing; and
- (2) contains the charges or complaints against the probationer.

(d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the Board's records.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Sec. 301.469. Notice of Final Action.**

If the Board takes a final disciplinary action, including a warning or reprimand, against a nurse under this subchapter, the Board shall immediately send a copy of the Board's final order to the nurse and to the last known employer of the nurse.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. Sept. 1, 2003]

**Subchapter K. Administrative Penalty**

**Sec. 301.501. Imposition of Penalty.**

The Board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

**Sec. 301.502. Amount of Penalty.**

(a) The amount of the administrative penalty may not exceed \$2,500 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including:
  - (A) the nature, circumstances, extent, and gravity of any prohibited acts; and
  - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts made to correct the violation; and
- (6) any other matter that justice may require.

**Sec. 301.503. Report and Notice of Violation and Penalty.**

- (a) If the Executive Director determines that a violation has occurred, the Executive Director may issue to the Board a report stating:
  - (1) the facts on which the determination is based; and
  - (2) the Director's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.
- (b) Not later than the 14th day after the date the report is issued, the Executive Director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:
  - (1) include a brief summary of the alleged violation;
  - (2) state the amount of the recommended penalty; and
  - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

**Sec. 301.504. Penalty to be Paid or Hearing Requested.**

- (a) Not later than the 20th day after the date the person receives the notice, the person may:
  - (1) accept the Executive Director's determination and recommended administrative penalty in writing; or
  - (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.
- (b) If the person accepts the Executive Director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

**Sec. 301.505. Hearing.**

- (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the Executive Director shall set a hearing and give notice of the hearing to the person.
- (b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.
- (c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

**Sec. 301.506. Decision by Board.**

- (a) Based on the findings of fact, conclusions of law, and proposal for decision, the Board by order may:

- (1) find that a violation occurred and impose an administrative penalty; or
- (2) find that a violation did not occur.

(b) The notice of the Board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

**Sec. 301.507. Options Following Decision: Pay or Appeal.**

- (a) Not later than the 30th day after the date the Board's order becomes final, the person shall:
- (1) pay the administrative penalty;
  - (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
  - (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.
- (b) Within the 30-day period, a person who acts under Subsection (a)(3) may:
- (1) stay enforcement of the penalty by:
    - (A) paying the penalty to the court for placement in an escrow account; or
    - (B) giving to the court a supersedeas bond that is approved by the court and that:
      - (i) is for the amount of the penalty; and
      - (ii) is effective until judicial review of the Board's order is final; or
  - (2) request the court to stay enforcement of the penalty by:
    - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
    - (B) giving a copy of the affidavit to the Executive Director by certified mail.
- (c) If the Executive Director receives a copy of an affidavit under Subsection (b)(2), the Executive Director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.
- (d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

**Sec. 301.508. Collection of Penalty.**

If the person does not pay the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the Attorney General for collection of the penalty.

**Sec. 301.509. Determination by Court.**

- (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.
- (b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

**Sec. 301.510. Remittance of Penalty and Interest.**

- (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:
  - (1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or
  - (2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.
- (b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

**Sec. 301.511. Administrative Procedure.**

A proceeding under this subchapter is subject to Chapter 2001, Government Code.

**Subchapter L. Other Penalties and Enforcement Provisions**

**Sec. 301.551. Injunction.**

- (a) In addition to any other action authorized by law, the Board may institute an action in its name to enjoin a violation of this chapter or a board rule.
- (b) To obtain an injunction under this section, it is not necessary to allege or prove that:
  - (1) an adequate remedy at law does not exist; or
  - (2) substantial or irreparable damage would result from the continued violation.
- (c) Notwithstanding Subsection (b), in a proceeding for an injunction under Subsection (a), the defendant may assert and prove as a complete defense to the action that the Board's actions or proceedings were:
  - (1) arbitrary or capricious;
  - (2) contrary to legal requirements; or

(3) conducted without due process of law.

(d) Either party to an action under Subsection (a) may appeal. The Board is not required to give an appeal bond in a cause arising under this section.

**Sec. 301.552. Monitoring of License Holder.**

The Board by rule shall develop a system for monitoring the compliance of license holders with the requirements of this chapter. Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the Board to perform certain acts; and
- (2) identify and monitor each license holder who represents a risk to the public.

**Sec. 301.553. Civil Penalty.**

(a) A person who violates Section 301.451 or Section 301.251 is liable to the state for a civil penalty not to exceed \$1,000 a day.

(b) The civil penalty may be collected in a suit initiated by the Board.

**Sec. 301.554. Criminal Penalty.**

(a) A person commits an offense if the person violates Section 301.451 or Section 301.251.

(b) An offense under Subsection (a) is a Class A misdemeanor, except that if it is shown on the trial of the offense that the defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.

(c) Each day of violation constitutes a separate offense.

(d) On final conviction of an offense under Subsection (a), the defendant forfeits all rights and privileges conferred by a license issued under this chapter.

**Sec. 301.555. Appeal.**

(a) A person against whom the Board has taken adverse action under this chapter may appeal to a district court in the county of the person's residence or in Travis County.

(b) The Board's decision may not be enjoined or stayed except on application to the district court after notice to the Board.

## **Subchapter M. Anesthesia in Outpatient Setting**

### **Sec. 301.601. Definition.**

In this subchapter, "outpatient setting" means a facility, clinic, center, office, or other setting that is not part of a licensed hospital or a licensed ambulatory surgical center.

### **Sec. 301.602. Rules.**

- (a) The Board shall establish by rule the minimum standards for the provision of anesthesia services in outpatient settings by persons licensed by the Board.
- (b) The rules must be designed to protect the health, safety, and welfare of the public and must include requirements relating to:
  - (1) general anesthesia, regional anesthesia, and monitored anesthesia care;
  - (2) patient assessment, counseling, and preparation;
  - (3) patient monitoring to be performed and equipment to be used during a procedure and during post-procedure monitoring;
  - (4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;
  - (5) the documentation necessary to demonstrate compliance with this article; and
  - (6) the period in which protocols or procedures covered by rules of the Board shall be reviewed, updated, or amended.
- (c) The Board shall cooperate with the Texas State Board of Medical Examiners in the adoption of rules under this article to eliminate to the extent possible conflicts between the rules adopted by each board.

### **Sec. 301.603. Applicability.**

Rules adopted by the board under Section 301.602 do not apply to:

- (1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;
- (2) an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life preserving protective reflexes;
- (3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;
- (4) a licensed ambulatory surgical center;
- (5) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;

- (6) a facility maintained or operated by a state or local governmental entity;
- (7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; or
- (8) an outpatient setting accredited by:
  - (A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;
  - (B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or
  - (C) the Accreditation Association for Ambulatory Health Care.

**Sec. 301.604. Registration Required.**

- (a) The Board shall require each certified registered nurse anesthetist who provides anesthesia services in an outpatient setting to register biennially by applying to the Board on a form prescribed by the board and paying to the Board a fee in an amount established by the Board.
- (b) The Board shall coordinate the registration required under this section with the license renewal requirements of Subchapter G so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimal administrative burden for the Board and certified registered nurse anesthetists.

**Sec. 301.605. Biennial Registration.**

- (a) A certified registered nurse anesthetist providing anesthesia services in an outpatient setting shall comply with the rules adopted by the Board under Section 301.602.
- (b) The Board may require a certified registered nurse anesthetist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the nurse anesthetist's provision of anesthesia in an outpatient setting in accordance with this chapter or board rule.

**Sec. 301.606. Inspections.**

- (a) The Board may conduct inspections to enforce this subchapter, including inspections of the equipment owned or leased by a certified registered nurse anesthetist and of documents of a certified registered nurse anesthetist's practice that relate to providing anesthesia in an outpatient setting. The Board may contract with another state agency or qualified person to conduct these inspections.
- (b) Unless it would jeopardize an ongoing investigation, the Board must provide notice at least five business days before the date of conducting an onsite inspection under this section.

- (c) This section does not require the Board to make an onsite inspection of an outpatient setting in which a certified registered nurse anesthetist provides anesthesia.

**Sec. 301.607. Requests for Inspection and Advisory Opinion.**

- (a) The Board may consider a request by a certified registered nurse anesthetist for an inspection of equipment owned or leased by the nurse anesthetist and of documents of the nurse anesthetist's practice that relate to the provision of anesthesia in an outpatient setting. The Board, on payment of a fee set by the board, may conduct the requested inspection and issue an advisory opinion.
- (b) An advisory opinion issued by the Board under this section is not binding on the board. Except as provided by Subsection (c), the board may take any action under this chapter relating to the situation addressed by the advisory opinion as the board considers appropriate.
- (c) A certified registered nurse anesthetist who requests and relies on a board advisory opinion may use the opinion as mitigating evidence in an action or proceeding by the Board to impose an administrative penalty or to assess a fine under this chapter. On receipt of proof of reliance on an advisory opinion, the Board shall consider the reliance and mitigate imposition of an administrative penalty or assessment of a fine accordingly.

## **Chapter 303. Nursing Peer Review**

### **Sec. 303.001. Definitions.**

In this chapter:

- (1) "Board" means the Board of Nurse Examiners.
- (2) "Nurse" means a registered nurse or a vocational nurse licensed under Chapter 301.
- (3) "Nursing" has the meaning assigned by Section 301.002.
- (4) "Nursing peer review committee" means a committee 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 state agency or political subdivision for the purpose of conducting peer review. The committee includes an employee or agent of the committee, including an assistant, an investigator, an intervenor, an attorney, and any other person who serves the committee in any capacity.
- (5) "Peer review" means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term includes:
  - (A) the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;
  - (B) a report made to a nursing peer review committee concerning an activity under the committee's review authority;
  - (C) a report made by a nursing peer review committee to another committee or to the Board as permitted or required by law; and
  - (D) implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

### **Sec. 303.002. General Provisions Regarding Peer Review.**

- (a) In adopting rules under this chapter, the Board shall consult with the Board of Vocational Nurse Examiners. (Repealed effective February 1, 2004)
- (b) The board shall enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing peer review committee. The memorandum of understanding must:
  - (1) state the actions the board and agency are to take to encourage compliance with the requirement to have a nursing peer review committee; and
  - (2) be adopted as a rule of the board and the agency.

- (c) A court may not enjoin the activities of a nursing peer review committee under this chapter.
- (d) This chapter may not be nullified by a contract.
- (e) The committee shall give the nurse being reviewed at least minimum due process, including notice and opportunity for a hearing.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004. Section (a) to be repealed per Article 3, H.B. 1483, eff. February 1, 2004.]

**Sec. 303.003. Committee Membership.**

- (a) A nursing peer review committee that conducts a peer review that involves only the practice of professional nursing must have registered nurses as three-fourths of its members and may have only registered nurses as voting members.
- (b) A nursing peer review committee that conducts a peer review that involves only the practice of vocational nursing must have registered nurses and vocational nurses as three-fourths of its members, to the extent feasible must include vocational nurses as members, and may have only registered nurses and vocational nurses as voting members.
- (c) A nursing peer review committee that conducts a peer review that involves the practice of both professional nursing and vocational nursing:
  - (1) must have registered nurses and vocational nurses as four-fifths of its members, with registered nurses as three-fifths of its members;
  - (2) to the extent feasible must include vocational nurses as members; and
  - (3) may have only:
    - (A) registered nurses and vocational nurses as voting members when a vocational nurse is being reviewed; and
    - (B) registered nurses as voting members when a registered nurse is being reviewed.
- (d) The committee shall include to the extent feasible at least one nurse who has a working familiarity with the area of nursing practice in which the nurse being reviewed practices.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 303.004. Peer Review by Two Entities.**

- (a) A nurse who, as a temporary agency nurse, faculty member, or similar staff member, practices nursing for an educational institution, health care facility, agency, or entity, or

a person other than the person who employs or directly compensates the nurse is subject to peer review by both the employer and the other person.

- (b) For the purposes of exchanging information, the peer review committee reviewing the nurse's conduct is considered to be established under the authority of both entities.
- (c) The two entities may contract as to which entity will conduct peer review of the nurse.

**Sec. 303.005. Request for Peer Review Committee Determination.**

- (a) In this section, "duty to a patient" means conduct required by standards of practice or professional conduct adopted by the board for nurses. The term includes administrative decisions directly affecting a nurse's ability to comply with that duty.
- (b) If a person who regularly employs, hires, or otherwise contracts for the services of at least 10 nurses requests one of those nurses to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may request, on a form produced 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.
- (c) A nurse who in good faith requests a peer review determination under Subsection (b):
  - (1) may not be disciplined or discriminated against for making the request;
  - (2) may engage in the requested conduct pending the peer review;
  - (3) is not subject to the reporting requirement under Subchapter I, Chapter 301; and
  - (4) may not be disciplined by the board for engaging in that conduct while the peer review is pending.
- (d) The determinations of the peer review committee shall be considered in a decision to discipline the nurse, but the determinations are not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty.
- (e) If the conduct for which the peer review is requested under Subsection (b) involves the medical reasonableness of a physician's order, the medical staff or medical director shall be requested to make a determination as to the medical reasonableness of the physician's order, and that determination is determinative of that issue.
- (f) A nurse's rights under this section may not be nullified by a contract.
- (g) An appropriate licensing agency may take action against a person who violates this section.
- (h) A person is not required to provide a peer review determination under this section for a request made by:

- (1) a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses; or
- (2) a vocational nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five vocational nurses.

[Sections (a), (b), (c), (d), (f), and (h) amended by Acts 2003 (H.B. 1483, S.B. 718), 78<sup>th</sup> Leg., eff. February 1, 2004. Amendments from H.B. 1483 supercede S.B. 718 amendments effective February 1, 2004. ]

**Sec. 303.006. Confidentiality of Peer Review Proceedings.**

- (a) Except as otherwise provided by this chapter, a nursing peer review committee proceeding is confidential and any communication made to a nursing peer review committee is privileged.
- (b) A member, agent, or employee of a nursing peer review committee or a participant in a proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.
- (c) A person who attends a nursing peer review committee proceeding may not disclose or be required to disclose:
  - (1) information acquired in connection with the proceeding; or
  - (2) an opinion, recommendation, or evaluation of the committee or a committee member.
- (d) A nursing peer review committee member and a person who provides information to the committee may not be questioned about:
  - (1) the person's testimony before the committee; or
  - (2) an opinion formed as a result of the committee proceedings.
- (e) Except as permitted by this chapter, information that is confidential under this section:
  - (1) is not subject to subpoena or discovery in any civil matter;
  - (2) is not admissible as evidence in a judicial or administrative proceeding; and
  - (3) may not be introduced into evidence in a nursing liability suit arising out of the provision of or a failure to provide nursing services.
- (f) If a peer review committee determines that a nurse has not engaged in conduct required to be reported to the nurse's licensing board, a member of the peer review committee whose knowledge of the nurse's conduct was acquired only through the peer review may not report that nurse to the licensing board for that conduct. A committee member is not prohibited from reporting:
  - (1) the nurse, if the member has knowledge of the nurse's conduct independently of peer review; or

- (2) the peer review committee to the licensing board, if the member believes the committee made its determination in bad faith.

[Amended by Acts 2003 (S.B. 718), 78<sup>th</sup> Leg., eff. June 20, 2003]

**Sec. 303.007. Disclosure of Information.**

- (a) A nursing peer review committee on request shall disclose written or oral communications made to the committee and the records and proceedings of the committee to:
  - (1) a licensing authority of any state; or
  - (2) a law enforcement agency investigating a criminal matter.
- (b) A nursing peer review committee may disclose written or oral communications made to the committee and the records and proceedings of the committee to:
  - (1) a licensing agency of any state;
  - (2) a law enforcement agency investigating a criminal matter;
  - (3) the association, school, agency, facility, or other organization under whose authority the committee is established;
  - (4) another nursing peer review committee;
  - (5) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
  - (6) an appropriate state or federal agency or accrediting organization that accredits a health care facility or school of nursing or surveys a facility for quality of care; or
  - (7) a person engaged in bona fide research, if all information that identifies a specific individual is deleted.
- (c) If a committee discloses information under this section, the committee does not by that action waive the privilege of non-disclosure of committee information and proceedings.
- (d) A peer review committee that discloses information under this section and each person who receives the information shall protect, to the extent possible, the identity of each patient.

**Sec. 303.008. Rebuttal Statement.**

- (a) If a nursing peer review committee discloses information under Section 303.007(a) that could result in the reprimand, suspension, or termination of, or other disciplinary action against, a nurse, or itself recommends or takes such an action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation.
- (b) The peer review committee shall give the nurse the opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. Any rebuttal statement must be included with the information disclosed by the committee.

**Sec. 303.009. Retaliatory Actions.**

- (a) A nursing peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including court costs, reasonable attorney's fees, and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.
- (b) A nursing peer review committee member or a person participating in peer review under this chapter named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may use information that is otherwise confidential under this chapter to defend the civil action or a civil action that alleges retaliation for the person's participation in peer review.
- (c) A person who discloses information under Subsection (b) does not by that action waive the privilege of non-disclosure of all other information privileged under this chapter.

**Sec. 303.010. Civil Liability.**

- (a) A cause of action does not accrue for an act, statement, determination, or recommendation made, or act reported, without malice, in the course of peer review against:
  - (1) a member, agent, or employee of a nursing peer review committee; or
  - (2) a school of nursing, hospital, nursing home, home health agency, health science center, or other health care facility, the nursing staff of such a facility, or a nursing association or other organization.
- (b) A person who, without malice, provides records, information, or assistance to a nursing peer review committee:
  - (1) is not liable in a civil action based on the person's participation or assistance in peer review; and
  - (2) may not be subjected to retaliatory action as a result of that act.

**Sec. 303.011. Evaluation by Committee.**

In evaluating a nurse's conduct, the nursing peer review committee shall review the evidence to determine the extent to which a deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

[Added by Acts 2003 (S.B. 718), 78<sup>th</sup> Leg., eff. June 20, 2003]

## **Chapter 304. Nurse Licensure Compact**

### **Sec. 304.001. Nurse Licensure Compact.**

The Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which is as follows:

#### **Nurse Licensure Compact**

##### **Article 1. Findings and Declaration of Purpose.**

- (a) The party states find that:
- (1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensing laws;
  - (2) violations of nurse licensing and other laws regulating the practice of nursing may result in injury or harm to the public;
  - (3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensing and regulation;
  - (4) new practice modalities and technology make compliance with each state nurse licensing laws difficult and complex; and
  - (5) the current system of the duplicative licensing of nurses practicing in multiple states is cumbersome and redundant to both nurses and the states.
- (b) The general purposes of this compact are to:
- (1) facilitate the states' responsibilities to protect the public's health and safety;
  - (2) ensure and encourage the cooperation of party states in the areas of nurse licensing and regulation;
  - (3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse action;
  - (4) promote compliance with the laws governing the practice of nursing in each jurisdiction; and
  - (5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is provided through the mutual recognition of party state licenses.

##### **Article 2. Definitions.**

In this compact:

- (a) "Adverse action" means a home or remote state action.
- (b) "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

- (c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.
- (d) "Current significant investigative information" means:
  - (1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
  - (2) investigative information that indicates that a nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
- (e) "Home state" means the party state that is the nurse's primary state of residence.
- (f) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws that are imposed on a nurse by the home state's licensing board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice.
- (g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.
- (h) "Multistate licensing privilege" means current, official authority from a remote state permitting the practice of nursing as a registered nurse, licensed practical nurse, or licensed vocational nurse in the party state. All party states have the authority, in accordance with existing state due process laws, to take actions against the nurse's privilege, including revocation, suspension, probation, or any other action that affects a nurse's authorization to practice.
- (i) "Nurse" means a registered nurse, licensed practical nurse, or licensed vocational nurse as those terms are defined by each party state's practice laws.
- (j) "Party state" means any state that has enacted this compact.
- (k) "Remote state" means a party state, other than the home state, in which:
  - (1) a patient is located at the time nursing care is provided; or
  - (2) in the case of the practice of nursing not involving a patient, the recipient of nursing practice is located.
- (l) "Remote state action" means:

(1) an administrative, civil, equitable, or criminal action permitted by a remote state's laws that are imposed on a nurse by the remote state's licensing board or other authority, including an action against an individual's multistate licensing privilege to practice in the remote state; and

(2) a cease and desist order and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

(m) "State" means a state, territory, possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) "State practice laws" means a party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term does not include the initial qualifications for licensing or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

### **Article 3. General Provisions and Jurisdiction.**

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensing privilege to practice as a registered nurse in the party state. A license to practice licensed practical nursing or licensed vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensing privilege to practice as a licensed practical nurse or vocational nurse in the party state. To obtain or retain a license, an applicant must meet the home state's qualifications for a license and license renewal as well as all other applicable state laws.

(b) A party state may, in accordance with state due process laws, limit or revoke the multistate licensing privilege of any nurse to practice in the party state and may take any other necessary actions under the party state's applicable laws to protect the health and safety of the party state's citizens. If a party state takes this action, the party state shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) A nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is provided. The practice of nursing includes patient care and all nursing practice defined by the party state's practice laws. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board, the courts, and the laws of the party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensing privilege to practice

registered nursing granted by a party state shall be recognized by another party state as a license to practice registered nursing if the state's law requires the license as a precondition for qualifying for advanced practice registered nurse authorization.

- (e) Individuals not residing in a party state may apply for a nurse license under the laws of a party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

#### **Article 4. Application for License in a Party State.**

- (a) Once an application for a license is submitted, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether:
  - (1) the applicant has held or is the holder of a license issued by another state;
  - (2) a restriction exists on the multistate licensing privilege; and
  - (3) any other adverse action by any state has been taken against the license.
- (b) A nurse in a party state shall hold a license that is issued by the home state in only one party state at a time.
- (c) A nurse who intends to change the nurse's primary state of residence may apply for a license in the new home state in advance of the change. However, a new license will not be issued by a party state until a nurse provides satisfactory evidence to the new home state's licensing board of a change in the nurse's primary state of residence.
- (d) When a nurse changes the nurse's primary state of residence by moving from:
  - (1) a party state to another party state and obtains a license from the new home state, the license from the former home state is no longer valid;
  - (2) a non-party state to a party state and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and remains in full force if provided by the laws of the non-party state; and
  - (3) a party state to a non-party state, the license issued by the prior home state converts to a state license valid only in the former home state and does not entitle the nurse to the multistate licensing privilege to practice in other party states.

#### **Article 5. Adverse Actions.**

- (a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system a remote state action and the factual and legal basis for the action, if known. The licensing board of a remote state shall promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of these reports.

- (b) The licensing board of a party state shall have the authority to complete a pending investigation of a nurse who changes the nurse's primary state of residence during the course of the investigation and to take appropriate action. The licensing board shall promptly report the conclusions of the investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any action.
- (c) A remote state may take adverse action affecting the multistate licensing privilege to practice in that party state. However, only the home state has the power to impose adverse action against the license issued by the home state.
- (d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would to conduct occurring in the home state. In so doing, the licensing board shall apply its state laws to determine appropriate action.
- (e) The home state may take adverse action based on the factual findings of the remote state only if each state follows its own procedures for imposing the adverse action.
- (f) This compact does not affect a party state's decision that participation in an alternative program may be used instead of licensing action and that the participation shall remain non-public if required by the party state's laws. Party states must require a nurse who enters an alternative program to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

**Article 6. Additional Authorities of Party State Nurse Licensing Boards.**

- (a) Notwithstanding any other powers, party state nurse licensing boards have the authority to:
  - (1) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against the nurse;
  - (2) issue subpoenas for hearings and investigations that require the attendance and testimony of witnesses and the production of evidence;
  - (3) issue a cease and desist order to limit or revoke a nurse's authority to practice in the state; and
  - (4) adopt uniform rules as provided under Article 8(c) of this compact.
- (b) A subpoena issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the non-issuing party state by a court of competent jurisdiction in accordance with the practice and procedure applicable to subpoenas issued in

proceedings pending before the court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which a witness or evidence is located.

**Article 7. Coordinated Licensure Information System.**

- (a) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses, licensed practical nurses, and licensed vocational nurses. This system will include information on the licensing and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensing and enforcement efforts.
- (b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report to the coordinated licensure information system adverse actions, actions against multistate licensing privileges, any current significant investigative information yet to result in adverse action, and denials of applications and the reasons for the denials.
- (c) Current significant investigative information shall be transmitted only to party state licensing boards through the coordinated licensure information system.
- (d) Notwithstanding any other provision of law, all party states' licensing boards that contribute information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.
- (e) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
- (f) Information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall be expunged from the coordinated licensure information system.
- (g) Each compact administrator shall act jointly and in consultation with the administrator of the coordinated licensure information system to formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

**Article 8. Compact Administration and Exchange of Information.**

- (a) The presiding officer of the nurse licensing board of a party state or the presiding officer's designee shall be the administrator of this compact for the state.

- (b) The compact administrator of each party state shall furnish to the compact administrator of each other party state information and documents including a uniform data set of investigations, identifying information, licensing data, and disclosable alternative program participation information to facilitate the administration of this compact.
- (c) Compact administrators have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. The uniform rules shall be adopted by party states under Article 6(a)(4) of this compact.

**Article 9. Immunity.**

A party state or an officer, employee, or agent of a party state's nurse licensing board who acts in accordance with the provisions of this compact is not liable for any good faith act or omission that occurs while the person is performing the person's duties under this compact. Good faith in this article does not include wilful misconduct, gross negligence, or recklessness.

**Article 10. Effective Date, Withdrawal, and Amendment.**

- (a) This compact enters into force and takes effect for a state when the state enacts this compact as law. A party state may withdraw from the compact by enacting a statute repealing the compact, but a withdrawal takes effect six months after the date the withdrawing state gives notice of the withdrawal to the executive heads of all other party states.
- (b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.
- (c) This compact does not invalidate or prevent any nurse licensing agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.
- (d) This compact may be amended by the party states. An amendment to this compact is not effective or binding on the party states unless and until all party states enact the amendment into the law of each state.

**Article 11. Construction and Severability.**

- (a) This compact shall be liberally construed to effectuate the compact's purposes.

- (b) This compact is severable. If a phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of a party state or the United States or the applicability of this compact to a government, agency, person, or circumstance is held invalid, the validity and applicability of the remainder of the compact to a government, agency, person, or circumstance is not affected. If this compact is held to be contrary to the constitution of a party state, the compact remains in full force and effect for the other party states and in full force and effect for the party state affected for all severable matters.
- (c) If the party states need to settle a dispute under the compact the party states may submit the issues in dispute to an arbitration panel comprised of:
  - (1) an individual appointed by the compact administrator in the home state;
  - (2) an individual appointed by the compact administrator in each remote state involved;  
and
  - (3) an individual mutually agreed upon by the compact administrators of each party state involved in the dispute.
- (d) The decision of a majority of the arbitrators shall be final and binding.

**Sec. 304.002. Administration of Compact.**

The Executive Director of the Board of Nurse Examiners is the Nurse Licensure Compact administrator for this state.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.003. Rules.**

The Board of Nurse Examiners may adopt rules necessary to implement this chapter.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.004. General Provisions.**

- (a) The terms "nurse," "registered nurse," and "vocational nurse" include nurses licensed as registered nurses or vocational nurses by a state that is a party to the Nurse Licensure Compact.
- (b) Unless the context indicates otherwise or doing so would be inconsistent with the Nurse Licensure Compact, nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Board of Nurse Examiners.
- (c) The Board of Nurse Examiners has the authority to determine whether a right or

obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact unless that determination is inconsistent with the Nurse Licensure Compact.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.005. Enforcement.**

The Board of Nurse Examiners is the state agency responsible for taking action against registered and vocational nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact as authorized by the Nurse Licensure Compact. The action shall be taken in accordance with the same procedures for taking action against registered and vocational nurses licensed by this state.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.006. Information Maintained Under Compact.**

- (a) On request and payment of a reasonable fee, the Board of Nurse Examiners shall provide a registered or vocational nurse licensed by this state with a copy of information regarding the nurse maintained by the coordinated licensure information system under Article 7 of the Nurse Licensure Compact.
- (b) A board is not obligated to provide information not available to the board or information that is not available to the nurse under the laws of the state contributing the information to the coordinated licensure information system.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.007. Access to Practice-Related Information.**

Practice-related information provided by the Board of Nurse Examiners to registered or vocational nurses licensed by this state shall be made available by the board on request and at a reasonable cost to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.008. Disclosure of Personal Information.**

- (a) In reporting information to the coordinated licensure information system under Article 7 of the Nurse Licensure Compact, the Board of Nurse Examiners may disclose personally identifiable information about the nurse, including social security number.

- (b) The coordinated licensure information system may not share personally identifiable information with a state not a party to the compact unless the state agrees not to disclose that information to other persons.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.009. Withdrawal from Compact.**

- (a) The governor may withdraw this state from the Nurse Licensure Compact if the Board of Nurse Examiners notifies the governor that a state that is party to the compact changed, after January 1, 1999, the state's requirements for licensing a nurse and that the state's requirements, as changed, are substantially lower than the requirements for licensing a nurse in this state.
- (b) The governor may completely withdraw this state from the Nurse Licensure Compact or may limit withdrawal to the application of the compact to registered nurses or vocational nurses.

[Amended by Acts 2003 (H.B. 1483), 78<sup>th</sup> Leg., eff. February 1, 2004]

**Sec. 304.010. Expiration of Compact.**

The Nurse Licensure Compact expires on December 31, 2005, unless this section is repealed or the expiration date is extended.

**NOTE:** Duplicate §§304.001-.014, relating to the Nursing Workforce Data Center, added by Acts 2001 (S.B. 572), 77<sup>th</sup> Leg., were repealed by H.B. 3126, effective June 20, 2003. Functions of the Center were transferred to the Nursing Resource Section created under the Statewide Health Coordinating Council (SHCC) at the Texas Department of Health. The Nursing Resource Section will be funded by a \$3.00 nurse licensure renewal surcharge fee under amended Sec. 301.155, relating to Fees.

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