

By: Villarreal

H.B. No. 311

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of licensed vocational nurses and nursing peer review.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 302, Occupations Code, is amended by adding Section 302.0001 to read as follows:

Sec. 302.0001. SHORT TITLE. This chapter may be cited as the Licensed Vocational Nursing Practice Act.

SECTION 2. Section 302.003, Occupations Code, is amended to read as follows:

Sec. 302.003. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided [without charge] by a friend;

(2) nursing care provided by a registered nurse licensed under Chapter 301;

(3) 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 represent that the person is a licensed vocational nurse, unless the person is licensed in another state;

(4) nursing care in which treatment is provided solely by prayer or spiritual means;

(5) an unlicensed person acting under the delegated

1 authority of:

2 (A) a physician licensed by the Texas State Board
3 of Medical Examiners; or

4 (B) a registered nurse licensed under Chapter 301
5 or authorized to practice in this state under Chapter 304, as added
6 by Section 14.130(a), Chapter 1420, Acts of the 77th Legislature,
7 Regular Session, 2001;

8 (6) an act performed by a person licensed by another
9 state agency if the act is authorized by the statute under which the
10 person is licensed;

11 (7) the practice of nursing that is incidental to a
12 program of study by a student enrolled in a board-accredited
13 vocational nurse education program leading to an initial license as
14 a licensed vocational nurse; or

15 (8) the practice of nursing by a licensed vocational
16 nurse or licensed practical nurse licensed in another state who is
17 in this state on a nonroutine basis for a period not to exceed 120
18 hours to provide:

19 (A) care to a patient being transported into, out
20 of, or through this state; or

21 (B) vocational nursing.

22 (b) This chapter does not authorize the practice of medicine
23 as defined by Chapter 151. [~~or family member, or~~

24 ~~[(2) a person who does not:~~

25 ~~[(A) represent to the public that the person is a~~
26 ~~licensed vocational nurse; or~~

27 ~~[(B) use the abbreviation "L.V.N."]~~

1 SECTION 3. Section 302.056(b), Occupations Code, is amended
2 to read as follows:

3 (b) A board member may [~~not~~] receive reimbursement for
4 travel expenses [~~, including expenses for meals and lodging, other~~
5 ~~than transportation expenses. A member is entitled to~~
6 ~~reimbursement for transportation expenses]~~ as provided by the
7 General Appropriations Act.

8 SECTION 4. Section 302.151, Occupations Code, is amended by
9 amending Subsection (b) and adding Subsection (c) to read as
10 follows:

11 (b) The board may adopt and enforce rules consistent with
12 this chapter and [~~as~~] necessary to:

13 (1) perform [~~govern~~] its duties and conduct
14 proceedings before the board;

15 (2) regulate the practice of vocational nursing;

16 (3) establish standards of professional conduct for
17 license holders under this chapter; and

18 (4) determine whether an act constitutes the practice
19 of vocational nursing [~~and to implement the purposes of this~~
20 ~~chapter].~~

21 (c) Rules adopted by the board related to the scope of the
22 practice of vocational nursing must be consistent with this chapter
23 and other law.

24 SECTION 5. Subchapter D, Chapter 302, Occupations Code, is
25 amended by adding Section 302.159 to read as follows:

26 Sec. 302.159. ADVISORY COMMITTEE. (a) The Practice
27 Advisory Committee shall advise the board regarding rules related

1 to the scope of the practice of vocational nursing.

2 (b) The advisory committee is appointed by the board and
3 consists of the following members:

4 (1) a member of the board;

5 (2) a member of the Board of Nurse Examiners;

6 (3) a licensed vocational nurse recommended by the
7 Licensed Vocational Nurses Association of Texas;

8 (4) a licensed vocational nurse recommended by the
9 Texas League for Vocational Nurses;

10 (5) a registered nurse recommended by the Texas
11 Organization of Nurse Executives;

12 (6) a registered nurse recommended by the Texas Nurses
13 Association;

14 (7) a person recommended by the Texas Association of
15 Vocational Nurse Educators;

16 (8) a person recommended by the Texas Organization for
17 the Advancement of Associate Degree Nursing;

18 (9) a person recommended by the Texas Organization of
19 Baccalaureate and Graduate Nursing Educators;

20 (10) a person recommended by the Texas Hospital
21 Association;

22 (11) a person recommended by the Texas Health Care
23 Association or the Texas Association of Homes and Services for the
24 Aging;

25 (12) a person recommended by the Texas Association for
26 Home Care;

27 (13) a person recommended by the Texas Department of

1 Mental Health and Mental Retardation; and

2 (14) a person recommended by the Texas Association of
3 School Nurses.

4 (c) The member of the advisory committee appointed under
5 Subdivision (b)(1) serves as the presiding officer of the
6 committee.

7 (d) Members of the advisory committee other than the members
8 appointed under Subdivisions (b)(1), (2), and (13) are not entitled
9 to reimbursement for expenses.

10 SECTION 6. Subchapter E, Chapter 302, Occupations Code, is
11 amended by adding Section 302.207 to read as follows:

12 Sec. 302.207. MANDATORY REPORTING REQUIREMENTS. (a) A
13 hospital, nursing home, or other employer of a licensed vocational
14 nurse shall report to the board the name of each licensed vocational
15 nurse whose employment is terminated, or who resigns to avoid
16 termination, for engaging in any conduct specified by Section
17 302.401 or 302.402.

18 (b) A person is not liable in a civil action for a failure to
19 report as required by Subsection (a).

20 (c) The appropriate state licensing agency may take action
21 against a person regulated by the agency for a failure to report as
22 required by Subsection (a).

23 SECTION 7. Section 302.255(a), Occupations Code, is amended
24 to read as follows:

25 (a) The director of education or the director of education's
26 designee shall visit and survey each vocational nursing institution
27 to determine whether the board's minimum requirements for

1 vocational nurse education programs are being met.

2 SECTION 8. Section 302.256(a), Occupations Code, is amended
3 to read as follows:

4 (a) The director of education or the director of education's
5 designee [~~board~~] periodically shall survey each vocational nurse
6 education program offered in this state. A written report of the
7 survey must be submitted to the board.

8 SECTION 9. Section 302.301(a), Occupations Code, is amended
9 to read as follows:

10 (a) A person may not practice vocational nursing or use the
11 designation "Licensed Vocational Nurse" or the abbreviation
12 "L.V.N." unless the person holds a license under this chapter.

13 SECTION 10. Section 302.307(b), Occupations Code, is
14 amended to read as follows:

15 (b) A temporary permit expires on the date:

16 (1) the applicant receives a permanent license from
17 the board; or

18 (2) the board notifies the applicant that the
19 applicant has failed the examination [~~a failing examination result~~
20 ~~for the applicant is reported to the board~~].

21 SECTION 11. Sections 302.403 and 302.409, Occupations Code,
22 are amended to read as follows:

23 Sec. 302.403. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF
24 DISCIPLINE. After a hearing is held on specific sworn written
25 charges [~~filed by the secretary-treasurer~~], if the board determines
26 that a person has committed an act listed in Section 302.402, the
27 board may:

- 1 (1) refuse to admit the person to a board examination;
- 2 (2) deny the person's application for a license,
3 license renewal, or temporary permit;
- 4 (3) issue a warning or reprimand;
- 5 (4) suspend or revoke the person's license as a
6 vocational nurse; or
- 7 (5) place on probation a person whose license has been
8 suspended.

9 Sec. 302.409. APPEAL. A person may appeal a board order
10 disciplining the person [~~in a district court of the county of the~~
11 ~~person's residence~~].

12 SECTION 12. Subchapter I, Chapter 302, Occupations Code, is
13 amended by adding Section 302.412 to read as follows:

14 Sec. 302.412. CONFIDENTIALITY. (a) A complaint and
15 investigation concerning a licensed vocational nurse under this
16 subchapter, and all information and material compiled by the board
17 in connection with the complaint and investigation, are:

18 (1) confidential and not subject to disclosure under
19 Chapter 552, Government Code; and

20 (2) not subject to disclosure, discovery, subpoena, or
21 other means of legal compulsion for release to anyone other than the
22 board or a board employee or agent involved in license holder
23 discipline.

24 (b) Notwithstanding Subsection (a), information regarding a
25 complaint and an investigation of a licensed vocational nurse may
26 be disclosed to:

27 (1) a person involved with the board in a disciplinary

1 action against the licensed vocational nurse;

2 (2) a vocational nursing licensing or disciplinary
3 board in another jurisdiction;

4 (3) a peer assistance program approved by the board
5 under Chapter 467, Health and Safety Code;

6 (4) a law enforcement agency; or

7 (5) a person engaged in bona fide research, if all
8 information identifying a specific individual has been deleted.

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

15 SECTION 13. Section 302.501, Occupations Code, is amended
16 to read as follows:

17 Sec. 302.501. INJUNCTIONS. (a) On petition of the board, a
18 district court may enjoin a person who is violating this chapter
19 from continuing the violation.

20 (b) A petition under this section may be filed in a district
21 court in:

22 (1) Travis County;

23 (2) the county in which the defendant resides; or

24 (3) the county in which the violation is occurring.

25 SECTION 14. Chapter 302, Occupations Code, is amended by
26 adding Subchapter L to read as follows:

27 SUBCHAPTER L. PRACTICE BY LICENSE HOLDER

1 Sec. 302.551. SUPERVISION AND DELEGATION. (a) In this
2 section, "delegate" means to grant a person the legal authority to
3 perform an act the person is not otherwise legally authorized to
4 perform.

5 (b) A licensed vocational nurse may only practice under the
6 supervision of a registered nurse, physician, dentist, podiatrist,
7 or other health care provider authorized to order the
8 administration of medications and treatments.

9 (c) A licensed vocational nurse may not delegate a health
10 care task, activity, or function to another person.

11 Sec. 302.552. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN
12 CONDUCT. (a) A person may not suspend, terminate, or otherwise
13 discipline or discriminate against a licensed vocational nurse who
14 refuses to engage in an act or omission relating to patient care
15 that would constitute a ground for disciplinary action under
16 Section 302.403 if the licensed vocational nurse notifies the
17 person at the time of the refusal that the reason for refusing is
18 that the act or omission:

19 (1) constitutes a ground for disciplinary action by
20 the board; or

21 (2) is a violation of this chapter or a rule of the
22 board.

23 (b) An act by a person under Subsection (a) does not
24 constitute a violation of this section if a nursing peer review
25 committee under Chapter 303 determines:

26 (1) that the act or omission the licensed vocational
27 nurse refused to engage in was not a ground for disciplinary action

1 under Section 302.403; or

2 (2) that:

3 (A) the act or omission the licensed vocational
4 nurse refused to engage in was a ground for disciplinary action
5 under Section 302.403; and

6 (B) the person:

7 (i) rescinds any disciplinary or
8 discriminatory action taken against the licensed vocational nurse;

9 (ii) compensates the licensed vocational
10 nurse for lost wages; and

11 (iii) restores to the licensed vocational
12 nurse any lost benefits.

13 (c) A licensed vocational nurse's rights under this section
14 may not be nullified by a contract.

15 (d) An appropriate licensing agency may take action against
16 a person who violates this section.

17 Sec. 302.553. IMMUNITY FROM LIABILITY FOR PROVIDING OR
18 RELYING ON INFORMATION. (a) A person may not be subject to
19 liability for damages in a civil action if the person, in good
20 faith, provides to the board information relating to:

21 (1) an alleged incident of negligence or malpractice
22 on the part of a holder of or an applicant for a license under this
23 chapter; or

24 (2) the qualifications, fitness, or character of a
25 holder of or an applicant for a license under this chapter.

26 (b) The board and the staff of the board may not be subject
27 to liability for damages in a civil action for taking action in

1 reliance on information provided under Subsection (a).

2 Sec. 302.554. PROTECTION FOR REPORTING CERTAIN
3 INFORMATION. A person may not suspend, terminate, or otherwise
4 discipline or discriminate against a person who, in good faith,
5 provides information to the board as provided by Section
6 302.553(a).

7 SECTION 15. Section 303.002(b), Occupations Code, is
8 amended to read as follows:

9 (b) The board shall enter into a memorandum of understanding
10 with each state agency that licenses, registers, or certifies a
11 facility required by law to have a nursing [~~registered nurse~~] peer
12 review committee. The memorandum of understanding must:

13 (1) state the actions the board and agency are to take
14 to encourage compliance with the requirement to have a nursing
15 [~~registered nurse~~] peer review committee; and

16 (2) be adopted as a rule of the board and the agency.

17 SECTION 16. Section 303.005, Occupations Code, is amended
18 by amending Subsections (a), (b), (c), (d), and (f) and adding
19 Subsection (h) to read as follows:

20 (a) In this section, "duty to a patient" means conduct
21 required by standards of practice or professional conduct adopted
22 by the board. The term includes administrative decisions directly
23 affecting a [~~registered~~] nurse's ability to comply with that duty.

24 (b) If a person who regularly employs, hires, or otherwise
25 contracts for the services of at least 10 [~~registered~~] nurses
26 requests one of those nurses to engage in conduct that the nurse
27 believes violates a [~~registered~~] nurse's duty to a patient, the

1 nurse may request, on a form produced by the board, a determination
2 by a nursing peer review committee under this chapter of whether the
3 conduct violates a [~~registered~~] nurse's duty to a patient.

4 (c) A [~~registered~~] nurse who in good faith requests a peer
5 review determination under Subsection (b):

6 (1) may not be disciplined or discriminated against
7 for making the request;

8 (2) may engage in the requested conduct pending the
9 peer review;

10 (3) is not subject to the reporting requirement under
11 Subchapter I, Chapter 301; and

12 (4) may not be disciplined by the board for engaging in
13 that conduct while the peer review is pending.

14 (d) The determinations of the peer review committee shall be
15 considered in a decision to discipline the nurse, but the
16 determinations are not binding if a [~~registered~~] nurse
17 administrator believes in good faith that the peer review committee
18 has incorrectly determined a [~~registered~~] nurse's duty.

19 (f) A [~~registered~~] nurse's rights under this section may not
20 be nullified by a contract.

21 (h) A person is not required to provide a peer review
22 determination under this section for a request made by:

23 (1) a registered nurse unless the person regularly
24 employs, hires, or otherwise contracts for the services of at least
25 five registered nurses; or

26 (2) a licensed vocational nurse unless the person
27 regularly employs, hires, or otherwise contracts for the services

1 of at least five licensed vocational nurses.

2 SECTION 17. Section 531.051(f), Government Code, is amended
3 to read as follows:

4 (f) Sections [~~Section~~] 301.251(a) and 302.301(a),
5 Occupations Code, do [~~does~~] not apply to delivery of a service for
6 which payment is provided under the voucher payment program
7 developed under this section if:

8 (1) the person who delivers the service:

9 (A) has not been denied a license under Chapter
10 301 or 302, Occupations Code;

11 (B) has not been issued a license under Chapter
12 301 or 302, Occupations Code, that is revoked or suspended; and

13 (C) provides a service listed under Subsection
14 (h); and

15 (2) the consumer who receives the service:

16 (A) has a functional disability and the service
17 would have been performed by the consumer, or the parent or guardian
18 for the consumer, except for that disability; and

19 (B) if:

20 (i) the consumer is capable of training the
21 person in the proper performance of the service, the consumer
22 directs the person to deliver the service; or

23 (ii) the consumer is not capable of
24 training the person in the proper performance of the service, the
25 consumer's parent or guardian is capable of training the person in
26 the proper performance of the service and directs the person to
27 deliver the service.

1 SECTION 18. Sections 302.057(c) and (d), Occupations Code,
2 are repealed.

3 SECTION 19. (a) This Act takes effect September 1, 2003.

4 (b) As soon as practicable on or after the effective date of
5 this Act, the Board of Vocational Nurse Examiners shall appoint the
6 members of the Practice Advisory Committee established under
7 Section 302.159, Occupations Code, as added by this Act.