

1-1 By: Shapleigh S.B. No. 241
1-2 (In the Senate - Filed January 22, 2003; February 5, 2003,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; May 2, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 2, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 241 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of licensed vocational nurses.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter A, Chapter 302, Occupations Code, is
1-13 amended by adding Section 302.0001 to read as follows:

1-14 Sec. 302.0001. SHORT TITLE. This chapter may be cited as
1-15 the Licensed Vocational Nursing Practice Act.

1-16 SECTION 2. Section 302.003, Occupations Code, is amended to
1-17 read as follows:

1-18 Sec. 302.003. APPLICATION OF CHAPTER. (a) This chapter
1-19 does not apply to:

1-20 (1) gratuitous nursing care of the sick that is
1-21 provided [without charge] by a friend;

1-22 (2) nursing care provided by a registered nurse
1-23 licensed under Chapter 301;

1-24 (3) nursing care provided during a disaster under the
1-25 state emergency management plan adopted under Section 418.042,
1-26 Government Code, if the person providing the care does not
1-27 represent that the person is a licensed vocational nurse, unless
1-28 the person is licensed in another state;

1-29 (4) nursing care in which treatment is provided solely
1-30 by prayer or spiritual means;

1-31 (5) an unlicensed person acting under the delegated
1-32 authority of:

1-33 (A) a physician licensed by the Texas State Board
1-34 of Medical Examiners; or

1-35 (B) a registered nurse licensed under Chapter 301
1-36 or authorized to practice in this state under Chapter 304, as added
1-37 by Section 14.130(a), Chapter 1420, Acts of the 77th Legislature,
1-38 Regular Session, 2001;

1-39 (6) an act performed by a person licensed by another
1-40 state agency if the act is authorized by the statute under which the
1-41 person is licensed;

1-42 (7) the practice of nursing that is incidental to a
1-43 program of study by a student enrolled in a board-accredited
1-44 vocational nurse education program leading to an initial license as
1-45 a licensed vocational nurse; or

1-46 (8) the practice of nursing by a licensed vocational
1-47 nurse or licensed practical nurse licensed in another state who is
1-48 in this state on a nonroutine basis for a period not to exceed 120
1-49 hours to provide:

1-50 (A) care to a patient being transported into, out
1-51 of, or through this state; or

1-52 (B) vocational nursing.

1-53 (b) This chapter does not authorize the practice of medicine
1-54 as defined by Chapter 151. [or family member, or

1-55 (2) a person who does not:

1-56 [(A) represent to the public that the person is a
1-57 licensed vocational nurse; or

1-58 [(B) use the abbreviation "L.V.N."]

1-59 SECTION 3. Subsection (b), Section 302.056, Occupations
1-60 Code, is amended to read as follows:

1-61 (b) A board member may ~~[not]~~ receive reimbursement for
1-62 travel expenses~~[, including expenses for meals and lodging, other~~
1-63 ~~than transportation expenses. A member is entitled to~~

2-1 ~~reimbursement for transportation expenses]~~ as provided by the
 2-2 General Appropriations Act.

2-3 SECTION 4. Subsection (b), Section 302.151, Occupations
 2-4 Code, is amended to read as follows:

2-5 (b) The board may adopt and enforce rules consistent with
 2-6 this chapter and [as] necessary to:

2-7 (1) perform [govern] its duties and conduct
 2-8 proceedings before the board;

2-9 (2) regulate the practice of vocational nursing;

2-10 (3) establish standards of professional conduct for
 2-11 license holders under this chapter; and

2-12 (4) determine whether an act constitutes the practice
 2-13 of vocational nursing [and to implement the purposes of this
 2-14 chapter].

2-15 SECTION 5. Subchapter D, Chapter 302, Occupations Code, is
 2-16 amended by adding Section 302.159 to read as follows:

2-17 Sec. 302.159. ADVISORY COMMITTEE. (a) The Practice
 2-18 Advisory Committee shall advise the board regarding rules related
 2-19 to the scope of the practice of vocational nursing.

2-20 (b) The Practice Advisory Committee is appointed by the
 2-21 board and consists of the following members:

2-22 (1) a member of the board;

2-23 (2) a member of the Board of Nurse Examiners;

2-24 (3) a licensed vocational nurse recommended by the
 2-25 Licensed Vocational Nurses Association of Texas;

2-26 (4) a licensed vocational nurse recommended by the
 2-27 Texas League of Vocational Nurses;

2-28 (5) a registered nurse recommended by the Texas
 2-29 Organization of Nurse Executives;

2-30 (6) a registered nurse recommended by the Texas Nurses
 2-31 Association;

2-32 (7) a person recommended by the Texas Association of
 2-33 Vocational Nurse Educators;

2-34 (8) a person recommended by the Texas Organization for
 2-35 the Advancement of Associate Degree Nursing;

2-36 (9) a person recommended by the Texas Organization of
 2-37 Baccalaureate and Graduate Nursing Educators;

2-38 (10) a person recommended by the Texas Hospital
 2-39 Association;

2-40 (11) a person recommended by the Texas Health Care
 2-41 Association or the Texas Association of Homes and Services for the
 2-42 Aging;

2-43 (12) a person recommended by the Texas Association for
 2-44 Home Care;

2-45 (13) a person recommended by the Texas Department of
 2-46 Mental Health and Mental Retardation; and

2-47 (14) a person recommended by the Texas Association of
 2-48 School Nurses.

2-49 (c) The member of the Practice Advisory Committee appointed
 2-50 under Subdivision (b)(1) serves as the presiding officer of the
 2-51 committee.

2-52 (d) Members of the Practice Advisory Committee other than
 2-53 the members appointed under Subdivisions (b)(1), (2), and (13) are
 2-54 not entitled to reimbursement for expenses.

2-55 SECTION 6. Subchapter E, Chapter 302, Occupations Code, is
 2-56 amended by adding Section 302.207 to read as follows:

2-57 Sec. 302.207. MANDATORY REPORTING REQUIREMENTS. (a) A
 2-58 hospital, nursing home, or other employer of a licensed vocational
 2-59 nurse shall report to the board the name of each licensed vocational
 2-60 nurse whose employment is terminated, or who resigns to avoid
 2-61 termination, for engaging in any conduct specified by Section
 2-62 302.401 or 302.402.

2-63 (b) A person is not liable in a civil action for a failure to
 2-64 report as required by Subsection (a).

2-65 (c) The appropriate state licensing agency may take action
 2-66 against a person regulated by the agency for a failure to report as
 2-67 required by Subsection (a).

2-68 SECTION 7. Subsection (a), Section 302.255, Occupations
 2-69 Code, is amended to read as follows:

3-1 (a) The director of education or the director of education's
3-2 designee shall visit and survey each vocational nursing institution
3-3 to determine whether the board's minimum requirements for
3-4 vocational nurse education programs are being met.

3-5 SECTION 8. Subsection (a), Section 302.256, Occupations
3-6 Code, is amended to read as follows:

3-7 (a) The director of education or the director of education's
3-8 designee [board] periodically shall survey each vocational nurse
3-9 education program offered in this state. A written report of the
3-10 survey must be submitted to the board.

3-11 SECTION 9. Subsection (a), Section 302.301, Occupations
3-12 Code, is amended to read as follows:

3-13 (a) A person may not practice vocational nursing or use the
3-14 designation "Licensed Vocational Nurse" or the abbreviation
3-15 "L.V.N." unless the person holds a license under this chapter.

3-16 SECTION 10. Subsection (b), Section 302.307, Occupations
3-17 Code, is amended to read as follows:

3-18 (b) A temporary permit expires on the date:

3-19 (1) the applicant receives a permanent license from
3-20 the board; or

3-21 (2) the board notifies the applicant that the
3-22 applicant has failed the [a failing] examination [result for the
3-23 applicant is reported to the board].

3-24 SECTION 11. Sections 302.403 and 302.409, Occupations Code,
3-25 are amended to read as follows:

3-26 Sec. 302.403. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF
3-27 DISCIPLINE. After a hearing is held on specific sworn written
3-28 charges [~~filed by the secretary-treasurer~~], if the board determines
3-29 that a person has committed an act listed in Section 302.402, the
3-30 board may:

- 3-31 (1) refuse to admit the person to a board examination;
3-32 (2) deny the person's application for a license,
3-33 license renewal, or temporary permit;
3-34 (3) issue a warning or reprimand;
3-35 (4) suspend or revoke the person's license as a
3-36 vocational nurse; or
3-37 (5) place on probation a person whose license has been
3-38 suspended.

3-39 Sec. 302.409. APPEAL. A person may appeal a board order
3-40 disciplining the person [~~in a district court of the county of the~~
3-41 ~~person's residence~~].

3-42 SECTION 12. Subchapter I, Chapter 302, Occupations Code, is
3-43 amended by adding Section 302.412 to read as follows:

3-44 Sec. 302.412. CONFIDENTIALITY. (a) A complaint and
3-45 investigation concerning a licensed vocational nurse under this
3-46 subchapter, and all information and material compiled by the board
3-47 in connection with the complaint and investigation, are:

3-48 (1) confidential and not subject to disclosure under
3-49 Chapter 552, Government Code; and

3-50 (2) not subject to disclosure, discovery, subpoena, or
3-51 other means of legal compulsion for release to anyone other than the
3-52 board or a board employee or agent involved in license holder
3-53 discipline.

3-54 (b) Notwithstanding Subsection (a), information regarding a
3-55 complaint and an investigation of a licensed vocational nurse may
3-56 be disclosed to:

3-57 (1) a person involved with the board in a disciplinary
3-58 action against the licensed vocational nurse;

3-59 (2) a vocational nursing licensing or disciplinary
3-60 board in another jurisdiction;

3-61 (3) a peer assistance program approved by the board
3-62 under Chapter 467, Health and Safety Code;

3-63 (4) a law enforcement agency; or

3-64 (5) a person engaged in bona fide research, if all
3-65 information identifying a specific individual has been deleted.

3-66 (c) The filing of formal charges against a licensed
3-67 vocational nurse by the board, the nature of those charges,
3-68 disciplinary proceedings of the board, and final disciplinary
3-69 actions, including warnings and reprimands, by the board are not

4-1 confidential and are subject to disclosure in accordance with
4-2 Chapter 552, Government Code.

4-3 SECTION 13. Section 302.501, Occupations Code, is amended
4-4 to read as follows:

4-5 Sec. 302.501. INJUNCTIONS. (a) On petition of the board,
4-6 a district court may enjoin a person who is violating this chapter
4-7 from continuing the violation.

4-8 (b) A petition under this section may be filed in a district
4-9 court in:

4-10 (1) Travis County;

4-11 (2) the county in which the defendant resides; or

4-12 (3) the county in which the violation is occurring.

4-13 SECTION 14. Chapter 302, Occupations Code, is amended by
4-14 adding Subchapter L to read as follows:

4-15 SUBCHAPTER L. PRACTICE BY LICENSE HOLDER

4-16 Sec. 302.551. SUPERVISION AND DELEGATION. (a) In this
4-17 section, "delegate" means to grant a person the legal authority to
4-18 perform an act the person is not otherwise legally authorized to
4-19 perform.

4-20 (b) A licensed vocational nurse may only practice under the
4-21 supervision of a registered nurse, physician, dentist, podiatrist,
4-22 or other health care provider authorized to order the
4-23 administration of medications and treatments.

4-24 (c) A licensed vocational nurse may not delegate a health
4-25 care task, activity, or function to another person.

4-26 Sec. 302.552. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN
4-27 CONDUCT. (a) A person may not suspend, terminate, or otherwise
4-28 discipline or discriminate against a licensed vocational nurse who
4-29 refuses to engage in an act or omission relating to patient care
4-30 that would constitute a ground for disciplinary action under
4-31 Section 302.403 if the licensed vocational nurse notifies the
4-32 person at the time of the refusal that the reason for refusing is
4-33 that the act or omission:

4-34 (1) constitutes a ground for disciplinary action by
4-35 the board; or

4-36 (2) is a violation of this chapter or a rule of the
4-37 board.

4-38 (b) An act by a person under Subsection (a) does not
4-39 constitute a violation of this section if a nursing peer review
4-40 committee under Chapter 303 determines:

4-41 (1) that the act or omission the licensed vocational
4-42 nurse refused to engage in was not a ground for disciplinary action
4-43 under Section 302.403; or

4-44 (2) that:

4-45 (A) the act or omission the licensed vocational
4-46 nurse refused to engage in was a ground for disciplinary action
4-47 under Section 302.403; and

4-48 (B) the person:

4-49 (i) rescinds any disciplinary or
4-50 discriminatory action taken against the licensed vocational nurse;

4-51 (ii) compensates the licensed vocational
4-52 nurse for lost wages; and

4-53 (iii) restores to the licensed vocational
4-54 nurse any lost benefits.

4-55 (c) A licensed vocational nurse's rights under this section
4-56 may not be nullified by a contract.

4-57 (d) An appropriate licensing agency may take action against
4-58 a person who violates this section.

4-59 Sec. 302.553. IMMUNITY FROM LIABILITY FOR PROVIDING OR
4-60 RELYING ON INFORMATION. (a) A person may not be subject to
4-61 liability for damages in a civil action if the person, in good
4-62 faith, provides to the board information relating to:

4-63 (1) an alleged incident of negligence or malpractice
4-64 on the part of a holder of or an applicant for a license under this
4-65 chapter; or

4-66 (2) the qualifications, fitness, or character of a
4-67 holder of or an applicant for a license under this chapter.

4-68 (b) The board and the staff of the board may not be subject
4-69 to liability for damages in a civil action for taking action in

5-1 reliance on information provided under Subsection (a).

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

5-7 SECTION 15. Subsection (b), Section 303.002, Occupations
5-8 Code, is amended to read as follows:

5-9 (b) The board shall enter into a memorandum of understanding
5-10 with each state agency that licenses, registers, or certifies a
5-11 facility required by law to have a nursing [~~registered nurse~~] peer
5-12 review committee. The memorandum of understanding must:

5-13 (1) state the actions the board and agency are to take
5-14 to encourage compliance with the requirement to have a nursing
5-15 [~~registered nurse~~] peer review committee; and

5-16 (2) be adopted as a rule of the board and the agency.

5-17 SECTION 16. Subsections (a) through (d) and (f), Section
5-18 303.005, Occupations Code, are amended to read as follows:

5-19 (a) In this section, "duty to a patient" means conduct
5-20 required by standards of practice or professional conduct adopted
5-21 by the board. The term includes administrative decisions directly
5-22 affecting a [~~registered~~] nurse's ability to comply with that duty.

5-23 (b) If a person who regularly employs, hires, or otherwise
5-24 contracts for the services of at least 10 [~~registered~~] nurses
5-25 requests one of those nurses to engage in conduct that the nurse
5-26 believes violates a [~~registered~~] nurse's duty to a patient, the
5-27 nurse may request, on a form produced by the board, a determination
5-28 by a nursing peer review committee under this chapter of whether the
5-29 conduct violates a [~~registered~~] nurse's duty to a patient.

5-30 (c) A [~~registered~~] nurse who in good faith requests a peer
5-31 review determination under Subsection (b):

5-32 (1) may not be disciplined or discriminated against
5-33 for making the request;

5-34 (2) may engage in the requested conduct pending the
5-35 peer review;

5-36 (3) is not subject to the reporting requirement under
5-37 Subchapter I, Chapter 301; and

5-38 (4) may not be disciplined by the board for engaging in
5-39 that conduct while the peer review is pending.

5-40 (d) The determinations of the peer review committee shall be
5-41 considered in a decision to discipline the nurse, but the
5-42 determinations are not binding if a [~~registered~~] nurse
5-43 administrator believes in good faith that the peer review committee
5-44 has incorrectly determined a [~~registered~~] nurse's duty.

5-45 (f) A [~~registered~~] nurse's rights under this section may not
5-46 be nullified by a contract.

5-47 SECTION 17. Subsection (f), Section 531.051, Government
5-48 Code, is amended to read as follows:

5-49 (f) Sections [~~Section~~] 301.251(a) and 302.301(a),
5-50 Occupations Code, do [~~does~~] not apply to delivery of a service for
5-51 which payment is provided under the voucher payment program
5-52 developed under this section if:

5-53 (1) the person who delivers the service:

5-54 (A) has not been denied a license under Chapter
5-55 301 or 302, Occupations Code;

5-56 (B) has not been issued a license under Chapter
5-57 301 or 302, Occupations Code, that is revoked or suspended; and

5-58 (C) provides a service listed under Subsection
5-59 (h); and

5-60 (2) the consumer who receives the service:

5-61 (A) has a functional disability and the service
5-62 would have been performed by the consumer, or the parent or guardian
5-63 for the consumer, except for that disability; and

5-64 (B) if:

5-65 (i) the consumer is capable of training the
5-66 person in the proper performance of the service, the consumer
5-67 directs the person to deliver the service; or

5-68 (ii) the consumer is not capable of
5-69 training the person in the proper performance of the service, the

6-1 consumer's parent or guardian is capable of training the person in
6-2 the proper performance of the service and directs the person to
6-3 deliver the service.

6-4 SECTION 18. Subsections (c) and (d), Section 302.057,
6-5 Occupations Code, are repealed.

6-6 SECTION 19. (a) This Act takes effect September 1, 2003.

6-7 (b) As soon as practicable on or after the effective date of
6-8 this Act, the Board of Vocational Nurse Examiners shall appoint the
6-9 members of the Practice Advisory Committee established under
6-10 Section 302.159, Occupations Code, as added by this Act.

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