

1-1 By: Madla S.B. No. 718
1-2 (In the Senate - Filed February 26, 2003; March 3, 2003,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; April 14, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 14, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 718 By: Janek

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

1-10 relating to the practice and regulatory environment for registered
1-11 nurses and licensed vocational nurses.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter D, Chapter 301, Occupations Code, is
1-14 amended by adding Sections 301.1605 and 301.1606 to read as
1-15 follows:

1-16 Sec. 301.1605. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS.

1-17 (a) The board may approve and adopt rules regarding pilot programs
1-18 for innovative applications in the practice and regulation of
1-19 professional nursing.

1-20 (b) The board shall specify the procedures to be followed in
1-21 applying for approval of a pilot program. The board may condition
1-22 approval of a program on compliance with this section and rules
1-23 adopted under this section.

1-24 (c) In approving a pilot program, the board may grant the
1-25 program an exception to the mandatory reporting requirements of
1-26 Sections 301.401-301.409 or to a rule adopted under this chapter or
1-27 Chapter 303 that relates to the practice of professional nursing,
1-28 including education and reporting requirements for registered
1-29 nurses. The board may not grant an exception to the mandatory
1-30 reporting requirements unless the program:

1-31 (1) is designed to evaluate the efficiency of
1-32 alternative reporting methods; and

1-33 (2) provides consumers adequate protection from
1-34 registered nurses whose continued practice is a threat to public
1-35 safety.

1-36 Sec. 301.1606. PILOT PROGRAMS ON NURSE REPORTING SYSTEMS.

1-37 (a) Before January 1, 2004, the board shall solicit proposals for
1-38 pilot programs designed to evaluate the efficacy and effect on
1-39 protection of the public of reporting systems designed to encourage
1-40 identification of system errors.

1-41 (b) The board may grant a pilot program approved under this
1-42 section an exception to the mandatory reporting requirements of
1-43 Sections 301.401-301.409 or to a rule adopted under this chapter or
1-44 Chapter 303 that relates to the practice of professional nursing,
1-45 including education and reporting requirements for registered
1-46 nurses. If the board grants an exception, the board may require
1-47 that the program:

1-48 (1) provide for the remediation of the deficiencies of
1-49 a registered nurse who has knowledge or skill deficiencies that
1-50 unless corrected may result in an unreasonable risk to public
1-51 safety;

1-52 (2) provide for supervision of the nurse during
1-53 remediation of deficiencies under Subdivision (1);

1-54 (3) require reporting to the board of a registered
1-55 nurse:

1-56 (A) who fails to satisfactorily complete
1-57 remediation, or who does not make satisfactory progress in
1-58 remediation, under Subdivision (1);

1-59 (B) whose incompetence in the practice of
1-60 professional nursing would pose a continued risk of harm to the
1-61 public; or

1-62 (C) whose error contributed to a patient death or
1-63 serious patient injury; or

2-1 (4) provide for a nursing peer review committee to
2-2 review whether a registered nurse is appropriate for remediation
2-3 under Subdivision (1).

2-4 (c) The board may require that the entity conducting a pilot
2-5 program under this section reimburse the board for the cost of
2-6 monitoring and evaluating the pilot program.

2-7 (d) The board may contract with a third party to perform the
2-8 monitoring and evaluation.

2-9 (e) The board may limit the number of pilot programs that it
2-10 approves under this section.

2-11 SECTION 2. Section 301.251, Occupations Code, is amended by
2-12 adding Subsection (d) to read as follows:

2-13 (d) Unless the person holds a license under this chapter or
2-14 as a vocational nurse under Chapter 302, a person may not use, in
2-15 connection with the person's name:

2-16 (1) the title "nurse"; or
2-17 (2) any other designation tending to imply that the
2-18 person is licensed to provide nursing care.

2-19 SECTION 3. The heading to Section 301.303, Occupations
2-20 Code, is amended to read as follows:

2-21 Sec. 301.303. CONTINUING COMPETENCY [~~EDUCATION~~].

2-22 SECTION 4. Subsections (a) and (d), Section 301.303,
2-23 Occupations Code, are amended to read as follows:

2-24 (a) The board may recognize, prepare, or implement
2-25 continuing competency [~~education~~] programs for license holders
2-26 under this chapter and may require participation in continuing
2-27 competency [~~education~~] programs as a condition of renewal of a
2-28 license. The programs may allow a license holder to demonstrate
2-29 competency through various methods, including:

2-30 (1) completion of targeted continuing education
2-31 programs; and

2-32 (2) consideration of a license holder's professional
2-33 portfolio, including certifications held by the license holder.

2-34 (d) In adopting rules under Subsection (c), the board shall
2-35 consider, but is not obligated to approve:

2-36 (1) a program or provider approved or accredited
2-37 through the [~~Board of Accreditation of the~~] American Nurses
2-38 [~~Nurses'~~] Association Credentialing Center [~~or the National~~
2-39 ~~Federation of Specialty Nursing Organizations~~]; and

2-40 (2) a nurse in-service program offered by a hospital
2-41 that is:

2-42 (A) accredited by the Joint Commission on
2-43 Accreditation of Healthcare Organizations;

2-44 (B) certified by Medicare; or

2-45 (C) maintained or operated by the federal
2-46 government or the state.

2-47 SECTION 5. Section 301.351, Occupations Code, is amended by
2-48 amending Subsection (b) and adding Subsection (c) to read as
2-49 follows:

2-50 (b) While interacting with the public in a professional
2-51 nursing role [~~on duty providing direct care to a patient~~], each
2-52 licensed registered nurse shall wear a clearly legible [~~an~~]
2-53 insignia identifying the nurse as a registered nurse. The insignia
2-54 may not contain information other than:

2-55 (1) the registered nurse designation;

2-56 (2) the nurse's name, certifications, academic
2-57 degrees, or practice position; and

2-58 (3) the name of the employing facility or agency, or
2-59 other employer.

2-60 (c) The board may adopt rules establishing specifications
2-61 for the insignia.

2-62 SECTION 6. Section 301.401, Occupations Code, is amended to
2-63 read as follows:

2-64 Sec. 301.401. GROUNDS FOR REPORTING REGISTERED NURSE.
2-65 (a) Except as provided by Subsection (b), the [~~The~~] following are
2-66 grounds for reporting a registered nurse under Section 301.402,
2-67 301.403, 301.405, or 301.407:

2-68 (1) unnecessary or likely exposure by the registered
2-69 nurse of a patient or other person to a risk of harm;

- 3-1 (2) unprofessional conduct by the registered nurse;
- 3-2 (3) failure by the registered nurse to adequately care
- 3-3 for a patient;
- 3-4 (4) failure by the registered nurse to conform to the
- 3-5 minimum standards of acceptable professional nursing practice; or
- 3-6 (5) impairment or likely impairment of the registered
- 3-7 nurse's practice by chemical dependency.

3-8 (b) Subsection (a) does not apply to a minor incident, as
 3-9 defined by Section 301.419, if the incident is not required to be
 3-10 reported under a rule adopted under Section 301.419.

3-11 SECTION 7. Section 301.402, Occupations Code, is amended by
 3-12 adding Subsection (f) to read as follows:

3-13 (f) A registered nurse may report to the nurse's employer or
 3-14 another entity at which the nurse is authorized to practice any
 3-15 situation that the nurse has reasonable cause to believe exposes a
 3-16 patient to substantial risk of harm as a result of a failure to
 3-17 provide patient care that conforms to minimum standards of
 3-18 acceptable and prevailing professional nursing practice. For
 3-19 purposes of this subsection, the employer or entity includes an
 3-20 employee or agent of the employer or entity.

3-21 SECTION 8. Subchapter J, Chapter 301, Occupations Code, is
 3-22 amended by adding Section 301.4515 to read as follows:

3-23 Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the
 3-24 person is practicing under the delegated authority of a registered
 3-25 nurse or is otherwise authorized by state or federal law, a person
 3-26 may not use, in connection with the person's name:

- 3-27 (1) the title "nurse aide," "nurse assistant," or
 3-28 "nurse technician"; or
- 3-29 (2) any other similar title.

3-30 SECTION 9. Section 301.457, Occupations Code, is amended by
 3-31 adding Subsection (f) to read as follows:

3-32 (f) In making a determination under Subsection (e), the
 3-33 board shall review the evidence to determine the extent to which a
 3-34 deficiency in care by the registered nurse was the result of
 3-35 deficiencies in the registered nurse's judgment, knowledge,
 3-36 training, or skill rather than other factors beyond the nurse's
 3-37 control. A determination that a deficiency in care is attributable
 3-38 to a registered nurse must be based on the extent to which the
 3-39 registered nurse's conduct was the result of a deficiency in the
 3-40 registered nurse's judgment, knowledge, training, or skill.

3-41 SECTION 10. Subsections (a) through (d) and (f), Section
 3-42 303.005, Occupations Code, are amended to read as follows:

3-43 (a) In this section, "duty to a patient" means conduct
 3-44 required by standards of practice or professional conduct adopted
 3-45 by the board for registered nurses or the Board of Vocational Nurse
 3-46 Examiners for licensed vocational nurses. The term includes
 3-47 administrative decisions directly affecting a [registered] nurse's
 3-48 ability to comply with that duty.

3-49 (b) If a person who regularly employs, hires, or otherwise
 3-50 contracts for the services of at least 10 [registered] nurses
 3-51 requests one of those nurses to engage in conduct that the nurse
 3-52 believes violates a [registered] nurse's duty to a patient, the
 3-53 nurse may request, on a form produced by the board, a determination
 3-54 by a nursing peer review committee under this chapter of whether the
 3-55 conduct violates a [registered] nurse's duty to a patient.

3-56 (c) A [registered] nurse who in good faith requests a peer
 3-57 review determination under Subsection (b):

- 3-58 (1) may not be disciplined or discriminated against
- 3-59 for making the request;
- 3-60 (2) may engage in the requested conduct pending the
- 3-61 peer review;

3-62 (3) is not subject to the reporting requirement under
 3-63 Subchapter I, Chapter 301, or the rules of the board or the Board of
 3-64 Vocational Nurse Examiners; and

3-65 (4) may not be disciplined by the board or the Board of
 3-66 Vocational Nurse Examiners for engaging in that conduct while the
 3-67 peer review is pending.

3-68 (d) The determinations of the peer review committee shall be
 3-69 considered in a decision to discipline the nurse, but the

determinations are not binding if a [~~registered~~] nurse administrator believes in good faith that the peer review committee has incorrectly determined a [~~registered~~] nurse's duty.

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

SECTION 11. Section 303.006, Occupations Code, is amended by adding Subsection (f) to read as follows:

(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.

SECTION 12. Chapter 303, Occupations Code, is amended by adding Section 303.011 to read as follows:

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.

SECTION 13. Subchapter B, Chapter 241, Health and Safety Code, is amended by adding Section 241.029 to read as follows:

Sec. 241.029. POLICIES AND PROCEDURES RELATING TO WORKPLACE SAFETY. (a) The governing body of a hospital shall adopt policies and procedures related to the work environment for nurses to:

(1) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(2) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(b) The policies and procedures adopted under Subsection (a), at a minimum, must include:

(1) evaluating new products and technology that incorporate ergonomic principles;

(2) educating nurses in the application of ergonomic practices;

(3) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(4) controlling access to those areas identified as having a high risk of violence; and

(5) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

SECTION 14. A hospital must adopt policies and procedures required by Section 241.029, Health and Safety Code, as added by this Act, not later than January 1, 2004.

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

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