

AN ACT

relating to the regulation of the practice of nursing.

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

SECTION 1. Subsections (b) and (c), Section 105.002, Health and Safety Code, are amended to read as follows:

(b) In conjunction with the committee formed under Section 104.0155, to avoid duplication of effort, and to the extent funding is available through fees collected under Section [~~Sections~~] 301.155(c) [~~and 302.153(d)~~], Occupations Code, the council shall establish a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state.

(c) If the nursing resource section established under Subsection (b) is funded from surcharges collected under Section [~~Sections~~] 301.155(c) [~~and 302.153(d)~~], Occupations Code, the council shall provide the Board of Nurse Examiners [~~and the Board of Vocational Nurse Examiners, as applicable,~~] with an annual accounting of the money received from the board [~~those boards~~]. The council may expend a reasonable amount of the money to pay administrative costs of maintaining the nursing resource section.

SECTION 2. Subsection (e), Section 105.003, Health and Safety Code, is amended to read as follows:

(e) Data received under this section by the nursing resource section established under Section 105.002 [~~department under this~~

1 ~~section~~] that contains information identifying specific patients  
2 [~~persons~~] or health care facilities is confidential, is not subject  
3 to disclosure under Chapter 552, Government Code, and may not be  
4 released unless all identifying information is removed.

5 SECTION 3. Subdivisions (2) and (5), Section 301.002,  
6 Occupations Code, are amended to read as follows:

7 (2) "Professional nursing" means the performance [~~for~~  
8 ~~compensation~~] of an act that requires substantial specialized  
9 judgment and skill, the proper performance of which is based on  
10 knowledge and application of the principles of biological,  
11 physical, and social science as acquired by a completed course in an  
12 approved school of professional nursing. The term does not include  
13 acts of medical diagnosis or the prescription of therapeutic or  
14 corrective measures. Professional nursing involves:

15 (A) the observation, assessment, intervention,  
16 evaluation, rehabilitation, care and counsel, or health teachings  
17 of a person who is ill, injured, infirm, or experiencing a change in  
18 normal health processes;

19 (B) the maintenance of health or prevention of  
20 illness;

21 (C) the administration of a medication or  
22 treatment as ordered by a physician, podiatrist, or dentist;

23 (D) the supervision or teaching of nursing;

24 (E) the administration, supervision, and  
25 evaluation of nursing practices, policies, and procedures;

26 (F) the requesting, receiving, signing for, and  
27 distribution of prescription drug samples to patients at sites in

1 which a registered nurse is authorized to sign prescription drug  
2 orders as provided by Subchapter B, Chapter 157; [~~and~~]

3 (G) the performance of an act delegated by a  
4 physician under Section 157.052, 157.053, 157.054, 157.0541,  
5 157.0542, 157.058, or 157.059; and

6 (H) the development of the nursing care plan.

7 (5) "Vocational nursing" means a directed scope of  
8 nursing practice, including the performance of an act that requires  
9 specialized judgment and skill, the proper performance of which is  
10 based on knowledge and application of the principles of biological,  
11 physical, and social science as acquired by a completed course in an  
12 approved school of vocational nursing. The term does not include  
13 acts of medical diagnosis or the prescription of therapeutic or  
14 corrective measures. Vocational nursing involves:

15 (A) collecting data and performing focused  
16 nursing assessments of the health status of an individual;

17 (B) participating in the planning of the nursing  
18 care needs of an individual;

19 (C) participating in the development and  
20 modification of the nursing care plan;

21 (D) participating in health teaching and  
22 counseling to promote, attain, and maintain the optimum health  
23 level of an individual;

24 (E) assisting in the evaluation of an  
25 individual's response to a nursing intervention and the  
26 identification of an individual's needs; and

27 (F) engaging in other acts that require education

1 and training, as prescribed by board rules and policies,  
2 commensurate with the nurse's experience, continuing education,  
3 and demonstrated competency~~[, other than professional nursing,~~  
4 ~~that generally requires experience and education in biological,~~  
5 ~~physical, and social sciences sufficient to qualify as a licensed~~  
6 ~~vocational nurse]~~.

7 SECTION 4. Subsection (c), Section 301.155, Occupations  
8 Code, is amended to read as follows:

9 (c) The board shall assess a \$3 surcharge for a registered  
10 nurse and a \$2 surcharge for a vocational nurse to the fee  
11 established by the board under Subsection (a) for a license holder  
12 to renew a license under this chapter. The board may use nine cents  
13 of the registered nurse surcharge and six cents of the vocational  
14 nurse surcharge to cover the administrative costs of collecting and  
15 depositing the surcharge. The board quarterly shall transmit the  
16 remainder [~~\$2.91~~] of each [~~the~~] surcharge to the [~~Texas~~] Department  
17 of State Health Services to be used only to implement the nursing  
18 resource section under Section 105.002, Health and Safety Code.  
19 The board is not required to collect the surcharge if the board  
20 determines the funds collected are not appropriated for the purpose  
21 of funding the nursing resource section.

22 SECTION 5. Subsections (c) and (d), Section 301.251,  
23 Occupations Code, are amended to read as follows:

24 (c) This section does not apply to a person entitled to  
25 practice [~~professional~~] nursing [~~or vocational nursing~~] in this  
26 state under Chapter 304 [~~, as added by Chapter 1420, Acts of the 77th~~  
27 ~~Legislature, Regular Session, 2001~~].

1 (d) Unless the person holds a license under this chapter [~~or~~  
2 ~~as a vocational nurse under Chapter 302~~], a person may not use, in  
3 connection with the person's name:

4 (1) the title "nurse"; or

5 (2) any other designation tending to imply that the  
6 person is licensed to provide nursing care.

7 SECTION 6. Section 301.351, Occupations Code, as amended by  
8 Section 1.027, Chapter 553, Acts of the 78th Legislature, Regular  
9 Session, 2003, and Section 5, Chapter 876, Acts of the 78th  
10 Legislature, Regular Session, 2003, is reenacted and amended to  
11 read as follows:

12 Sec. 301.351. DESIGNATIONS. (a) A person who holds a  
13 license as a registered nurse under this chapter:

14 (1) is referred to as a registered nurse; and

15 (2) may use the abbreviation "R.N."

16 (b) A person who holds a license as a vocational nurse under  
17 this chapter:

18 (1) is referred to as a licensed vocational nurse or  
19 vocational nurse; and

20 (2) may use the abbreviation "L.V.N." or "V.N."

21 (c) While interacting with the public in a [~~professional~~]  
22 nursing role, each [~~licensed registered~~] nurse shall wear a clearly  
23 legible insignia identifying the nurse as a registered or  
24 vocational nurse [~~and each licensed vocational nurse shall wear an~~  
25 ~~insignia identifying the nurse as a vocational nurse~~]. The  
26 insignia may not contain information other than:

27 (1) the registered or vocational nurse designation;

1           (2) the nurse's name, certifications, academic  
2 degrees, or practice position;

3           (3) the name of the employing facility or agency, or  
4 other employer;

5           (4) a picture of the nurse; or

6           (5) any other information authorized by the board.

7           (d) [~~(e)~~] The board may adopt rules establishing  
8 specifications for the insignia.

9           SECTION 7. Section 301.352, Occupations Code, is amended by  
10 amending Subsections (a) and (b) and adding Subsection (e) to read  
11 as follows:

12           (a) A person may not suspend, terminate, or otherwise  
13 discipline or discriminate against a nurse who refuses to engage in  
14 an act or omission relating to patient care that would constitute  
15 grounds for reporting the nurse to the board under Subchapter I,  
16 that constitutes a minor incident, or that violates this chapter or  
17 a board rule if the nurse notifies the person at the time of the  
18 refusal that the reason for refusing is that the act or omission:

19           (1) constitutes grounds for reporting the nurse to the  
20 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 nurse refused to  
27 engage in was;

1           (A) not conduct reportable to the board under  
2 Section 301.403;

3           (B) a minor incident; or

4           (C) a violation of this chapter or a board rule;  
5 or

6           (2) that:

7           (A) the act or omission in which the nurse  
8 refused to engage was conduct reportable to the board, a minor  
9 incident, or a violation of this chapter or a board rule; and

10           (B) the person:

11           (i) rescinds any disciplinary or  
12 discriminatory action taken against the nurse;

13           (ii) compensates the nurse for lost wages;  
14 and

15           (iii) restores to the nurse any lost  
16 benefits.

17           (e) In this section, "minor incident" has the meaning  
18 assigned by Section 301.419.

19           SECTION 8. Subchapter H, Chapter 301, Occupations Code, is  
20 amended by adding Section 301.353 to read as follows:

21           Sec. 301.353. SUPERVISION OF VOCATIONAL NURSE. The  
22 practice of vocational nursing must be performed under the  
23 supervision of a registered nurse, physician, physician assistant,  
24 podiatrist, or dentist.

25           SECTION 9. Subsection (a), Section 301.401, Occupations  
26 Code, is amended to read as follows:

27           (a) Except as provided by Subsection (b), the following are

1 grounds for reporting a nurse under Section 301.402, 301.403,  
2 301.405, or 301.407:

3 (1) [~~unnecessary or~~] likely exposure by the nurse of a  
4 patient or other person to an unnecessary [a] risk of harm;

5 (2) unprofessional conduct by the nurse;

6 (3) failure by the nurse to adequately care for a  
7 patient;

8 (4) failure by the nurse to conform to the minimum  
9 standards of acceptable [~~professional~~] nursing practice; or

10 (5) impairment or likely impairment of the nurse's  
11 practice by chemical dependency.

12 SECTION 10. Subsections (c) and (f), Section 301.402,  
13 Occupations Code, are amended to read as follows:

14 (c) In a written, signed report to the appropriate licensing  
15 board or accrediting body, a nurse may report a licensed health care  
16 practitioner, agency, or facility that the nurse has reasonable  
17 cause to believe has exposed a patient to substantial risk of harm  
18 as a result of failing to provide patient care that conforms to the:

19 (1) minimum standards of acceptable and prevailing  
20 professional [~~nursing~~] practice, for a report made regarding a  
21 practitioner; or

22 (2) statutory, regulatory, or accreditation  
23 standards, for a report made regarding an agency or facility.

24 (f) A [~~registered~~] nurse may report to the nurse's employer  
25 or another entity at which the nurse is authorized to practice any  
26 situation that the nurse has reasonable cause to believe exposes a  
27 patient to substantial risk of harm as a result of a failure to



1 provide patient care that conforms to minimum standards of  
2 acceptable and prevailing professional [~~nursing~~] practice or to  
3 statutory, regulatory, or accreditation standards. For purposes of  
4 this subsection, the employer or entity includes an employee or  
5 agent of the employer or entity.

6 SECTION 11. Section 301.403, Occupations Code, is amended  
7 to read as follows:

8 Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. A  
9 nursing peer review committee operating under Chapter 303 that has  
10 a ground for reporting a nurse under Section 301.401 shall file with  
11 the board a written, signed report that includes:

- 12 (1) the identity of the nurse;
- 13 (2) a description of any corrective action taken  
14 against the nurse;
- 15 (3) a statement whether the nursing peer review  
16 committee recommends that the board take formal disciplinary action  
17 against the nurse; [~~and~~]
- 18 (4) a description of the ground for reporting;
- 19 (5) the extent to which any deficiency in care  
20 provided by the reported nurse was the result of a factor beyond the  
21 nurse's control rather than a deficiency in the nurse's judgment,  
22 knowledge, training, or skill; and
- 23 (6) any additional information the board requires.

24 SECTION 12. Section 301.405, Occupations Code, is amended  
25 by amending Subsections (b), (c), (d), (e), and (g), and adding  
26 Subsection (h) to read as follows:

27 (b) A person that terminates, suspends for more than seven

1 days, or takes other substantive disciplinary action, as defined by  
2 the board, against a nurse, or a substantially equivalent action  
3 against a nurse who is a staffing agency nurse, because a ground  
4 under Section 301.401 exists to report the nurse shall report in  
5 writing to the board:

6 (1) the identity of the nurse;

7 (2) the ground that preceded the termination,  
8 suspension, or other substantive disciplinary action or  
9 substantially equivalent action; and

10 (3) any additional information the board requires.

11 (c) Except as provided by Subsection (g), each person  
12 subject to this section that regularly employs, hires, or otherwise  
13 contracts for the services of 10 or more nurses shall develop a  
14 written plan for identifying and reporting a nurse [~~in its service~~  
15 ~~against whom a ground~~] under Section 301.401(a) [~~301.401 exists~~].  
16 The plan must provide [~~include an appropriate process~~] for the  
17 review of the nurse and the incident by a nursing peer review  
18 committee established and operated under Chapter 303 [~~of any~~  
19 ~~incident reportable under this section and for the affected nurse~~  
20 ~~to submit rebuttal information to that committee~~]. Review by the  
21 committee is only advisory, but is required, even if the nurse is  
22 voluntarily or involuntarily terminated.

23 (d) The nursing [~~review by the~~] peer review committee shall  
24 submit a report to the board that contains the information required  
25 by Section 301.403. A report is not required under this subsection  
26 if the nurse was terminated, either voluntarily or involuntarily,  
27 and elected not to participate in peer review [~~must include a~~

1 ~~determination as to whether a ground under Section 301.401 exists~~  
2 ~~to report the nurse undergoing review. The peer review committee's~~  
3 ~~determination must be included in the report made to the board under~~  
4 ~~Subsection (b)].~~

5 (e) The requirement under Subsection (c) that a ~~[report to~~  
6 ~~the board be reviewed by a]~~ nursing peer review committee review the  
7 nurse and the incident[+

8 [~~(1) applies only to a required report, and~~

9 [~~(2)]~~ does not subject a person's administrative  
10 decision to discipline a nurse to the peer review process or prevent  
11 a person from taking disciplinary action before review by the peer  
12 review committee is conducted.

13 (g) A person is not required to develop a written plan under  
14 Subsection (c) for peer review of[+

15 [~~(1)]~~ a registered nurse, unless the person regularly  
16 employs, hires, or otherwise contracts for the services of at least  
17 five registered nurses[~~, or~~

18 [~~(2) a vocational nurse, unless the person regularly~~  
19 ~~employs, hires, or otherwise contracts for the services of at least~~  
20 ~~five vocational nurses].~~

21 (h) A plan developed under Subsection (c) must provide that  
22 a nurse who has been terminated, either voluntarily or  
23 involuntarily, shall have the opportunity to participate in peer  
24 review. If the nurse elects to not participate in peer review, the  
25 nurse waives any right to procedural due process under Section  
26 303.002.

27 SECTION 13. Subsection (b), Section 301.417, Occupations

1 Code, is amended to read as follows:

2 (b) The board may disclose the information to the same  
3 extent that the board may disclose information relating to a  
4 complaint under Section 301.466 [~~use the information in connection~~  
5 ~~with an investigation or disciplinary action against a license~~  
6 ~~holder or in the subsequent trial or appeal of a board action or~~  
7 ~~order. The board may disclose the information to:~~

8 [~~(1) a licensing or disciplinary authority of another~~  
9 ~~jurisdiction;~~

10 [~~(2) a peer assistance program approved by the board~~  
11 ~~under Chapter 467, Health and Safety Code; or~~

12 [~~(3) a person engaged in bona fide research or another~~  
13 ~~educational purpose if all information identifying any specific~~  
14 ~~individual is first deleted].~~

15 SECTION 14. Section 301.603, Occupations Code, is amended  
16 to read as follows:

17 Sec. 301.603. APPLICABILITY. Rules adopted by the board  
18 under Section 301.602 do not apply to:

19 (1) an outpatient setting in which only local  
20 anesthesia, peripheral nerve blocks, or both are used;

21 (2) [~~an outpatient setting in which only anxiolytics~~  
22 ~~and analgesics are used and only in doses that do not have the~~  
23 ~~probability of placing the patient at risk for loss of the patient's~~  
24 ~~life-preserving protective reflexes;~~

25 [~~(3)] a licensed hospital, including an outpatient~~

26 facility of the hospital that is located separate from the

27 hospital;

1           (3) [~~(4)~~] a licensed ambulatory surgical center;

2           (4) [~~(5)~~] a clinic located on land recognized as  
3 tribal land by the federal government and maintained or operated by  
4 a federally recognized Indian tribe or tribal organization as  
5 listed by the United States secretary of the interior under 25  
6 U.S.C. Section 479a-1 or as listed under a successor federal  
7 statute or regulation;

8           (5) [~~(6)~~] a facility maintained or operated by a state  
9 or local governmental entity;

10          (6) [~~(7)~~] a clinic directly maintained or operated by  
11 the United States; or

12          (7) [~~(8)~~] an outpatient setting accredited by:

13               (A) the Joint Commission on Accreditation of  
14 Healthcare Organizations relating to ambulatory surgical centers;

15               (B) the American Association for the  
16 Accreditation of Ambulatory Surgery Facilities; or

17               (C) the Accreditation Association for Ambulatory  
18 Health Care.

19           SECTION 15. Subsections (a), (b), and (c), Section 303.003,  
20 Occupations Code, are amended to read as follows:

21           (a) A nursing peer review committee [~~that conducts a peer~~  
22 ~~review that involves only the practice of professional nursing]~~  
23 must have [~~registered~~] nurses as three-fourths of its members [~~and~~  
24 ~~may have only registered nurses as voting members~~].

25           (b) A nursing peer review committee that conducts a peer  
26 review that involves [~~only~~] the practice of vocational nursing  
27 [~~must have registered nurses and vocational nurses as three-fourths~~

1 ~~of its members~~], to the extent feasible, must include vocational  
2 nurses as members~~[7]~~ and may have only registered nurses and  
3 vocational nurses as voting members.

4 (c) A nursing peer review committee that conducts a peer  
5 review that involves the practice of ~~[both]~~ professional nursing  
6 ~~[and vocational nursing]~~

7 ~~[(1)]~~ must have registered nurses ~~[and vocational~~  
8 ~~nurses]~~ as two-thirds ~~[four-fifths]~~ of its members~~[7, with~~  
9 ~~registered nurses as three-fifths of its members]~~;

10 ~~[(2) to the extent feasible must include vocational~~  
11 ~~nurses as members]~~ and

12 ~~[(3)]~~ may have only~~+~~

13 ~~[(A) registered nurses and vocational nurses as~~  
14 ~~voting members when a vocational nurse is being reviewed]~~ and

15 ~~[(B)]~~ registered nurses as voting members ~~[when a~~  
16 ~~registered nurse is being reviewed]~~.

17 SECTION 16. Subsections (a), (b), (c), and (h), Section  
18 303.005, Occupations Code, are amended to read as follows:

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

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

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

5 (c) A nurse who in good faith requests a peer review  
6 determination under Subsection (b):

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

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

11 (3) is not subject to the reporting requirement under  
12 Subchapter I, Chapter 301~~[, or the rules of the board or the Board~~  
13 ~~of Vocational Nurse Examiners]~~; and

14 (4) may not be disciplined by the board ~~[or the Board~~  
15 ~~of Vocational Nurse Examiners]~~ for engaging in that conduct while  
16 the peer review is pending.

17 (h) A person is not required to provide a peer review  
18 determination under this section for a request made by[+

19 ~~(1)]~~ a registered nurse, unless the person regularly  
20 employs, hires, or otherwise contracts for the services of at least  
21 five registered nurses~~[, or~~

22 ~~(2) a licensed vocational nurse, unless the person~~  
23 ~~regularly employs, hires, or otherwise contracts for the services~~  
24 ~~of at least five licensed vocational nurses].~~

25 SECTION 17. Section 303.008, Occupations Code, is amended  
26 to read as follows:

27 Sec. 303.008. REBUTTAL STATEMENT. (a) If a nursing peer

1 review committee makes an adverse finding against a nurse  
2 [~~discloses information under Section 303.007(a) that could result~~  
3 ~~in the reprimand, suspension, or termination of, or other~~  
4 ~~disciplinary action against, a nurse, or itself recommends or takes~~  
5 ~~such an action~~], the committee shall provide the nurse with a  
6 detailed description of [~~summary of information disclosed or~~] the  
7 basis of its finding [~~action or recommendation~~].

8 (b) The peer review committee shall give the nurse the  
9 opportunity to offer rebuttal information and to submit a rebuttal  
10 statement of reasonable length. Any rebuttal statement must be  
11 included with any [~~the~~] information disclosed by the committee  
12 under Section 303.007.

13 SECTION 18. Section 301.005, Subsection (c), Section  
14 301.417, and Section 304.010, Occupations Code, are repealed.

15 SECTION 19. Subsection (c), Section 301.155, Occupations  
16 Code, as amended by this Act, applies only to a renewal of a license  
17 that expires on or after the effective date of this Act. The  
18 renewal of a license that expires before the effective date of this  
19 Act is governed by the law that existed when the license expired,  
20 and the former law is continued in effect for that purpose.

21 SECTION 20. The changes in law made by this Act regarding  
22 reporting requirements apply only to a report made on or after the  
23 effective date of this Act. A report made before the effective date  
24 of this Act is governed by the law that existed when the report was  
25 made, and the former law is continued in effect for that purpose.

26 SECTION 21. Sections 303.003 and 303.008, Occupations Code,  
27 as amended by this Act, apply only to a peer review commenced on or



1 after the effective date of this Act. A peer review commenced  
2 before the effective date of this Act is governed by the law that  
3 existed when the peer review was commenced, and the former law is  
4 continued in effect for that purpose.

5 SECTION 22. To the extent of any conflict, this Act prevails  
6 over another Act of the 79th Legislature, Regular Session, 2005,  
7 relating to nonsubstantive additions to and corrections in enacted  
8 codes.

9 SECTION 23. This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas Constitution.  
12 If this Act does not receive the vote necessary for immediate  
13 effect, this Act takes effect September 1, 2005.

S.B. No. 1000

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1000 passed the Senate on April 28, 2005, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1000 passed the House on May 12, 2005, by the following vote: Yeas 131, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor