

By: Madla

S.B. No. 1000

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the practice of nursing.

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

SECTION 1. Sections 105.002(b) and (c), 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. Section 105.003(e), 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. Sections 301.002(2) and (5), Occupations Code,
6 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 includes all
13 acts that are within the scope of vocational nursing. The term does
14 not include acts of medical diagnosis or the prescription of
15 therapeutic or corrective measures. Professional nursing
16 involves:

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

21 (B) the maintenance of health or prevention of
22 illness;

23 (C) the administration of a medication or
24 treatment [~~as ordered by a physician, podiatrist, or dentist~~];

25 (D) the supervision or teaching of nursing;

26 (E) the administration, supervision, and
27 evaluation of nursing practices, policies, and procedures;

1 (F) the requesting, receiving, signing for, and
2 distribution of prescription drug samples to patients at sites in
3 which a registered nurse is authorized to sign prescription drug
4 orders as provided by Subchapter B, Chapter 157; ~~and~~

5 (G) the performance of an act delegated by a
6 physician under Section 157.052, 157.053, 157.054, 157.0541,
7 157.0542, 157.058, or 157.059; and

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

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

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

19 (B) participating in the planning of the nursing
20 care needs of an individual;

21 (C) administering a medication or treatment;

22 (D) participating in the development and
23 modification of the nursing care plan;

24 (E) participating in health teaching and
25 counseling to promote, attain, and maintain the optimum health
26 level of an individual;

27 (F) assisting in the evaluation of an

1 individual's response to a nursing intervention and the
2 identification of an individual's needs; and

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

10 SECTION 4. Section 301.155(c), Occupations Code, is amended
11 to read as follows:

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

25 SECTION 5. Sections 301.251(c) and (d), Occupations Code,
26 are amended to read as follows:

27 (c) This section does not apply to a person entitled to

1 practice [~~professional~~] nursing [~~or vocational nursing~~] in this
2 state under Chapter 304 [~~, as added by Chapter 1420, Acts of the 77th~~
3 ~~Legislature, Regular Session, 2001~~].

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

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

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

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

- 17 (1) is referred to as a registered nurse; and
18 (2) may use the abbreviation "R.N."

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

- 21 (1) is referred to as a licensed vocational nurse or
22 vocational nurse; and
23 (2) may use the abbreviation "L.V.N." or "V.N."

24 (c) While interacting with the public in a [~~professional~~]
25 nursing role, each [~~licensed registered~~] nurse shall wear a clearly
26 legible insignia identifying the nurse as a registered or
27 vocational nurse [~~and each licensed vocational nurse shall wear an~~

1 ~~insignia identifying the nurse as a vocational nurse]~~. The
2 insignia may not contain information other than:

- 3 (1) the registered or vocational nurse designation;
4 (2) the nurse's name, certifications, academic
5 degrees, or practice position;
6 (3) the name of the employing facility or agency, or
7 other employer;
8 (4) a picture of the nurse; or
9 (5) any other information authorized by the board.

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

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

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

- 22 (1) constitutes grounds for reporting the nurse to the
23 board; or
24 (2) is a violation of this chapter or a rule of the
25 board.

26 (b) An act by a person under Subsection (a) does not
27 constitute a violation of this section if a nursing peer review

1 committee under Chapter 303 determines:

2 (1) that the act or omission the nurse refused to
3 engage in was:

4 (A) not conduct reportable to the board under
5 Section 301.403;

6 (B) a minor incident; or

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

8 or

9 (2) that:

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

13 (B) the person:

14 (i) rescinds any disciplinary or
15 discriminatory action taken against the nurse;

16 (ii) compensates the nurse for lost wages;

17 and

18 (iii) restores to the nurse any lost
19 benefits.

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

22 SECTION 8. Subchapter H, Chapter 301, Occupations Code, is
23 amended by adding Sections 301.353 and 301.354 to read as follows:

24 Sec. 301.353. ADMINISTRATION OF MEDICATION OR TREATMENT.

25 (a) A nurse may not administer medication unless ordered by a
26 health care practitioner legally authorized to order the
27 medication.

1 (b) A nurse may not administer a treatment, including a
2 treatment using durable medical equipment, unless the treatment is
3 ordered by a physician, podiatrist, or dentist.

4 Sec. 301.354. SUPERVISION OF VOCATIONAL NURSE. The
5 practice of vocational nursing must be performed under the
6 supervision of a registered nurse, physician, physician assistant,
7 podiatrist, or dentist.

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

10 (a) Except as provided by Subsection (b), the following are
11 grounds for reporting a nurse under Section 301.402, 301.403,
12 301.405, or 301.407:

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

15 (2) unprofessional conduct by the nurse;

16 (3) failure by the nurse to adequately care for a
17 patient;

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

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

22 SECTION 10. Sections 301.402(c) and (f), Occupations Code,
23 are amended to read as follows:

24 (c) In a written, signed report to the appropriate licensing
25 board or accrediting body, a nurse may report a licensed health care
26 practitioner, agency, or facility that the nurse has reasonable
27 cause to believe has exposed a patient to substantial risk of harm

1 as a result of failing to provide patient care that conforms to the:

2 (1) minimum standards of acceptable and prevailing
3 professional [nursing] practice, for a report made regarding a
4 practitioner; or

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

7 (f) A [~~registered~~] nurse may report to the nurse's employer
8 or another entity at which the nurse is authorized to practice any
9 situation that the nurse has reasonable cause to believe exposes a
10 patient to substantial risk of harm as a result of a failure to
11 provide patient care that conforms to minimum standards of
12 acceptable and prevailing professional [~~nursing~~] practice or to
13 statutory, regulatory, or accreditation standards. For purposes of
14 this subsection, the employer or entity includes an employee or
15 agent of the employer or entity.

16 SECTION 11. Section 301.403, Occupations Code, is amended
17 to read as follows:

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

22 (1) the identity of the nurse;

23 (2) a description of any corrective action taken
24 against the nurse;

25 (3) a statement whether the nursing peer review
26 committee recommends that the board take formal disciplinary action
27 against the nurse; [~~and~~]

1 (4) a description of the ground for reporting;

2 (5) the extent to which any deficiency in care
3 provided by the reported nurse was the result of a factor beyond the
4 nurse's control rather than a deficiency in the nurse's judgment,
5 knowledge, training, or skill; and

6 (6) any additional information the board requires.

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

10 (b) A person that terminates, suspends for more than seven
11 days, or takes other substantive disciplinary action, as defined by
12 the board, against a nurse, or a substantially equivalent action
13 against a nurse who is a staffing agency nurse, because a ground
14 under Section 301.401 exists to report the nurse shall report in
15 writing to the board:

16 (1) the identity of the nurse;

17 (2) the ground that preceded the termination,
18 suspension, or other substantive disciplinary action or
19 substantially equivalent action;

20 (3) whether the nurse is being reviewed by a nursing
21 peer review committee; and

22 (4) any additional information the board requires.

23 (c) Except as provided by Subsection (g), each person
24 subject to this section that regularly employs, hires, or otherwise
25 contracts for the services of 10 or more nurses shall develop a
26 written plan for identifying and reporting a nurse in its service
27 against whom a ground under Section 301.401 exists. The plan must

1 include an appropriate process for the review of the nurse by a
2 nursing peer review committee established and operated under
3 Chapter 303 of any incident reportable under this section [~~and for~~
4 ~~the affected nurse to submit rebuttal information to that~~
5 ~~committee~~]. Review by the committee is only advisory.

6 (d) The [~~review by the~~] peer review committee shall submit a
7 report to the board that contains the information required by
8 Section 301.403. A report is not required under this subsection if
9 the nurse was terminated, voluntarily or involuntarily, and elected
10 not to participate in peer review [~~must include a determination as~~
11 ~~to whether a ground under Section 301.401 exists to report the nurse~~
12 ~~undergoing review. The peer review committee's determination must~~
13 ~~be included in the report made to the board under Subsection (b)] .~~

14 (e) The requirement that a report to the board be submitted
15 [~~reviewed~~] by a nursing peer review committee[+]

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

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

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

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 vocational nurse, unless the person regularly~~
27 ~~employs, hires, or otherwise contracts for the services of at least~~

1 ~~five vocational nurses]~~.

2 (h) A plan developed under Subsection (c) must provide that
3 a nurse who has been terminated, either voluntarily or
4 involuntarily, shall have the opportunity to participate in peer
5 review. If the nurse elects to not participate in peer review, a
6 review must be conducted of the incident to determine the extent to
7 which any deficiency in care provided by the nurse was the result of
8 a factor beyond the nurse's control rather than a deficiency in the
9 nurse's judgment, knowledge, training, or skill. If a committee
10 other than the nursing peer review committee performs the review,
11 the committee performing the review shall share the committee's
12 findings with the nursing peer review committee.

13 SECTION 13. Section 301.417(b), Occupations Code, is
14 amended to read as follows:

15 (b) The board may disclose the information to the same
16 extent that the board may disclose information relating to a
17 complaint under Section 301.466 [~~use the information in connection~~
18 ~~with an investigation or disciplinary action against a license~~
19 ~~holder or in the subsequent trial or appeal of a board action or~~
20 ~~order. The board may disclose the information to:~~

21 [~~(1) a licensing or disciplinary authority of another~~
22 ~~jurisdiction;~~

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

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

1 SECTION 14. Sections 303.003(a), (b), and (c), Occupations
2 Code, are amended to read as follows:

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

7 (b) A nursing peer review committee that conducts a peer
8 review that involves [~~only~~] the practice of vocational nursing
9 [~~must have registered nurses and vocational nurses as three-fourths~~
10 ~~of its members~~], to the extent feasible, l must include vocational
11 nurses as members[~~7~~] and may have only registered nurses and
12 vocational nurses as voting members.

13 (c) A nursing peer review committee that conducts a peer
14 review that involves the practice of [~~both~~] professional nursing
15 [~~and vocational nursing~~;

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

19 [~~(2)~~ ~~to the extent feasible must include vocational~~
20 ~~nurses as members~~], and

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

22 [~~(A)~~ ~~registered nurses and vocational nurses as~~
23 ~~voting members when a vocational nurse is being reviewed~~; and

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

26 SECTION 15. Sections 303.005(a), (b), (c), and (h),
27 Occupations Code, are amended to read as follows:

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

7 (b) If a person who regularly employs, hires, or otherwise
8 contracts for the services of at least 10 nurses requests one of
9 those nurses to engage in conduct that the nurse believes violates a
10 nurse's duty to a patient, the nurse may request, on a form
11 developed or approved [~~produced~~] by the board, a determination by a
12 nursing peer review committee under this chapter of whether the
13 conduct violates a nurse's duty to a patient.

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

16 (1) may not be disciplined or discriminated against
17 for making the request;

18 (2) may engage in the requested conduct pending the
19 peer review;

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

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

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

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

4 ~~[(2)]~~ a licensed vocational nurse, unless the person
5 regularly employs, hires, or otherwise contracts for the services
6 of at least five licensed vocational nurses].

7 SECTION 16. Section 303.008, Occupations Code, is amended
8 to read as follows:

9 Sec. 303.008. REBUTTAL STATEMENT. (a) If a nursing peer
10 review committee makes an adverse finding against a nurse
11 ~~[discloses information under Section 303.007(a) that could result~~
12 ~~in the reprimand, suspension, or termination of, or other~~
13 ~~disciplinary action against, a nurse, or itself recommends or takes~~
14 ~~such an action]~~, the committee shall provide the nurse with a
15 detailed description of ~~[summary of information disclosed or]~~ the
16 basis of its finding ~~[action or recommendation]~~.

17 (b) The peer review committee shall give the nurse the
18 opportunity to offer rebuttal information and to submit a rebuttal
19 statement of reasonable length. Any rebuttal statement must be
20 included with any ~~[the]~~ information disclosed by the committee
21 under Section 303.007.

22 SECTION 17. Sections 301.005, 301.417(c), and 304.010,
23 Occupations Code, are repealed.

24 SECTION 18. Section 301.155(c), Occupations Code, as
25 amended by this Act, applies only to a renewal of a license that
26 expires on or after the effective date of this Act. The renewal of a
27 license that expires before the effective date of this Act is

1 governed by the law that existed when the license expired, and the
2 former law is continued in effect for that purpose.

3 SECTION 19. The changes in law made by this Act regarding
4 reporting requirements apply only to a report made on or after the
5 effective date of this Act. A report made before the effective date
6 of this Act is governed by the law that existed when the report was
7 made, and the former law is continued in effect for that purpose.

8 SECTION 20. Sections 303.003 and 303.008, Occupations Code,
9 as amended by this Act, apply only to a peer review commenced on or
10 after the effective date of this Act. A peer review commenced
11 before the effective date of this Act is governed by the law that
12 existed when the peer review was commenced, and the former law is
13 continued in effect for that purpose.

14 SECTION 21. To the extent of any conflict, this Act prevails
15 over another Act of the 79th Legislature, Regular Session, 2005,
16 relating to nonsubstantive additions to and corrections in enacted
17 codes.

18 SECTION 22. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2005.