

By: McReynolds

H.B. No. 2158

A BILL TO BE ENTITLED

AN ACT

relating to nursing peer review and the regulation of the practice of nursing.

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

SECTION 1. Section 301.002, Occupations Code, is amended by adding Subdivisions (1-a) and (1-b) to read as follows:

(1-a) "Chief nursing officer" means the registered nurse who is administratively responsible for the nursing services at a facility.

(1-b) "Patient safety committee" has the meaning assigned by Section 303.001.

SECTION 2. Section 301.303(b), Occupations Code, is amended to read as follows:

(b) The board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period ~~[and may not require that more than 10 hours of the continuing education consist of classroom instruction in approved programs. The remaining hours of continuing education may consist of any combination of:~~

~~[(1) classroom instruction,~~

~~[(2) institutional-based instruction, or~~

~~[(3) individualized study].~~

SECTION 3. The heading to Subchapter I, Chapter 301, Occupations Code, is amended to read as follows:

SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE CONCERNS [~~DUTY~~
~~TO REPORT VIOLATION~~]

SECTION 4. Section 301.401, Occupations Code, is amended to read as follows:

Sec. 301.401. DEFINITIONS [~~GROUND~~~~S~~ ~~FOR~~ ~~REPORTING~~
~~NURSE~~]. In this subchapter:

(1) "Conduct subject to reporting" means conduct by a nurse that:

(A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;

(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(C) constitutes abuse, exploitation, or fraud, violates professional boundaries, or is an intentional or knowing act of significant unprofessional conduct; or

(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

(2) "Minor incident" means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person.

(3) "Nursing educational program" means an educational program approved by the board that may lead to an

1 initial license as a registered nurse or vocational nurse.

2 (4) "Nursing student" means an individual who is
3 enrolled in a nursing educational program [~~(a) Except as provided~~
4 ~~by Subsection (b), the following are grounds for reporting a nurse~~
5 ~~under Section 301.402, 301.403, 301.405, or 301.407:~~

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

8 ~~[(2) unprofessional conduct by the nurse;~~

9 ~~[(3) failure by the nurse to adequately care for a~~
10 ~~patient;~~

11 ~~[(4) failure by the nurse to conform to the minimum~~
12 ~~standards of acceptable nursing practice; or~~

13 ~~[(5) impairment or likely impairment of the nurse's~~
14 ~~practice by chemical dependency].~~

15 ~~[(b) Subsection (a) does not apply to a minor incident, as~~
16 ~~defined by Section 301.419, if the incident is not required to be~~
17 ~~reported under a rule adopted under Section 301.419.]~~

18 SECTION 5. Sections 301.402(b) and (e), Occupations Code,
19 are amended to read as follows:

20 (b) A nurse shall report to the board in the manner
21 prescribed under Subsection (d) if the nurse has reasonable cause
22 to suspect that:

23 (1) another nurse has engaged in conduct subject to
24 reporting [~~is subject to a ground for reporting under Section~~
25 ~~301.401]; or~~

26 (2) the ability of a nursing student to perform the
27 services of the nursing profession would be, or would reasonably be

1 expected to be, impaired by chemical dependency.

2 (e) Instead of reporting to the board under Subsection (b),
3 a [A] nurse may make a report required under:

4 (1) Subsection (b)(1) to a nursing peer review
5 committee under Chapter 303; or

6 (2) Subsection (b)(2) to the nursing educational
7 program in which the student is enrolled ~~[instead of reporting to~~
8 ~~the board]~~.

9 SECTION 6. Section 301.403, Occupations Code, is amended to
10 read as follows:

11 Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. (a)
12 Except as provided by Subsection (b), a [A] nursing peer review
13 committee operating under Chapter 303 that determines that a nurse
14 has engaged in conduct subject to reporting ~~[has a ground for~~
15 ~~reporting a nurse under Section 301.401]~~ shall file with the board a
16 written, signed report that includes:

17 (1) the identity of the nurse;

18 (2) a description of any corrective action taken
19 against the nurse;

20 (3) a recommendation ~~[statement]~~ whether the ~~[nursing~~
21 ~~peer review committee recommends that the]~~ board should take formal
22 disciplinary action against the nurse and the basis for the
23 recommendation;

24 (4) a description of the conduct subject to ~~[ground~~
25 ~~for]~~ reporting;

26 (5) the extent to which any deficiency in care
27 provided by the reported nurse was the result of a factor beyond the

nurse's control [~~rather than a deficiency in the nurse's judgment,~~
~~knowledge, training, or skill~~]; and

(6) any additional information the board requires.

(b) A report under Subsection (a) is not required if:

(1) the nursing peer review committee determines that
the reported conduct was a minor incident that is not required to be
reported under board rule; or

(2) the nurse has been reported to the board for the
conduct under Section 301.405.

SECTION 7. Section 301.404, Occupations Code, is amended to
read as follows:

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO
REPORT. [~~(a) In this section, "nursing educational program" and~~
~~"nursing student" have the meanings assigned by Section 301.402(a).~~

~~[(b)]~~ A nursing educational program that has reasonable
cause to suspect that the ability of a nursing student to perform
the services of the nursing profession would be, or would
reasonably be expected to be, impaired by chemical dependency shall
file with the board a written, signed report that includes the
identity of the student and any additional information the board
requires.

SECTION 8. Sections 301.405(b), (c), and (e), Occupations
Code, are amended to read as follows:

(b) A person that terminates, suspends for more than seven
days, or takes other substantive disciplinary action, as defined by
the board, against a nurse, or a substantially equivalent action
against a nurse who is a staffing agency nurse, because the nurse

1 engaged in conduct subject to reporting ~~[a ground under Section~~
2 ~~301.401 exists to report the nurse]~~ shall report in writing to the
3 board:

4 (1) the identity of the nurse;

5 (2) the conduct subject to reporting that resulted in
6 ~~[ground that preceded]~~ the termination, suspension, or other
7 substantive disciplinary action or substantially equivalent
8 action; and

9 (3) any additional information the board requires.

10 (c) If a person who makes a report required under Subsection
11 (b) is required under Section 303.0015 to establish a nursing peer
12 review committee, the person shall submit a copy of the report to
13 the nursing peer review committee. The nursing peer review
14 committee shall review the conduct to determine if any deficiency
15 in care by the reported nurse was the result of a factor beyond the
16 nurse's control. A nursing peer review committee that determines
17 that there is reason to believe that the nurse's deficiency in care
18 was the result of a factor beyond the nurse's control shall report
19 the conduct to the patient safety committee at the facility where
20 the reported conduct occurred, or if the facility does not have a
21 patient safety committee, to the chief nursing officer ~~[Except as~~
22 ~~provided by Subsection (g), each person subject to this section~~
23 ~~that regularly employs, hires, or otherwise contracts for the~~
24 ~~services of 10 or more nurses shall develop a written plan for~~
25 ~~identifying and reporting a nurse under Section 301.401(a). The~~
26 ~~plan must provide for the review of the nurse and the incident by a~~
27 ~~nursing peer review committee established and operated under~~

1 ~~Chapter 303. Review by the committee is only advisory, but is~~
2 ~~required, even if the nurse is voluntarily or involuntarily~~
3 ~~terminated].~~

4 (e) The requirement under Subsection (c) that a nursing peer
5 review committee review the nurse and the incident does not subject
6 a person's administrative decision to discipline a nurse to the
7 peer review process ~~[or prevent a person from taking disciplinary~~
8 ~~action before review by the peer review committee is conducted].~~

9 SECTION 9. Section 301.407(b), Occupations Code, is amended
10 to read as follows:

11 (b) Unless expressly prohibited by state or federal law, a
12 state agency that has reason to believe that a nurse has engaged in
13 conduct subject to reporting ~~[a ground for reporting a nurse exists~~
14 ~~under Section 301.401]~~ shall report the nurse in writing to the
15 board or to a nursing peer review committee under Chapter 303 ~~[the~~
16 ~~identity of that nurse].~~

17 SECTION 10. Section 301.457, Occupations Code, is amended
18 by adding Subsection (g) to read as follows:

19 (g) If the board determines after investigating a complaint
20 under Subsection (e) that there is reason to believe that a nurse's
21 deficiency in care was the result of a factor beyond the nurse's
22 control, the board shall report that determination to the patient
23 safety committee at the facility where the nurse's deficiency in
24 care occurred, or if the facility does not have a patient safety
25 committee, to the chief nursing officer.

26 SECTION 11. Section 303.001, Occupations Code, is amended
27 by adding Subdivision (4-a) to read as follows:

1 (4-a) "Patient safety committee" means a committee
2 established by an association, school, agency, or other
3 organization to address issues relating to patient safety,
4 including:

5 (A) the entity's medical staff; or

6 (B) a committee that performs the functions
7 required of a hospital under Subchapter H, Chapter 241, Health and
8 Safety Code.

9 SECTION 12. Chapter 303, Occupations Code, is amended by
10 adding Section 303.0015 to read as follows:

11 Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER
12 REVIEW COMMITTEE. (a) A person shall establish a nursing peer
13 review committee to conduct nursing peer review under this chapter
14 and Chapter 301:

15 (1) for vocational nurses, if the person regularly
16 employs, hires, or contracts for the services of 10 or more nurses;
17 and

18 (2) for professional nurses, if the person regularly
19 employs, hires, or contracts for the services of 10 or more nurses,
20 at least five of whom are registered nurses.

21 (b) A person required to establish a nursing peer review
22 committee under this section may contract with another entity to
23 conduct the peer review for the person.

24 SECTION 13. Section 303.005(b), Occupations Code, is
25 amended to read as follows:

26 (b) If a person who is required to establish a nursing peer
27 review committee under Section 303.0015 [~~regularly employs, hires,~~

1 ~~or otherwise contracts for the services of at least 10 nurses]~~
2 requests a nurse ~~[one of those nurses]~~ to engage in conduct that the
3 nurse believes violates a nurse's duty to a patient, the nurse may
4 request, on a form developed or approved by the board, a
5 determination by a nursing peer review committee under this chapter
6 of whether the conduct violates a nurse's duty to a patient.

7 SECTION 14. Chapter 303, Occupations Code, is amended by
8 adding Section 303.0075 to read as follows:

9 Sec. 303.0075. SHARING OF INFORMATION. (a) A nursing peer
10 review committee and a patient safety committee established by the
11 same entity may share information.

12 (b) The requirement to maintain the confidentiality of
13 information obtained by a nursing peer review committee or patient
14 safety committee applies to information shared under Subsection
15 (a). A committee that receives information from another committee
16 under this section owes the same duty of confidentiality regarding
17 the information as the committee that provided the information.

18 (c) A committee that receives information may not disclose
19 the information to another person and shall forward any request to
20 disclose the information to the committee that provided the
21 information.

22 SECTION 15. Section 303.011, Occupations Code, is amended
23 to read as follows:

24 Sec. 303.011. EVALUATION BY COMMITTEE. (a) In evaluating
25 a nurse's conduct, the nursing peer review committee shall review
26 the evidence to determine the extent to which a deficiency in care
27 by the nurse was the result of deficiencies in the nurse's judgment,

1 knowledge, training, or skill rather than other factors beyond the
2 nurse's control. A determination that a deficiency in care is
3 attributable to a nurse must be based on the extent to which the
4 nurse's conduct was the result of a deficiency in the nurse's
5 judgment, knowledge, training, or skill.

6 (b) The nursing peer review committee shall report a
7 deficiency in care that the committee determines was the result of a
8 factor beyond the nurse's control to a patient safety committee for
9 evaluation. The patient safety committee shall evaluate the
10 influence of the factors on the conduct of the nurse being evaluated
11 and on the practice of other nurses within the entity that
12 established the committee. The committee shall report its findings
13 to the nursing peer review committee.

14 SECTION 16. The following sections of the Occupations Code
15 are repealed:

- 16 (1) Section 301.303(d);
17 (2) Section 301.352(e);
18 (3) Section 301.402(a);
19 (4) Sections 301.405(d), (f), (g), and (h);
20 (5) Section 301.419(a); and
21 (6) Section 303.005(h).

22 SECTION 17. (a) Except as provided by Subsection (b) of
23 this section, the changes in law made by this Act apply only to
24 conduct that occurs on or after the effective date of this Act.
25 Conduct that occurs before the effective date of this Act is
26 governed by the law in effect when the conduct occurs, and the
27 former law is continued in effect for that purpose.

1 (b) The change in law made by this Act by the amendment of
2 Section 301.303(b), Occupations Code, applies only to an
3 application for renewal of a license issued under Chapter 301,
4 Occupations Code, that is submitted on or after the effective date
5 of this Act. An application for renewal submitted before the
6 effective date of this Act is governed by the law in effect when the
7 application is submitted, and the former law is continued in effect
8 for that purpose.

9 SECTION 18. 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, 2007.