

By: Nelson

S.B. No. 993

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. Subsection (b), Section 301.303, 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:

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

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

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

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

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

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

14 (C) constitutes abuse, exploitation, fraud, or a
15 violation of professional boundaries; or

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

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

25 (3) "Nursing educational program" means an
26 educational program approved by the board that may lead to an
27 initial license as a registered nurse or vocational nurse.

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

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

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

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

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

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

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

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

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

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

25 (2) the ability of a nursing student to perform the
26 services of the nursing profession would be, or would reasonably be
27 expected to be, impaired by chemical dependency.

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

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

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

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

10 Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT.

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

16 (1) the identity of the nurse;

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

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

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

25 (5) the extent to which any deficiency in care
26 provided by the reported nurse was the result of a factor beyond the
27 nurse's control [~~rather than a deficiency in the nurse's judgment,~~

1 ~~knowledge, training, or skill~~]; and

2 (6) any additional information the board requires.

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

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

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

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

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

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

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

23 (b) A person that terminates, suspends for more than seven
24 days, or takes other substantive disciplinary action, as defined by
25 the board, against a nurse, or a substantially equivalent action
26 against a nurse who is a staffing agency nurse, because the nurse
27 engaged in conduct subject to reporting [~~a ground under Section~~

1 ~~301.401 exists to report the nurse]~~ shall report in writing to the
2 board:

3 (1) the identity of the nurse;

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

8 (3) any additional information the board requires.

9 (c) If a person who makes a report required under Subsection
10 (b) is required under Section 303.0015 to establish a nursing peer
11 review committee, the person shall submit a copy of the report to
12 the nursing peer review committee. The nursing peer review
13 committee shall review the conduct to determine if any deficiency
14 in care by the reported nurse was the result of a factor beyond the
15 nurse's control. A nursing peer review committee that determines
16 that there is reason to believe that the nurse's deficiency in care
17 was the result of a factor beyond the nurse's control shall report
18 the conduct to the patient safety committee at the facility where
19 the reported conduct occurred, or if the facility does not have a
20 patient safety committee, to the chief nursing officer ~~[Except as~~
21 ~~provided by Subsection (g), each person subject to this section~~
22 ~~that regularly employs, hires, or otherwise contracts for the~~
23 ~~services of 10 or more nurses shall develop a written plan for~~
24 ~~identifying and reporting a nurse under Section 301.401(a). The~~
25 ~~plan must provide for the review of the nurse and the incident by a~~
26 ~~nursing peer review committee established and operated under~~
27 ~~Chapter 303. Review by the committee is only advisory, but is~~

1 ~~required, even if the nurse is voluntarily or involuntarily~~
2 ~~terminated].~~

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

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

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

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

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

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

27 (4-a) "Patient safety committee" means a committee

1 established by an association, school, agency, health care
2 facility, or other organization to address issues relating to
3 patient safety, including:

4 (A) the entity's medical staff composed of
5 individuals licensed under Subtitle B; or

6 (B) a medical committee under Subchapter D,
7 Chapter 161, Health and Safety Code.

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

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

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

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

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

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

25 (b) If a person who is required to establish a nursing peer
26 review committee under Section 303.0015 [~~regularly employs, hires,~~
27 ~~or otherwise contracts for the services of at least 10 nurses]~~

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

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

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

11 (b) A record or determination of a patient safety committee,
12 or a communication made to a patient safety committee, is not
13 subject to subpoena or discovery and is not admissible in any civil
14 or administrative proceeding, regardless of whether the
15 information has been provided to a nursing peer review committee.
16 The privileges under this subsection may be waived only through a
17 written waiver signed by the chair, vice chair, or secretary of the
18 patient safety committee. This subsection does not affect the
19 application of Section 303.007 to a nursing peer review committee.

20 (c) A committee that receives information from another
21 committee shall forward any request to disclose the information to
22 the committee that provided the information.

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

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

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

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

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

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

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

1 governed by the law in effect when the conduct occurs, and the
2 former law is continued in effect for that purpose.

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

11 SECTION 18. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect September 1, 2007.