

1-1 By: Nelson S.B. No. 993  
1-2 (In the Senate - Filed February 28, 2007; March 7, 2007,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; March 26, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 March 26, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 993 By: Nelson

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

1-10 relating to nursing peer review and the regulation of the practice  
1-11 of nursing.

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

1-13 SECTION 1. Section 301.002, Occupations Code, is amended by  
1-14 adding Subdivisions (1-a) and (1-b) to read as follows:

1-15 (1-a) "Chief nursing officer" means the registered  
1-16 nurse who is administratively responsible for the nursing services  
1-17 at a facility.

1-18 (1-b) "Patient safety committee" has the meaning  
1-19 assigned by Section 303.001.

1-20 SECTION 2. Subsection (b), Section 301.303, Occupations  
1-21 Code, is amended to read as follows:

1-22 (b) The board may not require participation in more than a  
1-23 total of 20 hours of continuing education in a two-year licensing  
1-24 period ~~[and may not require that more than 10 hours of the~~  
1-25 ~~continuing education consist of classroom instruction in approved~~  
1-26 ~~programs. The remaining hours of continuing education may consist~~  
1-27 ~~of any combination of:~~

1-28 ~~[(1) classroom instruction;~~  
1-29 ~~[(2) institutional-based instruction; or~~  
1-30 ~~[(3) individualized study].~~

1-31 SECTION 3. The heading to Subchapter I, Chapter 301,  
1-32 Occupations Code, is amended to read as follows:

1-33 SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE CONCERNS ~~[DUTY~~  
1-34 ~~TO REPORT VIOLATION]~~

1-35 SECTION 4. Section 301.401, Occupations Code, is amended to  
1-36 read as follows:

1-37 Sec. 301.401. DEFINITIONS ~~[GROUNDS FOR REPORTING NURSE].~~  
1-38 In this subchapter:

1-39 (1) "Conduct subject to reporting" means conduct by a  
1-40 nurse that:

1-41 (A) violates this chapter or a board rule and  
1-42 contributed to the death or serious injury of a patient;

1-43 (B) causes a person to suspect that the nurse's  
1-44 practice is impaired by chemical dependency or drug or alcohol  
1-45 abuse;

1-46 (C) constitutes abuse, exploitation, fraud, or a  
1-47 violation of professional boundaries; or

1-48 (D) indicates that the nurse lacks knowledge,  
1-49 skill, judgment, or conscientiousness to such an extent that the  
1-50 nurse's continued practice of nursing could reasonably be expected  
1-51 to pose a risk of harm to a patient or another person, regardless of  
1-52 whether the conduct consists of a single incident or a pattern of  
1-53 behavior.

1-54 (2) "Minor incident" means conduct by a nurse that  
1-55 does not indicate that the nurse's continued practice poses a risk  
1-56 of harm to a patient or another person.

1-57 (3) "Nursing educational program" means an  
1-58 educational program approved by the board that may lead to an  
1-59 initial license as a registered nurse or vocational nurse.

1-60 (4) "Nursing student" means an individual who is  
1-61 enrolled in a nursing educational program ~~[(a) Except as provided~~  
1-62 ~~by Subsection (b), the following are grounds for reporting a nurse~~  
1-63 ~~under Section 301.402, 301.403, 301.405, or 301.407:~~

2-1 ~~[(1) likely exposure by the nurse of a patient or other~~  
2-2 ~~person to an unnecessary risk of harm;~~  
2-3 ~~[(2) unprofessional conduct by the nurse;~~  
2-4 ~~[(3) failure by the nurse to adequately care for a~~  
2-5 ~~patient;~~  
2-6 ~~[(4) failure by the nurse to conform to the minimum~~  
2-7 ~~standards of acceptable nursing practice; or~~  
2-8 ~~[(5) impairment or likely impairment of the nurse's~~  
2-9 ~~practice by chemical dependency].~~

2-10 ~~[(b) Subsection (a) does not apply to a minor incident, as~~  
2-11 ~~defined by Section 301.419, if the incident is not required to be~~  
2-12 ~~reported under a rule adopted under Section 301.419.]~~

2-13 SECTION 5. Subsections (b) and (e), Section 301.402,  
2-14 Occupations Code, are amended to read as follows:

2-15 (b) A nurse shall report to the board in the manner  
2-16 prescribed under Subsection (d) if the nurse has reasonable cause  
2-17 to suspect that:

2-18 (1) another nurse has engaged in conduct subject to  
2-19 reporting ~~[is subject to a ground for reporting under Section~~  
2-20 ~~301.401]; or~~

2-21 (2) the ability of a nursing student to perform the  
2-22 services of the nursing profession would be, or would reasonably be  
2-23 expected to be, impaired by chemical dependency.

2-24 (e) Instead of reporting to the board under Subsection (b),  
2-25 a [A] nurse may make a report required under:

2-26 (1) Subsection (b)(1) to a nursing peer review  
2-27 committee under Chapter 303; or

2-28 (2) Subsection (b)(2) to the nursing educational  
2-29 program in which the student is enrolled ~~[instead of reporting to~~  
2-30 ~~the board].~~

2-31 SECTION 6. Section 301.403, Occupations Code, is amended to  
2-32 read as follows:

2-33 Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT.

2-34 (a) Except as provided by Subsection (b), a [A] nursing peer  
2-35 review committee operating under Chapter 303 that determines that a  
2-36 nurse has engaged in conduct subject to reporting ~~[has a ground for~~  
2-37 ~~reporting a nurse under Section 301.401]~~ shall file with the board a  
2-38 written, signed report that includes:

2-39 (1) the identity of the nurse;  
2-40 (2) a description of any corrective action taken  
2-41 against the nurse;

2-42 (3) a recommendation ~~[statement]~~ whether the ~~[nursing~~  
2-43 ~~peer review committee recommends that the]~~ board should take formal  
2-44 disciplinary action against the nurse and the basis for the  
2-45 recommendation;

2-46 (4) a description of the conduct subject to ~~[ground~~  
2-47 ~~for] reporting;~~

2-48 (5) the extent to which any deficiency in care  
2-49 provided by the reported nurse was the result of a factor beyond the  
2-50 nurse's control ~~[rather than a deficiency in the nurse's judgment,~~  
2-51 ~~knowledge, training, or skill]; and~~

2-52 (6) any additional information the board requires.

2-53 (b) A report under Subsection (a) is not required if:

2-54 (1) the nursing peer review committee determines that  
2-55 the reported conduct was a minor incident that is not required to be  
2-56 reported under board rule; or

2-57 (2) the nurse has been reported to the board for the  
2-58 conduct under Section 301.405.

2-59 SECTION 7. Section 301.404, Occupations Code, is amended to  
2-60 read as follows:

2-61 Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO  
2-62 REPORT. ~~[(a) In this section, "nursing educational program" and~~  
2-63 ~~"nursing student" have the meanings assigned by Section 301.402(a).~~

2-64 ~~[(b)]~~ A nursing educational program that has reasonable  
2-65 cause to suspect that the ability of a nursing student to perform  
2-66 the services of the nursing profession would be, or would  
2-67 reasonably be expected to be, impaired by chemical dependency shall  
2-68 file with the board a written, signed report that includes the  
2-69 identity of the student and any additional information the board

3-1 requires.

3-2 SECTION 8. Subsections (b), (c), and (e), Section 301.405,  
3-3 Occupations Code, are amended to read as follows:

3-4 (b) A person that terminates, suspends for more than seven  
3-5 days, or takes other substantive disciplinary action, as defined by  
3-6 the board, against a nurse, or a substantially equivalent action  
3-7 against a nurse who is a staffing agency nurse, because the nurse  
3-8 engaged in conduct subject to reporting [~~a ground under Section~~  
3-9 ~~301.401 exists to report the nurse~~] shall report in writing to the  
3-10 board:

3-11 (1) the identity of the nurse;

3-12 (2) the conduct subject to reporting that resulted in  
3-13 [~~ground that preceded~~] the termination, suspension, or other  
3-14 substantive disciplinary action or substantially equivalent  
3-15 action; and

3-16 (3) any additional information the board requires.

3-17 (c) If a person who makes a report required under Subsection  
3-18 (b) is required under Section 303.0015 to establish a nursing peer  
3-19 review committee, the person shall submit a copy of the report to  
3-20 the nursing peer review committee. The nursing peer review  
3-21 committee shall review the conduct to determine if any deficiency  
3-22 in care by the reported nurse was the result of a factor beyond the  
3-23 nurse's control. A nursing peer review committee that determines  
3-24 that there is reason to believe that the nurse's deficiency in care  
3-25 was the result of a factor beyond the nurse's control shall report  
3-26 the conduct to the patient safety committee at the facility where  
3-27 the reported conduct occurred, or if the facility does not have a  
3-28 patient safety committee, to the chief nursing officer [~~Except as~~  
3-29 ~~provided by Subsection (g), each person subject to this section~~  
3-30 ~~that regularly employs, hires, or otherwise contracts for the~~  
3-31 ~~services of 10 or more nurses shall develop a written plan for~~  
3-32 ~~identifying and reporting a nurse under Section 301.401(a). The~~  
3-33 ~~plan must provide for the review of the nurse and the incident by a~~  
3-34 ~~nursing peer review committee established and operated under~~  
3-35 ~~Chapter 303. Review by the committee is only advisory, but is~~  
3-36 ~~required, even if the nurse is voluntarily or involuntarily~~  
3-37 ~~terminated].~~

3-38 (e) The requirement under Subsection (c) that a nursing peer  
3-39 review committee review the nurse and the incident does not subject  
3-40 a person's administrative decision to discipline a nurse to the  
3-41 peer review process [~~or prevent a person from taking disciplinary~~  
3-42 ~~action before review by the peer review committee is conducted].~~

3-43 SECTION 9. Subsection (b), Section 301.407, Occupations  
3-44 Code, is amended to read as follows:

3-45 (b) Unless expressly prohibited by state or federal law, a  
3-46 state agency that has reason to believe that a nurse has engaged in  
3-47 conduct subject to reporting [~~a ground for reporting a nurse exists~~  
3-48 ~~under Section 301.401]~~ shall report the nurse in writing to the  
3-49 board or to a nursing peer review committee under Chapter 303 [~~the~~  
3-50 ~~identity of that nurse~~].

3-51 SECTION 10. Section 301.457, Occupations Code, is amended  
3-52 by adding Subsection (g) to read as follows:

3-53 (g) If the board determines after investigating a complaint  
3-54 under Subsection (e) that there is reason to believe that a nurse's  
3-55 deficiency in care was the result of a factor beyond the nurse's  
3-56 control, the board shall report that determination to the patient  
3-57 safety committee at the facility where the nurse's deficiency in  
3-58 care occurred, or if the facility does not have a patient safety  
3-59 committee, to the chief nursing officer.

3-60 SECTION 11. Section 303.001, Occupations Code, is amended  
3-61 by adding Subdivision (4-a) to read as follows:

3-62 (4-a) "Patient safety committee" means a committee  
3-63 established by an association, school, agency, health care  
3-64 facility, or other organization to address issues relating to  
3-65 patient safety, including:

3-66 (A) the entity's medical staff composed of  
3-67 individuals licensed under Subtitle B; or

3-68 (B) a medical committee under Subchapter D,  
3-69 Chapter 161, Health and Safety Code.

4-1 SECTION 12. Chapter 303, Occupations Code, is amended by  
4-2 adding Section 303.0015 to read as follows:

4-3 Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER  
4-4 REVIEW COMMITTEE. (a) A person shall establish a nursing peer  
4-5 review committee to conduct nursing peer review under this chapter  
4-6 and Chapter 301:

4-7 (1) for vocational nurses, if the person regularly  
4-8 employs, hires, or contracts for the services of 10 or more nurses;  
4-9 and

4-10 (2) for professional nurses, if the person regularly  
4-11 employs, hires, or contracts for the services of 10 or more nurses,  
4-12 at least five of whom are registered nurses.

4-13 (b) A person required to establish a nursing peer review  
4-14 committee under this section may contract with another entity to  
4-15 conduct the peer review for the person.

4-16 SECTION 13. Subsection (b), Section 303.005, Occupations  
4-17 Code, is amended to read as follows:

4-18 (b) If a person who is required to establish a nursing peer  
4-19 review committee under Section 303.0015 [~~regularly employs, hires,~~  
4-20 ~~or otherwise contracts for the services of at least 10 nurses~~]  
4-21 requests a nurse [~~one of those nurses~~] to engage in conduct that the  
4-22 nurse believes violates a nurse's duty to a patient, the nurse may  
4-23 request, on a form developed or approved by the board, a  
4-24 determination by a nursing peer review committee under this chapter  
4-25 of whether the conduct violates a nurse's duty to a patient.

4-26 SECTION 14. Chapter 303, Occupations Code, is amended by  
4-27 adding Section 303.0075 to read as follows:

4-28 Sec. 303.0075. SHARING OF INFORMATION. (a) A nursing peer  
4-29 review committee and a patient safety committee established by the  
4-30 same entity may share information.

4-31 (b) A record or determination of a patient safety committee,  
4-32 or a communication made to a patient safety committee, is not  
4-33 subject to subpoena or discovery and is not admissible in any civil  
4-34 or administrative proceeding, regardless of whether the  
4-35 information has been provided to a nursing peer review committee.  
4-36 The privileges under this subsection may be waived only through a  
4-37 written waiver signed by the chair, vice chair, or secretary of the  
4-38 patient safety committee. This subsection does not affect the  
4-39 application of Section 303.007 to a nursing peer review committee.

4-40 (c) A committee that receives information from another  
4-41 committee shall forward any request to disclose the information to  
4-42 the committee that provided the information.

4-43 SECTION 15. Section 303.011, Occupations Code, is amended  
4-44 to read as follows:

4-45 Sec. 303.011. EVALUATION BY COMMITTEE. (a) In evaluating  
4-46 a nurse's conduct, the nursing peer review committee shall review  
4-47 the evidence to determine the extent to which a deficiency in care  
4-48 by the nurse was the result of deficiencies in the nurse's judgment,  
4-49 knowledge, training, or skill rather than other factors beyond the  
4-50 nurse's control. A determination that a deficiency in care is  
4-51 attributable to a nurse must be based on the extent to which the  
4-52 nurse's conduct was the result of a deficiency in the nurse's  
4-53 judgment, knowledge, training, or skill.

4-54 (b) The nursing peer review committee shall report a  
4-55 deficiency in care that the committee determines was the result of a  
4-56 factor beyond the nurse's control to a patient safety committee for  
4-57 evaluation. The patient safety committee shall evaluate the  
4-58 influence of the factors on the conduct of the nurse being evaluated  
4-59 and on the practice of other nurses within the entity that  
4-60 established the committee. The committee shall report its findings  
4-61 to the nursing peer review committee.

4-62 SECTION 16. The following provisions of the Occupations  
4-63 Code are repealed:

- 4-64 (1) Subsection (d), Section 301.303;  
4-65 (2) Subsection (e), Section 301.352;  
4-66 (3) Subsection (a), Section 301.402;  
4-67 (4) Subsections (d), (f), (g), and (h), Section  
4-68 301.405;  
4-69 (5) Subsection (a), Section 301.419; and

5-1 (6) Subsection (h), Section 303.005.  
5-2 SECTION 17. (a) Except as provided by Subsection (b) of  
5-3 this section, the changes in law made by this Act apply only to  
5-4 conduct that occurs on or after the effective date of this Act.  
5-5 Conduct that occurs before the effective date of this Act is  
5-6 governed by the law in effect when the conduct occurs, and the  
5-7 former law is continued in effect for that purpose.

5-8 (b) The change in law made by this Act by the amendment of  
5-9 Subsection (b), Section 301.303, Occupations Code, applies only to  
5-10 an application for renewal of a license issued under Chapter 301,  
5-11 Occupations Code, that is submitted on or after the effective date  
5-12 of this Act. An application for renewal submitted before the  
5-13 effective date of this Act is governed by the law in effect when the  
5-14 application is submitted, and the former law is continued in effect  
5-15 for that purpose.

5-16 SECTION 18. This Act takes effect immediately if it  
5-17 receives a vote of two-thirds of all the members elected to each  
5-18 house, as provided by Section 39, Article III, Texas Constitution.  
5-19 If this Act does not receive the vote necessary for immediate  
5-20 effect, this Act takes effect September 1, 2007.

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