

## **NURSING PEER REVIEW COMMITTEE AND PROCESS**

### **Function and Purpose:**

The intent of the Temple College Nursing Peer Review Policy is to provide Temple College with a nursing peer review process for evaluation of qualifications of a nurse, and the quality and safety of patient care rendered by a nurse.

The Temple College Nursing Peer Review is conducted in accordance with the Nurse Practice Act, Texas Occupations Code, and the Texas Administrative Code. Appendix A describes the process and the applicable code.

### **Composition:**

5 RN members of the staff of Temple College. Members are appointed by the Associate Vice-President, Health Professions with recommendations from leadership of the Vocational Nursing (VN) and Associate Degree Nursing (ADN) programs. A Registered Nurse (RN) with supervisory authority over the nurse being reviewed may not serve on the committee.

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## APPENDIX A

The Nursing Peer Review and Safe Harbor Peer Review Committees (PRC) are established in compliance with the State of Texas Nurse Practice Act (NPA) of 2003, as codified by the Texas Occupational Code and the Texas Administrative Code (Title 22, Chapter 217 TAC) as amended in September of 2003.

The acts require reporting of reportable conduct, either through a Nursing Peer Review Committee or directly to the Texas Board of Nursing (BON) by individual registered or licensed vocational nurses, employers (i.e., hospitals), professional associations and certification bodies, insurance companies, and judicial systems. If a registered nurse (RN) reports a nurse to a Nursing Peer Review Committee for conduct, that the nurse has a duty to report to the Board. The report to the committee will satisfy the nurse's duty to report to the Board, provided that the following conditions are met:

- 1) The Nursing Peer Review Committee shall report the nurse to the Board, if it finds the nurse engaged in reportable conduct. If PRC finds that the conduct constitutes a minor incident as defined by 22 TAC §217.16 (relating to reporting of minor incidents), it shall report in accordance with the requirements of that rule.
- 2) The reporting nurse shall be notified of the PRC findings which shall be kept confidential subject to the confidentiality requirements of the peer review proceedings and Texas Occupations Code §303.006; and
- 3) The reporting nurse accepts in good faith the findings of the Nursing Peer Review Committee. (22 TAC §217.19)

According to the NPA Sec. 303.001(5), "peer review" is defined as:

The evaluation of nursing services, the qualifications of nurses, the quality of patient care rendered by nurses, the merits of complaints concerning nurses and nursing care, and determinations or recommendations regarding a complaint. The term includes:

- A. the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;
- B. a report made to a nursing peer review committee concerning an activity under the committee's review authority;
- C. a report made by a nursing peer review committee to another committee or to the Board as permitted or required by law; and
- D. implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee.

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This definition is broad in an attempt to cover most activities relating to review and evaluation of nursing care. The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. It is not intended to be a form of punishment.

The term also includes the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns, report under Chapter 301, request peer review, and the resolution of workplace and practice questions relating to nursing and patient care.

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REPORTABLE CONDUCT [Texas Occupations Code §301.401 (a); 22 TAC §217.11(K)]

Conduct subject to reporting means conduct by a nurse:

- A. who violates the Nursing Practice Act or a board rule and contributed to the death or serious injury of a patient;
- B. whose conduct causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;
- C. whose actions constitute abuse, exploitation, fraud, or a violation of professional boundaries; or
- D. whose actions indicate 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.

Temple College will, either through the peer review process or directly, report to the BON any termination, suspension greater than 7 days, or substantive disciplinary action of a registered or licensed vocational nurse for conduct which has been defined as reportable conduct. The option to directly report through Texas Peer Assistance Program for the Impaired Nurse (TPAPIN) (in lieu of being reported to the BON or reviewed by a professional Nursing Peer Review Committee) is exercised if it is believed that the reported nurse's conduct results from chemical dependency or mental illness as per the Chapter 467, Health and Safety Code.

Peer review committees (PRC) are advisory in nature. The committee cannot take any action against a nurse being reviewed, but can only make recommendations as permitted by law. The PRC must report apparent violations of the NPA to the Board of Nurse Examiners, if they are not considered "minor incidents", and may report their findings to the facility administration, in accordance with the law. The definition of a "minor incident" can be found in the REPORTING OF MINOR INCIDENTS section of this policy.

Nurses subject to review by a PRC are entitled to due process as outlined in the Board's Rules, and can be found in 22 TAC §217.19 (b). A violation of these "rights" by a peer review committee is a violation of the Nurse Practice Act, and can itself be reported to the Board of Nurse Examiners by the nurse.

The composition of a PRC is defined by statute, as is the confidentiality of the proceeding, and protection from civil liability for committee members. Chapter 303.

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Nursing Peer Review, Nursing Practice Act. See COMMITTEE COMPOSITION section of this policy.

## REPORTING OF MINOR INCIDENTS

According to Texas Occupations Code 301.419(a); 22 TAC §217.16 (b)(c), a “minor incident” is defined as conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to a client or other person.

A single minor incident need not be reported to the Board or the PRC. When it is determined that the incident is minor, the following steps are required:

- 1) an incident/variance report shall be completed according to the employing facility’s policy;
- 2) the nurse’s manager shall maintain a record of each minor incident involving those nurses under his/her supervision;
- 3) the nurse’s manager shall assure that the incident/variance report contains a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remediate the problem;
- 4) the nurse’s manager shall report a nurse to the PRC if three minor incidents involving the nurse are documented within a one-year time period; and
- 5) the PRC shall review the three minor incidents and make a determination as to whether a report to the Board is warranted. (22 TAC §217.16)

The supervisor shall report to the Nursing Peer Review Committee a nurse that has three minor incidents documented within a one year time period (22 TAC §217.16 (d)).

A nurse involved in an incident which is determined to be minor need not be reported to the Board or the Peer Review Committee if all of the following factors exist:

- 1) potential risk of physical, emotional, or financial harm to the client due to the incident is very low;
- 2) the incident is a singular event with no pattern indicating the nurse’s continuing practice would pose a risk of harm to clients or others;
- 3) the nurse exhibits a conscientious approach to and accountability for his/her practice; and
- 4) the nurse appears to have the knowledge and skill to practice safely.

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Other conditions which may be considered in determining that mandatory reporting is not required are:

- 1) the significance of the nurse's conduct in the particular practice setting; and
- 2) the presence of contributing or mitigating circumstances, including system issues, in relation to the nurse's conduct.

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## REQUEST FOR SAFE HARBOR PEER REVIEW

Safe Harbor is a nursing peer review process that a nurse may initiate when asked to engage in conduct, which the nurse in good faith believes would violate the nurse's duty to a patient. When properly invoked, safe harbor protects a nurse from employer retaliation and from licensure sanction by the Board of Nursing.

"Duty to a patient" is defined as conduct required by standards of practice or professional conduct adopted by the board of nurses. The term includes administrative decisions directly affecting a nurse's ability to comply with that duty. Texas Occupations Code §303.005(a).

In accordance with Texas Occupations Code §303.005 (c), and 22 TAC §217.20 (d)(a) a nurse may be protected for requesting peer review either by notifying the Executive Director of Nursing in writing that the nurse is invoking Safe Harbor by including:

- 1) the nurses(s) name(s) making the safe harbor request and his/her signature
- 2) the date and time of the request
- 3) the location of where the conduct or assignment is to be completed;
- 4) the name of the person requesting the conduct or making the assignment; and
- 5) brief explanation of why safe harbor is being requested.

To initiate a nursing peer review of the situation; the nurse must complete a Comprehensive Request for Safe Harbor form found on the BON's website.

### SAFE HARBOR PROCESS (22 TAC §217.20)

The following timelines shall be followed, pursuant to 22 TAC §217.20 (d)(1)(A)(B):

- 1) the peer review committee shall complete its review and notify the nurse administrator within 14 days of when the nurse requested Safe Harbor;
- 2) within 48 hours of receiving the committee's determination, the nurse administrator shall review these findings and notify the nurse requesting peer review of both the committee's determination and whether the administrator believes in good faith that the committee's findings are correct or incorrect.

Consideration for patient safety should contribute to the timeline for implementing a decision, but shall not exceed the time limits specified in this section. 22 TAC §217.20 (d)(2).

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In addition to consideration of the nurse's request for Safe Harbor, the peer review committee may consider whether an exclusion to Safe Harbor peer review applies, and evaluate whether a professional nurse has engaged in reportable misconduct provided such review is conducted in accordance with the requirements of Minimum Due Process, Rule 217.19 (a). (22 TAC §217.20 (e)(2)).

If the peer review committee determines that a nurse's conduct was not related to the nurse's request for Safe Harbor and would otherwise constitute misconduct reportable to the Board, the committee shall report the nurse to the Board as required in Texas Occupations Code 301.403. (22 TAC §217.20 (e)(3)).

## COMMITTEE COMPOSITION

The Nursing Peer Review Committee (PRC) is composed of a pool of 5 nurse members of the staff of Temple College. Members are appointed by the Associate Vice-President, Health Professions (AVP-HP) with recommendations from leadership of the nursing programs. A nurse with supervisory authority over the nurse being reviewed may not serve on the committee.

The AVP-HP appoints a secretary to serve as committee secretary.

Members will serve four-year terms that are alternated and expire on August 31. The same committee may continue beyond August 31 if a referral is under consideration.

If a report is initiated against a PRC nurse member, he/she is replaced on the committee, pending the result of review process.

## COMMITTEE AUTHORITY

The PRC reviews reports of all nurses employed by Temple College.

The authority of the PRC is limited to the investigation of reports and the presentation of the committee's findings to the Associate Vice-President, Health Professions.

The PRC functions to review disciplinary proceedings and/or practice issues of nurse to determine whether to recommend that the actions of an nurse constitute reportable behavior.

## COMMITTEE PROCESS

The completed form (PRC Form A) is submitted to the Chair of the PRC. The Chair submits Form A to the AVP-HP and initiates Peer Review Checklist (Form J). The PRC Chair provides written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility. The notice informs the nurse that his/her practice is being evaluated, that the peer review committee will meet on a specified date

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not sooner than 21 calendar days and not more than 45 calendar days from date of notice, unless otherwise agreed upon by the nurse and peer review committee. The notice must include a written copy of the peer review plan, policies and procedures (PRC Form C).. The nurse is to be provided the opportunity to review, in person or by attorney, documents concerning the event under review at least 15 calendar days prior to appearing before the committee. (22 TAC §217.19 (a)(4)(C)(E)). However, the identity of the reporting person will remain confidential

The PRC chair coordinates the investigation and may interview other health employees and/or patients and examine medical records, Adverse Event reports, personnel records and any other information pertinent to the complaint.

The PRC hearing (PRC Form D may be used) is held.

The nurse is given the opportunity to submit a written statement regarding the event under review, call witnesses, question witnesses and be present when testimony or evidence is being presented. The nurse is not allowed to be present during the committee's deliberation and recommendation phase.

Persons with firsthand knowledge of the incident or action cited in the report, if requested, are expected to testify at the hearing. The person reporting and witnesses attend the hearing only while testifying. Witnesses are limited to those persons with firsthand knowledge of the incident, and one expert witness, as appropriate.

Review by peer review is advisory only and does not limit what administrative/personnel action is taken against the nurse. Administration is not prohibited from taking action prior to peer review. The focus of peer review is to evaluate professional practice and not administrative/personnel issues.

The nurse undergoing review and the nurse who filed the report are informed in writing (PRC Form E) of the committee's recommendation to the Associate Vice President, HP within 10 calendar days from the committee meeting. The nurse undergoing review is given five working days after receiving the report to submit a rebuttal statement (PRC Form F). (22 TAC §217.19 (a)(4)(H)).

The PRC Chair submits all paperwork and committee findings (PRC Form D-G) to the AVP-HP who with Chair notifies the appropriate department of the findings and recommendations as appropriate.

The AVP-HP submits the results of the peer review process and final recommendations to the Board of Nursing, if reportable practice occurred (PRC Form E-F-G-H). The report to the BON shall include what corrective action was taken against the nurse and whether formal BON disciplinary action is recommended.

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The AVP-HP may choose to submit a preliminary report for potential reportable conduct to the BON before receiving the final committee report (PRC Form K). If he/she chooses this option, the PRC findings will be forwarded separately. (All above time frames are still in effect.)

## NURSE'S RIGHT TO REPRESENTATION

A nurse shall have the right of representation. The nurse has the right to be accompanied to the hearing by a nurse peer or an attorney. The accompanying individual's participation is limited to being present with the nurse and to conferring with the nurse only.

If the nurse plans on bringing an attorney representative, he/she must notify the peer review representative at least seven (7) calendar days before the hearing. (22 TAC §217.19 (a)(5)). If an attorney representing the facility or peer review committee is present at the peer review hearing in any capacity, including serving as a member of the peer review committee, the nurse is entitled to parity of participation of counsel and the nurse is to be notified at least 7 calendar days before the hearing. (22 TAC §217.19 (a)(5)).

("Parity of participation of counsel" means that the nurse's attorney is able to participate to the same extent and level as the facility's attorney, e.g. if the facility's attorney can question witnesses, the nurse's attorney must have the same right.)

Confidentiality of information presented to and/or considered by the peer review committee shall be maintained and not disclosed, except as provided by Texas Occupations Code Rule §303.006 and §303.007. Disclosure/discussion by a nurse with the nurse's attorney is proper because the nurse's attorney is bound to the same confidentiality requirements as the nurse.

## CONFIDENTIALITY

To protect the identity of any patient, only medical record numbers are used throughout the process.

Committee members are apprised of the legal requirements for confidentiality. Each committee member, including each advisory member and the secretary, and each witness signs a confidentiality statement (PRC Form D-I) at the beginning of each proceeding.

All proceedings of the review are confidential pursuant to Texas Occupations Code §303.006 except as specified in Texas Occupations Code §303.007 which states that upon request, the committee shall disclose information to the State Board of Registration or Licensure of any state or to a law enforcement authority investigating a criminal matter. The committee may disclose information to the State Board of

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Registration or Licensure of any state; a law enforcement authority investigating a criminal matter; to the facility under whose authority the committee is established; another professional Nursing Peer Review Committee; a Peer Assistance Program approved by the BON; appropriate state or federal agencies or accrediting organizations; or persons engaged in bona fide research, if all individual-identifying information is deleted. A committee member or a participant in any committee proceeding may not disclose or be required to disclose any opinion or finding of the committee or any member of the committee. Members of the committee and the persons who provide information to the committee may not be questioned about their testimony before the committee or about opinions formed as a result of the committee proceedings.

Immunity from civil liability is granted to the person who makes the report, to members of the PRC, and to persons who participate in the course of peer review as defined in the Nursing Quality Assurance Act.

A cause of action does not accrue for an act, statement, determination or recommendation made or act reported, without malice, in the course of peer review against:

- 1) a member, agent, or employee of a Nursing Peer Review Committee or
- 2) a school of nursing, hospital, nursing home, home health agency, health science center, or other health care facility, the nursing staff of such a facility or a nursing association or other organization. (Texas Occupations Code §303.010 (a)).

A person who, without malice, provides records, information, or assistance to a Nursing Peer Review Committee:

- 1) is not liable in a civil action based on the person's participation or assistance in peer review; and
- 2) may not be subjected to retaliatory action as a result of that act. (Texas Occupations Code §303.010 (b)). Immunity does not apply if a person acts in bad faith or with malice against an NURSE or if a person violates confidentiality requirements. (Texas Occupations Code §303.010 (a)(b) and Texas Occupations Code §301.412). Final documentation of Peer Review Committee activities shall be maintained in the office of the AVP-HP.

## INDIVIDUAL INITIATION OF PEER REVIEW

The peer review may be initiated by an nurse who is employed by Temple College. A nurse reporting another nurse who has engaged in "reportable conduct" must complete a report to the BON (PRC Form B) and should report to the chair of the PRC (PRC Form A) within fifteen (15) days of occurrence.

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