

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 VN and ADN programs. An RN with supervisory authority over the RN being reviewed may not serve on the committee.

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APPENDIX A

The Nursing Peer Review and Safe Harbor Peer Review Committees 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 (Chapter 22, 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 Board of Nurse Examiners (BNE) 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 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 peer review committee shall report the nurse to the Board, if it finds the nurse engaged in reportable conduct. If the peer review and safe harbor committees 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 peer review committee's findings and 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 peer review committee. (22 TAC §217.19)

According to the NPA, 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 complaints including:

- 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. [Texas Occupations Code §303.001 (5) (D)]

This definition is very broad in an attempt to cover most activities relating to review and evaluation of nursing care. The intent is that Peer Review will be a collegial, non-adversarial review of a nurse or an event. It is not intended to be a form of punishment.

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

Reportable conduct is defined as an incident or pattern of behavior when an RN/LVN:

- 1) unnecessary or likely exposure by the nurse of a patient or other person to a risk of harm,
 - 2) unprofessional conduct by the nurse
 - 3) failure to adequately care for a patient
 - 4) failure by the nurse to conform to the minimum standards of acceptable professional nursing practice; or
 - 5) impairment or likely impairment of the nurse's practice by chemical dependency.
- The option exists to report through Texas Peer Assistance Program for the Impaired Nurse (TPAPIN).

Temple College will, either through the Peer Review Process or directly, report to the BNE 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 BNE or reviewed by a professional nursing peer review committee) is exercised if it is believed that the reported RN's/LVN's conduct results from chemical dependency or mental illness, Chapter 467, Health and Safety Code.

It must be emphasized that peer review committees (PRC) are only 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" is found in 22 TAC §217.16 (b) of the Board of Nurse Examiners Rules and Regulations Relating to Professional Nurse Education, Licensure, and Practice.

This is not a "one-sided" process. Nurses subject to review by a PRC are entitled to due process rights. Due process is outlined in the Board's Rules, and can be found in 22 TAC §217.19 (b). A violation of these "rights" by the PRC is a violation of the NPA, and can itself be reported to the BNE by the nurse.

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 - NURSING PEER REVIEW, in the Nursing Practice Act is the statutory basis for peer review, and covers these items.

For a facility, the advantage of the Peer Review is in its ability to be used as a quality improvement tool. Done properly, with emphasis on the event or occurrence, as well as the nurse, often problems with "the system" are found that mitigated or directly affected

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the actions of the nurse(s). Identifying and “fixing” these system problems can have a positive, lasting effect on patient care.

REPORTING OF MINOR INCIDENTS

A single minor incident need not be reported to the Board or the Peer Review Committee. When a decision is made 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 RNs 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, RN involved and the action taken to correct or remediate the problem;
- 4) the nurse’s manager shall report an RN to the Peer Review Committee if three minor incidents involving the RN are documented within a one-year time period; and
- 5) the Peer Review Committee 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 Peer Review Committee an RN/LVN that has three minor incidents documented within a one year time period (22 TAC §217.16 (d) (4)). 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. (Texas Occupations Code 301.419(a); 22 TAC §217.16 (b)(c)). An RN/LVN 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 RN/LVN exhibits a conscientious approach to and accountability for his/her practice; and 4) the RN/LVN appears to have the knowledge and skill to practice safely.

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.

REQUEST FOR PEER REVIEW UNDER THE TEXAS OCCUPATIONS CODE, SECTION 303.005

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In accordance with the Texas Occupations Code §303.005(c), a nurse may be protected through accessing peer review either by using the form (PRC Form L, which includes 9 pages) which is found also on the BNE website. These forms are available from the Associate Vice-President, Health Professions (AVP-HP). The nurse may also submit in writing:

- 1) the conduct assigned or requested, including the name and title of the person making the assignment or request;
- 2) a description of the practice setting;
- 3) a detailed description of how the conduct would have violated the RN's duty to a patient or any other provision of the Nurse Practice Act;
- 4) the RN's name, title and relationship to the supervisor making the assignment or request.

This process is to be used if a nurse is asked to engage in conduct, which the nurse in good faith believes would violate the nurse's duty to a patient. Protection for nurses is available only when the nurse's duty thought to be violated fits the statutory definition:

"Duty to a patient" means 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).

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).

In addition to consideration of the RN'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 RN's conduct was not related to the RN's request for Safe Harbor and would otherwise constitute misconduct reportable to the Board, the committee shall report the RN to the Board as required in Texas Occupations Code 301.403. (22 TAC §217.20 (e)(3)).

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COMMITTEE COMPOSITION

The Peer Review Committee functions to address nursing matters related to Temple College nursing practice.

The Peer Review Committee (PRC) is composed of a pool of 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 VN and ADN programs. An RN with supervisory authority over the RN being reviewed may not serve on the committee.

The Associate Vice President, 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 RN member, he/she is replaced on the committee, pending the result of review process.

COMMITTEE AUTHORITY

The PRC reviews reports of all RNs 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 RN to determine whether to recommend that the actions of an RN constitute reportable behavior.

COMMITTEE PROCESS

The completed form (PRC Form A) is submitted to the Chair of the PRC. The chairperson submits Form A to the Associate Vice President 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 that his/her practice is being evaluated, that the peer review committee will meet on a specified date 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. Said notice must include a written copy of the peer review plan, policies and procedures (PRC Form C). The identity of the person making the report is kept confidential. The RN 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)).

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The PRC chair coordinates the investigation and may interview other health employees and/or patients and may 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.

The persons with firsthand knowledge of the incident or action cited in the report, if requested, are expected to testify at the hearing. The person who filed the report and the 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 RN. Administration is not prohibited from taking action prior to peer review. It should be emphasized that the focus of peer review is to evaluate professional practice and not administrative/personnel issues.

The RN undergoing review and the RN 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 RN 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 chairperson submits all paperwork and committee findings (PRC Form D-G) to the AVP-HP. The AVP-HP and/or the chairperson/advisor notifies the appropriate Department of the findings and recommendations as appropriate.

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

The AVP-HP may choose to submit a preliminary report for potential reportable conduct to the BNE before receiving the final peer review committee report (PRC Form K). If he/she chooses this option, the peer review committee 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

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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

In order 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 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 BNE; 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

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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 RN/LVN 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 RN who is employed by Temple College. An RN reporting an RN who has engaged in "reportable conduct" must complete a report to the BNE (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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