

N 1200.4

N 937

1995

**NURSING PRACTICE ACT**

**TEXAS STATUTES  
REGULATING THE PRACTICE  
OF PROFESSIONAL NURSING  
As Amended 1995**

**and**  
**Excerpts from the**  
**Board of Nurse Examiners'**  
*Rules and Regulations*  
*Relating to*  
*Professional Nurse Education,*  
*Licensure and Practice*

Government Publications  
Texas State Documents



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**BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS**

P.O. BOX 140466  
AUSTIN, TEXAS 78714  
512/305-7400



**See center insert page for  
six-step decision-making  
model for determining RN  
scope of practice.**



## **AGENCY MISSION**

The mission of the Board of Nurse Examiners is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a registered professional nurse in the State of Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of professional nursing and the accreditation of schools of nursing. The Board serves as a catalyst for developing partnerships, promoting collaboration, and proactively responding to regulatory issues. This mission, derived from the Nursing Practice Act, supersedes the interest of any individual, the nursing profession, or any special interest group.

## **INTRODUCTION**

Welcome to the practice of professional nursing in the State of Texas. To assist you in understanding the Nursing Practice Act (NPA), the Board of Nurse Examiners offers the following information and detailed table of contents.

The NPA is the law which creates the Board of Nurse Examiners and defines its responsibility for regulating nursing education, licensure and practice. The NPA defines professional nursing practice and gives the Board the authority to make rules which implement and interpret the NPA. The NPA and the rules are equally enforceable. Licensees are required to comply with both. The NPA and the rules are amended from time to time. Only the Legislature can change the NPA, so statutory changes can be presented every two years. The Board makes rule changes as needed to assist in the application of the NPA to evolving practice conditions and settings. It is therefore necessary that you keep up with the changes. You may obtain copies at a nominal cost by writing to the Board's office at: Box 140466, Austin, Texas 78714; or calling 512/305-7400.

Any person "practicing or offering to practice professional nursing in this state for compensation" is required to have a license. Your license must be renewed every two years in order to continue practicing in Texas. Once licensed, you are authorized to use the title "RN" and are required to wear a name tag identifying yourself as an RN while providing patient care.

You must keep the Board informed of your current address at all times. Do this by sending written notice, clearly marked "change of address" to the Board's office any time you move. Failure to do so can result in a lapse of your license and disciplinary action.

It is essential that you know and practice in compliance with the NPA, the Standards of Professional Nursing Practice and Board Rules. At the back of this booklet are certain rules which we think all practicing RNs need to have available for ready reference. As a professional, you are required to know and follow the law and these rules.

# WHAT YOU NEED TO KNOW TO KEEP A LICENSE

Rule 217.11. Standards of Nursing Practice  
• Describes the minimum acceptable standards of professional nursing

Art. 4518, Section 7 and Mandatory Continuing Education  
Rule 217.15.

- Describe the required types and number of hours of CE to keep your license current

Art. 4526 Renewal  
• Describe the procedure to renew your license every two (2) years

Rule 217.10. Change of Address or Name  
• Describes the procedure for keeping your address current in the Board's records and/or changing your name

Rule 218 Delegation Rules  
• Describes your responsibility when working with care givers who are not licensed nurses

Art. 4525a Professional Nurse Reporting  
• Describes your duty to report colleagues who may expose others to risk of harm

Rule 217.1. and Definition of Direct Rule Supervision  
217.3  
• Describe the role of the graduate nurse and the requirement for direct supervision

Art. 4525 (a) - (k) Disciplinary Proceedings  
Art. 4525.1 Penalties and Sanctions  
Rule 217.13. Unprofessional Conduct  
• Describe the grounds for discipline which you must avoid

Rule 217.12. Titles Deemed Misleading  
• Describes limitations on the use of titles tending to imply that a person is licensed

## YOUR ONGOING PROFESSIONAL RESPONSIBILITY

Art. 4525b Peer Review  
Section 1 Definition  
Section 2, Confidential Proceedings  
Section 3, 4 Disclosure of Information  
Section 5, 6 Immunity/Protection from Liability

## DISCLAIMER

In 1993, the 73rd Legislature passed two bills affecting the Nursing Practice Act (NPA): House Bill 2180 and House Bill 756. In most instances, the provisions of these bills can be harmonized. In cases where the provisions conflict, House Bill 756 controls because it was the last bill passed and signed. The Legislative Council anticipates that the full text of both bills will be published in Vernon's Revised Texas Civil Statutes. The following text merges House Bill 2180 and House Bill 756 with the existing NPA in the manner we understand the Legislature intended. The source of the 1993 amendments and additions is indicated parenthetically following each article affected. In preparing the text, we have corrected some typographical and internal reference errors in the existing NPA and the amendments. Anyone desiring the verbatim text of the 1993 amendments and additions should obtain the enrolled bills. The text of the NPA through the 1991 second called session of the 72nd Legislature is found at Article 4513, et. seq. Texas Revised Civil Statutes.

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*The following rules are excerpts from the Board of Nurse Examiners Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice. The Rules and Regulations are promulgated by the Board of Nurse Examiners under the authority of the Nursing Practice Act (NPA). Registered Nurses must practice in compliance with these rules, as well as the NPA. The rules may change before the NPA is reprinted. Major rule changes are reported in the Board’s “RN UPDATE” mailed quarterly to all registered nurses.*

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**CHAPTER SEVEN**  
**TITLE 71. HEALTH-PUBLIC**  
**NURSES**

**Article 4513. BOARD OF NURSE EXAMINERS**  
**(amended/added by HB 2180)**

Sec. 1. Composition of Board; Programs of Study.

The Board of Nurse Examiners (hereinafter "Board") is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. The Board shall prescribe three programs of study to prepare professional nurse practitioners, to wit: (1) The Baccalaureate Degree Program--A program leading to a baccalaureate degree in nursing conducted by an educational unit in nursing (department, division, school, or college) which is a part of a senior college or university; (2) The Associate Degree Program--A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or a university; and (3) The Diploma Program--A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital. Six of the board members must be Registered Nurses, three of whom shall be engaged in professional nurse education and shall be representative of said three programs in that one shall be a nurse faculty member in a school of nursing pursuing the Baccalaureate Degree Program; one shall be a nurse faculty member in a school of nursing pursuing the Associate Degree Program; and one shall be a nurse faculty member in a school of nursing pursuing the Diploma Program. Three members must be members of the general public.

Sec. 2. Terms; Requirements of Professional Nurse Members and Public Members. (added/amended by HB 883)

(a) The members of the Board shall hold office for staggered terms of six years, with the terms of one practicing registered nurse, one professional nurse engaged in nurse education, and one public member expiring on January 31 of odd-numbered years. A professional nurse member must be actually engaged in the nursing profession for at least three of the five years preceding the appointment.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

### Sec. 3. Conflict of Interest Restrictions.

(a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a board member or employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member or employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a non-profit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

### Sec. 4. Effect of Lobbying Activity.

A person may not serve as a board member or act as general counsel to the Board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the Board.

### Sec. 5. Grounds for Removal from Board.

(a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Section 1 of this article;

(2) does not maintain during service on the Board the qualifications required by Section 1 of this article;

(3) violates a prohibition established by Section 3 or 4 of this article;

(4) cannot discharge a substantial part of the term for which the

member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the Board.

(b) The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the Board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

#### Sec. 6. Standards of Conduct Information.

The Board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

#### Sec. 7. Staff.

The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.

#### Sec. 8. Annual Financial Report.

The Board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

#### Sec. 9. Personnel Policies.

(a) The executive director or the director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all non-entry level positions concurrently with any public posting.

(b) The executive director or the director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

#### Sec. 10. Equal Employment Opportunity Policies.

(a) The executive director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Ar-

title 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant under use in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of under use.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.

#### Sec. 11. Public Interest Information.

(a) The Board shall prepare information of public interest describing the functions of the Board and the procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the public and appropriate state agencies.

(b) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board. The Board may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the Board;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the Board; or

(3) in a bill for service provided by an individual or entity regulated by the Board.

(c) The Board shall list along with its regular telephone number, the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

(d) The Board shall enter into memoranda of understanding with each state agency that licenses health-care facilities or agencies for the purpose of coordinating any posting or notification requirements under Subsection (b) of this section with posting or notification requirements that may be imposed on the health-care facility or agency by that state agency.

#### Sec. 12. Public Participation in Board Hearings.

The Board shall develop and implement policies that provide the pub-



lic with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

Sec. 13. Program Accessibility.

The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.

Sec. 14. Training; Standards of Conduct Information.

(a) The Board shall establish a training program for the members of the Board.

(b) Before a member of a Board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

- (1) the enabling legislation that created the Board;
- (2) the programs operated by the Board;
- (3) the role and functions of the Board;
- (4) the rules of the Board with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the Board;
- (6) the results of the most recent formal audit of the Board;
- (7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the Board shall consult with the governor's office, the attorney general's office, and the ethics commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the Board shall allow that training in lieu of developing its own program.

Sec. 15. Interagency Contracts.

The Board may enter interagency contracts for any purpose authorized by law.

**Article 4513a. SUNSET PROVISION.** (amended/added by HB 2180)

The Board of Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the Board is abolished September 1, 2005.

**Article 4514. ORGANIZATION OF BOARD.** (amended/added by HB 2180)

Sec. 1. President; Special Meetings; Powers.

The governor shall designate one of the members of the Board as presiding officer to serve in that capacity at the pleasure of the governor. The members of the Board shall elect other officers from their members. Special meetings of said Board shall be called by the presiding officer acting upon the written request of any two members. The Board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

Sec. 2. Rules Restricting Competitive Bidding or Advertising Prohibited.

The Board may not promulgate rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

- (1) restricts the person's use of any medium for advertising;
  - (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
  - (3) relates to the size or duration of an advertisement by the person;
- or
- (4) restricts the person's advertisement under a trade name.

Sec. 3. Records; Assistance to Legal Authorities.

The executive director shall be required to keep a record of each meeting of said Board, including a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. The Board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. Nothing herein shall either expand or contract the Board's present powers as they relate to the regulation of nursing education.

#### Sec. 4. Open Meetings; Administrative Procedure.

The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252 17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252 13a, Vernon's Texas Civil Statutes).

#### Sec. 5. Recommendation of Rules Relating to Delegation of Medical Acts by Physicians.

The Board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to physician's delegating medical acts to registered nurses licensed by the Board. The recommendations shall be acted on in the same manner as a petition for the adoption of a rule by an interested party under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The Board in making recommendations may distinguish between nurses on the basis of special training and education. The Board in recommending rules and the Texas State Board of Medical Examiners in acting on recommended rules shall act, to the extent allowable under state and federal statutes and regulations, so as to permit the state to obtain its fair share of federal funds available for the delivery of health care in this state.

#### Sec. 6. Rules.

The Board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a registered nurse must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(2) a system for assigning an identification number to a registered nurse who provides the Board with evidence of completing the required specialized education and training.

#### Sec. 7. Nursing Practice Act.

Articles 4513-4528, Revised Statutes, collectively may be referred to as the Nursing Practice Act.

#### Sec. 8. Approval of Registered Nurses for Advanced Status. (added by SB 673)

(a) The board shall adopt rules for approval of a registered nurse as an advanced nurse practitioner or an advanced practice nurse. "Advanced nurse practitioner" or "advanced practice nurse" means a registered nurse approved by the board to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist.

(b) The board shall adopt rules for the initial approval and biennial renewal of an advanced nurse practitioner to carry out or sign prescription drug orders under Section 3.06(d) (5) or (6), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). The rules at a minimum shall:

(1) require completion of pharmacology and related pathology for initial approval;

(2) require continuing education in clinical pharmacology and related pathology in addition to any continuing education otherwise required under Article 4518, Revised Statutes; and

(3) provide for the issuing of a prescription authorization number to an advanced nurse practitioner approved under this section.

#### **Article 4515. PER DIEM, SALARY, TRAVEL AND OTHER EXPENSES.**

Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses a member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. The Board shall determine the salaries and compensation to be paid to employees and persons retained by the Board.

#### **Article 4516. REPEALED.** (amended/added by HB 2180)

#### **Article 4517. EXECUTIVE DIRECTOR AND BONDS.** (amended/added by HB 2180)

The Board shall employ a qualified executive director who shall not be a member of the Board. Under the direction of the Board, the executive director shall perform duties required by this Act and duties designated by the Board. Also, the Board shall employ all other persons necessary to carry on the work of the Board. The executive director shall upon employment execute a bond in the sum of One Thousand Dollars payable to the Governor. The bond is conditioned that the executive director shall faithfully perform the duties of the office and shall account for funds coming into the director's hands as executive director. The bond shall be signed by two or more sufficient sureties or by a surety company authorized to do business in this state and approved by the president of the Board.

#### **Article 4518. ACCREDITATION OF SCHOOLS OF NURSING AND EDUCATIONAL PROGRAMS; CERTIFICATION OF GRADUATES; EXAMINATION BY THE BOARD OF NURSE EXAMINERS AND REQUIREMENT OF REGISTRATION.** (amended/added by HB 2180 and HB 756)

##### Sec. 1.

It shall be the duty of the Board to prescribe and publish the minimum requirements and standards for a course of study in programs which

prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) academic years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered and approved by the Board, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

#### Sec. 2.

No person shall be certified as a graduate of any school of nursing or educational program unless such person has completed the requirements of the prescribed course of study, including clinical practice, of an accredited school of nursing or educational program.

#### Sec. 3. (added/amended by HB 883)

Every applicant for registration as a registered nurse shall present to the Board evidence of good professional character, successful completion of an accredited program of professional nursing education, and a sworn application and shall, upon payment of required fees, be entitled to take the examination prescribed by the Board. Upon passing the examination, the applicant shall be entitled to receive from said Board a certificate attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas. The Board shall determine the criteria not to exceed the criteria required by a majority of the states, that constitutes passing the examination.

#### Sec. 4.

Any person practicing or offering to practice professional nursing in this state for compensation, shall hereafter be required to submit evi-

dence to the Board that the person is qualified to practice and shall be registered as provided by this law.

#### Sec. 5. (amended by SB 673)

Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as ordered by a licensed physician, including a podiatric physician licensed by the Texas State Board of Podiatric Medical Examiners, or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures; (f) in the requesting, receiving, signing for, and distributing of prescription drug samples to patients at sites at which a registered nurse is authorized to sign prescription drug orders by Section 3.06(d)(5) or (6), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); or (g) in the performing of acts delegated by a physician under Section 3.06(d)(5) or (6), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures. Nothing in this section shall be construed as prohibiting a registered nurse recognized by the Board as having the specialized education and training required under Section 6, Article 4514, Revised Statutes, and functioning under adequate physician supervision from carrying out prescription drug orders or treatments under physician's orders, standing medical orders, standing delegation orders, or other orders or protocols.

#### Sec. 6.

Nothing in this chapter permits the practice of medicine as defined by the Acts of 1907, page 224, being Article 4510, Revised Civil Statutes of Texas, 1925, as amended by Chapter 94, Acts of the 51st Legislature, Regular Session, 1949; Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953 and nothing in this chapter shall be construed to amend, modify, or repeal Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951, known as Article 4528c, Revised Civil Statutes of Texas, 1925, as amended by Chapter 28, Acts of the 53rd Legislature, First Called Session, 1954; Chapter 47, Acts of the 55th Legislature, Regular Session, 1957, and Chapter 449, Acts of the 55th Legislature, Regular Session, 1957.

#### Sec. 7.

(a) The Board may recognize, prepare, or implement continuing educa-

tion programs for its licensees and may require participation in continuing education programs as a condition of renewal of a registration certificate.

(b) The Board may not require more than a total of 20 hours of continuing education in a two-year registration period and may not require that more than 10 of those hours consist of classroom instruction in approved programs. The remaining 10 hours may consist of any combination of classroom instruction, institutional-based instruction, or individualized study.

(c) If the Board requires participation in continuing education programs as a condition of renewal of a registration certificate, the Board shall by rule establish a system for the approval of programs and providers of continuing education. In adopting the rules, the Board shall consider but is not obligated to approve programs or providers approved or accredited through the Board of Accreditation of the American Nurses' Association or the National Federation of Specialty Nursing Organizations and nurse in service programs offered by hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations, certified by Medicare, or maintained or operated by the federal government or the State of Texas. The Board may assess programs and providers a fee in an amount reasonable and necessary to defray the costs incurred in approving providers and programs. The fee collected under this subsection shall be deposited in the Professional Nurse Registration Fund.

(d) The Board may adopt other rules as necessary to implement this section.

**Article 4519. EXAMINATION.** (amended/added by HB 2180)

(a) An applicant that wishes to take a licensing examination must submit to the Board an application demonstrating the applicant's qualifications under this chapter. If the Board determines that the applicant meets the qualifications, the applicant may take the licensing examination.

(b) The examination shall be given in various cities throughout the State and shall be of such character as to determine the fitness of the applicant to practice professional nursing. A written examination prepared, approved, or offered by the Board, including a standardized national examination, shall be validated by an independent testing professional. Not later than the 30th day after the date on which a licensing examination is administered under this article, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination not later than the 14th day after the date the Board receives the results from the testing service. If the notice of the examination results graded or reviewed by a

national testing service will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination, the Board shall furnish the person with an analysis of the person's performance on the examination. If the result of the examination be satisfactory to the Board, a certificate shall be issued to the applicant, signed by the president of the Board, and executive director and attested by the seal of said Board, which certificate shall qualify the person receiving the same to practice professional nursing in this State.

(c) The Board by rule shall establish the conditions under which an applicant who fails the licensing examination may retake the examination. After twice failing the examination, the Board may require an applicant to fulfill additional educational requirements and, after twice failing an examination, may deny an applicant who failed the examination the opportunity to retake the examination.

#### **Article 4519a. DECLARATORY ORDERS OF ELIGIBILITY FOR LICENSE.**

(a) An individual enrolled or planning to enroll in an educational program that prepares an individual for an initial license as a registered nurse who has reason to believe that the individual is ineligible for the license may petition the Board for a declaratory order as to the individual's eligibility. The petition must state the basis for the individual's potential ineligibility. The Board shall have the same powers investigate the petition and the individual's eligibility that it has to investigate a person applying for a license. The petitioning individual or the Board may amend the petition at any time before a final determination is made to include additional grounds for potential ineligibility.

(b) If the Board proposes to find the petitioner ineligible for a license, the petitioner is entitled to a hearing before the Board in accordance with Subsection (b), Article 4525, Revised Statutes. The Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the individual's eligibility with respect to the basis for potential ineligibility set out in the order.

#### **Article 4520. EXEMPT FROM EXAMINATION.**

No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of the State and received a certificate from the Board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law.

#### **Article 4521. TEMPORARY LICENSE; ENDORSEMENT. (amended/added by HB 2180)**



(a) To qualify for a temporary license to practice as a registered nurse by endorsement, an applicant for licensing must:

(1) submit to the Board an endorsement fee as determined by the Board and a completed application given under oath, in the form prescribed by the Board;

(2) have possessed at the time of initial licensing as a registered nurse other qualifications necessary to have been eligible for licensing at that time in this state; and

(3) have presented to the Board proof of initial licensing by examination and proof that the license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason.

(b) A holder of a temporary license under this section shall receive a permanent license if the applicant:

(1) has verified the academic and professional credentials of the applicant; and

(2) satisfies any other requirement set by statute.

(c) The Board shall either grant or deny an application for a permanent license within 180 days after the date of the Board's receipt of all required forms or information. The Board may extend the 180-day time limit to allow for the receipt and tabulation of examination results.

(d) Any applicant who holds a registration certificate as a registered nurse from a territory or possession of the United States, or from a foreign country, may be issued a license to practice as a registered nurse in the State of Texas by endorsement and without examination upon the payment of a fee established by the Board, provided in the opinion of the Board of Nurse Examiners such other Board issuing such other certificate in its examination required the same general degree of fitness required by this state.

#### **Article 4522. USE OF TITLE "R.N."; REGISTRATION BUREAUS.**

A nurse who has received his or her license according to the provisions of this law, shall be styled a "Registered Nurse," and may use the title or abbreviations "R.N." When a licensed registered nurse is on duty providing direct care to patients, the nurse shall wear an insignia identifying the nurse as a registered nurse.

#### **Article 4523. TEMPORARY PERMIT. (amended/added by HB 2180 and HB 756)**

(a) The Board may issue a permit to practice professional nursing under the direct supervision of a Registered Nurse to graduates of approved educational programs pending the results of the licensing examination. The permit expires on receipt of a permanent license or on receipt of a notice of failing the examination from the Board. The permit may not be issued to any applicant who has previously failed an examination administered by the Board or by another state.

(b) To allow a nurse to satisfy a requirement imposed by the Board, to renew an expired license, to reactivate an inactive license, or to reissue a suspended, revoked, or surrendered license, the Board may issue a temporary permit to practice professional nursing for the limited purpose of satisfying the requirement. A permit issued under this subsection expires on the earlier of the receipt of a permanent license or six months from the date of issuance.

(c) A person who holds a temporary permit under this article is a licensed professional registered nurse for all purposes except to the extent of any stipulations or limitations on practice imposed by the Board as a condition of issuing the permit.

#### **Article 4524. REPEALED.**

#### **Article 4524A. RECORDS OF COMPLAINTS.** (amended/added by HB 2180)

(a) The Board shall keep an information file about each complaint filed with the Board. The Board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
- (4) other relevant information.

(b) If a written complaint is filed with the Board that the Board has authority to resolve, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The Board by rule shall adopt a form to standardize information concerning complaints made to the Board. The Board by rule shall prescribe information to be provided to a person when the person files a complaint with the Board.

(d) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

#### **Article 4524B. COMPLAINT INVESTIGATION AND DISPOSITION.** (amended/added by HB 2180)

(a) The Board shall adopt rules concerning the investigation of a complaint filed with the Board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint

explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.

(b) The Board shall dispose of all complaints in a timely manner. The Board shall establish a timeline for conducting each phase of a complaint that is under the control of the Board not later than the 30th day after the date the complaint is received by the Board. The timeline shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the timeline must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive director of the Board shall notify the Board of a complaint that extends beyond the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.

**Article 4524C. INFORMAL PROCEEDINGS.** (amended/added by HB 2180)

(a) The Board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this article must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the Board's legal staff or of the office of the attorney general to advise the Board or the Board's employees.

**Article 4524D. MONITORING OF LICENSEE.** (amended/added by HB 2180)

The Board by rule shall develop a system for monitoring licensees' compliance with the requirements of this chapter. Rules adopted under this article shall include procedures for monitoring a licensee who is ordered by the Board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.

**Article 4525. DISCIPLINARY PROCEEDINGS.**

(4525. (a)-(c) amended/added by HB 756)

(4525. (e) amended/added by HB 2180)

(a) The Board may refuse to admit persons to the licensing examina-

tion, to issue or renew a license, or to issue a temporary permit for any of the reasons for which the Board may take disciplinary action against a registered nurse under Subsection (b) of this article. If the Board proposes to refuse to admit a person to the examination, to issue or renew a license, or to issue a temporary permit, the Board shall notify the person of the basis for its decision. A person who is refused admittance to the examination or the renewal or issuance of a license or temporary Permit is entitled to a hearing before an administrative law judge of the State Office of Administrative Hearings.

(b) The Board may take disciplinary action against a registered nurse for any of the following reasons:

(1) The violation of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereinunder.

(2) Fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude, or any conduct resulting in the revocation of probation imposed pursuant to such conviction.

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of or any other action relating to the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, revocation, or any other action shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs that the Board determines endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the Board, is likely to deceive, defraud, or injure patients or the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public.

(12) Failing to care adequately for patients or to conform to the minimum standards of acceptable professional nursing practice that, in the opinion of the Board, exposes a patient or other person unnecessarily to risk of harm.

(c) (1) Any person against whom the Board has taken adverse action under this chapter may take an appeal to any of the district courts in the county of residence or in Travis County, but the decision of the Board shall not be enjoined or stayed except on application to such district courts after notice to the Board.

(2) Upon application the Board may reissue a license or certificate to practice professional nursing to a person whose license has been re-

voked, suspended, or surrendered, but such application, in case of revocation, shall not be made prior to one year after the revocation was issued and shall be made in such manner and form as the Board may require. At the time the Board denies an application for reinstatement, it may set a reasonable period that must lapse before the applicant may reapply for reinstatement.

(d) The Board shall have the right and may, upon majority vote, rule that the order denying an application for a license or suspending any license be probated so long as the probated practitioner conforms to such orders and rules as the Board may set out in the terms of probation, including, but not limited to limiting the practice of the person to, or by excluding, one or more specified activities of professional nursing or requiring the person to submit to supervision, care, counseling, or treatment of a practitioner designated by the Board. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period; provided further that the Board may at any time while the probationer remains on probation hold a hearing and upon majority vote rescind the probation and enforce the Board's original action in denying or suspending such license. The said hearing to rescind the probation shall be called by the president of the Board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his or her counsel at least 20 days prior to the time set for the hearing. Notice shall be sufficient if sent by registered or certified mail to the person charged at the person's most recent address as shown in the records of the Board.

(e) The Board is charged with the duty of aiding in the enforcement of the provisions of this chapter, and may retain legal counsel to represent the Board, but prior to retaining outside legal counsel, the Board shall request the attorney general to perform such services and may only retain outside counsel if the attorney general so certifies to the Board that the attorney general cannot provide such services. The Board shall have the power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this chapter, and the Board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

(f) Any person, corporation, or other entity, however organized, shall respond promptly and fully to any request for information by the Board and to any subpoena issued by the Board. No such request or subpoena may be refused, denied, or resisted except on the grounds that such

request or subpoena calls for information within the attorney/client privilege. No other privilege shall apply to proceedings of the Board. All subpoenas issued at the request of the Board may be served either personally by a board investigator, by certified mail, or in any other manner authorized by law. The Board may pay a reasonable fee for photocopies subpoenaed at the Board's request not to exceed the amount the Board charges for copies of its records. The Board shall protect, to the extent possible, the identity of patients named in information received by the Board.

(g) A complaint and investigation concerning a registered nurse under this article and all information and materials compiled by the Board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252 17a, Vernon's Texas Civil Statutes), and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the Board or its employees or agents involved in licensee discipline except that this information may be disclosed to:

- (1) persons involved with the Board in a disciplinary action against the nurse;
- (2) professional nursing licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes);
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(h) The filing of formal charges against a registered nurse by the Board, the nature of those charges, disciplinary proceedings of the Board, and final disciplinary actions, including warnings and reprimands, by the Board are not confidential and are subject to disclosure in accordance with Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252 17a, Vernon's Texas Civil Statutes).

(i) If the Board takes a final disciplinary action, including a warning or reprimand, against a registered nurse under this article, the Board shall immediately send a copy of the Board's final order to the nurse and to the last known employer of the nurse.

(j) The Board is entitled to obtain criminal conviction record information maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division to investigate a person who applies for a license or requests a determination of eligibility for a license or who is subject to investigation by the Board in connection with a complaint or a formal charge filed against the person. The Department of Public Safety may not provide the Board with the criminal conviction record information of a person unless the information relates to:

- (1) a felony;

- (2) a misdemeanor that involves moral turpitude;
- (3) an offense involving the abuse of drugs, including alcohol; or
- (4) conduct resulting in revocation of probation imposed under a conviction for conduct or an offense listed in Subdivision (1), (2), or (3) of this subsection.

**Art. 4525.1. PENALTIES AND SANCTIONS.** (amended/added by HB 756)

(a) If the Board finds a person has committed any act set forth in Subsection (b), Article 4525, Revised Statutes, or has violated any provision of this chapter or a rule or order of the Board, it shall enter an order imposing one or more of the following:

(1) deny the person's application for a license, license renewal, or temporary permit;

(2) issue a written warning;

(3) administer a public reprimand;

(4) limit, or restrict the registered nurse's license, including limiting the registered nurse's practice to, or excluding it from, one or more specified activities of professional nursing or stipulating periodic Board review;

(5) suspend the registered nurse's license;

(6) revoke the registered nurse's license;

(7) require the registered nurse to submit to care, counseling, or treatment of health providers designated by the Board as a condition for the issuance or renewal of a license;

(8) require the registered nurse to participate in a program of education or counseling prescribed by the Board;

(9) require the registered nurse to practice under the direction of a registered nurse designated by the Board for a specified period of time;

(10) require the registered nurse to perform public service considered appropriate by the Board; or

(11) assess a monetary fine.

(b) The Board may probate any penalty imposed on the registered nurse.

(c) The Board in its discretion may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines the registered nurse is competent to resume practice.

(d) When the Board suspends, revokes, or accepts surrender of a license, it may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

(e) The schedule of sanctions adopted by the Board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

**Art. 4525.2. COMPLAINT AND INVESTIGATION.** (amended/added by HB 756)

(a) Any person may file a complaint against a registered nurse with the Board, or the Board may file a complaint on its own initiative. The complaint shall be in writing and signed by the complainant.

(b) Except as otherwise provided by this article, all investigations shall be conducted by the Board or persons authorized by the Board to conduct them. Each complaint against a registered nurse that requires a determination of professional nursing competency shall be reviewed by a board member, consultant, or employee with professional nursing background considered sufficient by the Board.

(c) On the filing of a complaint, the Board may conduct a preliminary investigation into the identity of the person named or described in the complaint. After the preliminary investigation, unless it would jeopardize an investigation, the Board shall notify the registered nurse that a complaint has been filed and the nature of the complaint. The Board shall make an initial investigation of the complaint to determine if formal charges should be filed charging the registered nurse with having committed an act or acts prohibited by Subsection (b), Article 4525, Revised Statutes, or that violate a statute, board rule, or board order. The first consideration of the Board shall be whether the registered nurse's continuing to practice professional nursing poses a risk of harm to clients or other persons.

**Art. 4525.3. AGREED DISPOSITION.** (amended/added by HB 756)

(a) The Board may, unless precluded by law or this chapter, make a disposition of any complaint by stipulation, agreed settlement, agreed order, or dismissal.

(b) An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of professional nursing. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Civil Evidence, and Rule 408, Texas Rules of Criminal Evidence.

(c) This article does not apply to a licensee who has previously entered into an agreed disposition with the Board of a different disciplinary matter or whose license the Board is seeking to revoke.

**Art. 4525.4. RIGHTS OF REGISTERED NURSE.** (amended/added by HB 756)

(a) Except in the case of a temporary suspension authorized under this chapter or action taken in accordance with the terms of an agreement between the Board and a licensee, a revocation, suspension, or other disciplinary action relating to a license is not effective unless, before Board proceedings are instituted:

(1) the Board has served notice to the registered nurse of the facts or conduct alleged to warrant the intended action; and



(2) the registered nurse was given an opportunity to show compliance with all requirements of law for the retention of the license whether in writing or through informal meeting.

(b) If an informal meeting is held, any board member, staff member, or representative of the Board in attendance at the meeting shall be considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 17 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

**Art. 4525.5. INITIATION OF FORMAL CHARGES.** (amended/added by HB 756)

(a) If the Board's initial investigation reveals probable cause that the registered nurse committed an act or acts prohibited by Subsection (b), Article 4525, Revised Statutes, or that violate a statute, board rule, or board order, proceedings shall be initiated against the registered nurse unless there is an agreed disposition of the complaint under Article 4525.3, Revised Statutes. Proceedings shall be initiated by the Board or its duly authorized representative by filing formal charges against the registered nurse. A copy of the formal charges shall be served on the registered nurse or the nurse's counsel of record.

(b) Formal charges shall be in writing and shall allege with reasonable certainty the specific act or acts relied on by the Board to constitute a violation of a specific statute, board rule, or board order. The formal charges shall be specific enough to enable a person of common understanding to know what is meant by the formal charges and shall contain a degree of certainty that will give the person who is the subject of the formal charges notice of the particular act or acts alleged to be a violation of a specific statute, board rule, or board order.

(c) The Board shall adopt reasonable rules to promote discovery by all parties to contested cases.

**Art. 4525.6. HEARINGS.** (amended/added by HB 756)

(a) The Board by rule shall adopt procedures governing formal disposition of a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). A formal hearing shall be conducted by the State Office of Administrative Hearings.

(b) Not later than the 30th day after receiving a written request from a licensee who is the subject of formal charges filed under Article 4525.5, Revised Statutes, or from the licensee's counsel of record and subject to any other privileges or restrictions set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the Board shall provide the licensee with access to all known exculpatory information in its possession and all information in its possession that the Board intends to offer into evidence in presenting its case in chief at the con-

tested hearing on the complaint. However, the Board is not required to provide board investigative reports or investigative memoranda, the identity of nontestifying complainants, attorney-client communications, attorney-work product, or other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Civil Evidence. The furnishing of information does not constitute a waiver of privilege or confidentiality under this article, this chapter, or other applicable law.

(c) In all hearings under this article, the registered nurse shall have the right to appear either personally or by counsel or both.

**Article 4525a. PROFESSIONAL NURSE REPORTING.** [amended/added by HB 756: 4525a. B 1-4, 6A, 11(c), 12(a) & (b), 12A] [amended/added by SB 519: 4525a. B1B]

### Sec. 1.

Each registered nurse having reasonable cause to suspect that a registered nurse has exposed or is likely to expose a patient or other person unnecessarily to a risk of harm, has engaged in unprofessional conduct, has failed to care adequately for a patient, or has failed to conform to the minimum standards of acceptable professional nursing practice, or that a registered nurse's practice is or is likely to be impaired by chemical dependency shall report in a signed, written report to the Board the identity of the nurse and such additional information as the Board may require.

#### Sec. 1A.

A professional nursing peer review committee operating under Article 4525b, Revised Statutes, that finds a registered nurse exposed or is likely to expose a patient or other person unnecessarily to a risk of harm, engaged in unprofessional conduct, failed to care adequately for a patient, or failed to conform to the minimum standards of acceptable professional nursing practice, or that a registered nurse's practice is or is likely to be impaired by chemical dependency shall report in a signed, written report to the Board the identity of the nurse and such additional information as the Board may require. The report shall include what corrective action was taken against the nurse and whether the committee recommends the Board take formal disciplinary action against the nurse.

#### Sec. 1B. Reports Regarding Nursing Students.

(a) A professional nursing educational program or a registered nurse who has reasonable cause to suspect that the ability of a professional nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall report in a signed, written report to the board the identity of the student and any additional information required for such a report by the board.

(b) In lieu of reporting to the board, a registered nurse required to report under this section may report the student to the professional nursing educational program in which the student is enrolled.

(c) In this section:

(1) "Professional nursing educational program" means a board-accredited educational program leading to initial licensure as a registered nurse.

(2) "Professional nursing student" means an individual who is enrolled in a professional nursing educational program.

## Sec. 2.

(a) Each hospital, health science center, nursing home, home health agency, other health care facility, state agency, political subdivision, school of professional nursing, temporary nursing service, or person that employs, hires, or contracts for the services of registered nurses that terminates, suspends for more than 7 days, or takes other substantive disciplinary action as defined by the Board against a registered nurse because the registered nurse has exposed or is likely to expose a patient or other person unnecessarily to a risk of harm, has engaged in unprofessional conduct, has failed to care adequately for a patient, or has failed to conform to the minimum standards of acceptable professional nursing practice or because the registered nurse's practice is or is likely to be impaired by chemical dependency shall report in writing to the Board the identity of the nurse and such additional information as the Board may require.

(b) Each hospital, nursing home, health science center, home health agency, other health-care facility, state agency, political subdivision, school of professional nursing, temporary nursing service, or person that regularly employs, hires, or otherwise contracts for the services of 10 or more registered nurses shall develop a written plan for identifying and reporting registered nurses in its service who expose or are likely to expose patients or other persons unnecessarily to a risk of harm, engage in unprofessional conduct, fail to care adequately for a patient, or fail to conform to the minimum standards of acceptable professional nursing practice, or whose practice is or is likely to be impaired by chemical dependency. The plan must include an appropriate process for the review of any incident reportable under this section by a professional nursing peer review committee established and operated under Article 4525b, Revised Statutes, and for the affected nurse to submit rebuttal information to that committee. The Board shall enter into memoranda of understanding with any state agency that licenses, registers, or certifies health-care facilities or agencies or surveys such facilities or agencies with respect to professional nursing care as to how that state agency can promote compliance with this subsection.

(c) The requirement that a report to the Board be reviewed by a professional nursing peer review committee applies only to a required report, and review by the peer review committee is only advisory. The

requirement may not be construed as subjecting an employer's or other person's administrative decision to discipline a registered nurse to the peer review process or as preventing an employer or other person from taking disciplinary action before review by the peer review committee is conducted. The review by the peer review committee established under Subsection (b) of this section must include a determination as to whether or not the nurse undergoing review exposed or was likely to expose a patient or other person unnecessarily to risk of harm, engaged in unprofessional conduct, failed to care adequately for a patient, or failed to conform to the minimum standards of acceptable professional nursing practice, or as to whether the registered nurse's practice is or is likely to be impaired by chemical dependency. The peer review committee's determination shall be included in the report made to the Board under Subsection (a) of this section.

### Sec. 3.

Each professional association of registered nurses or any organization that conducts a certification or accreditation program for registered nurses that expels, decertifies, or takes any other substantive disciplinary action, as defined by the Board, against a registered nurse as a result of the registered nurse's failure to conform to the minimum standards of acceptable professional nursing practice shall report in writing to the Board the identity of the nurse and such additional information as the Board may require.

### Sec. 4.

Each state agency that licenses, registers or certifies hospitals, nursing homes, health science centers, home health agencies, other health-care facilities or agencies, or surveys such facilities or agencies with respect to quality of professional nursing care provided, unless otherwise expressly prohibited by state or federal law, shall report in writing to the Board any registered nurse that it has reason to believe exposed or is likely to expose patients or other persons unnecessarily to a risk of harm, engaged in unprofessional conduct, failed to care adequately for a patient, or failed to conform to the minimum standards of acceptable professional nursing practice, or that the registered nurse's practice is or is likely to be impaired by chemical dependency.

### Sec. 5.

(a) Every insurer providing professional liability insurance to a professional nurse covering claims arising from providing or failing to provide professional nursing care shall submit to the Board the report or data required by this section at the time prescribed.

(b) The report or data shall be provided with respect to a complaint filed against an insured in court, if the complaint seeks damages relat-

## INTRODUCTION TO A SIX-STEP DECISION MAKING MODEL FOR DETERMINING RN SCOPE OF PRACTICE

The Texas Board of Nurse Examiners (BNE) receives in excess of 1,100 practice calls per month. The majority inquire if an issue is within the scope of nursing practice. The BNE has developed a Decision Making Model to empower each registered nurse to take the tools available to them and to make decisions in appropriately determining the scope of practice. The BNE recognizes that professional nursing practice is a dynamic, ever-changing process that must be responsive to societal needs, new technology, research findings and new & emerging trends and issues in health care.

Most practice decisions can be made by professional nurses without consultation with the BNE staff. In fact, the process outlined in this model is the one BNE staff uses to assist RNs in their decision making. This model is offered to RNs to enable independent decision making.

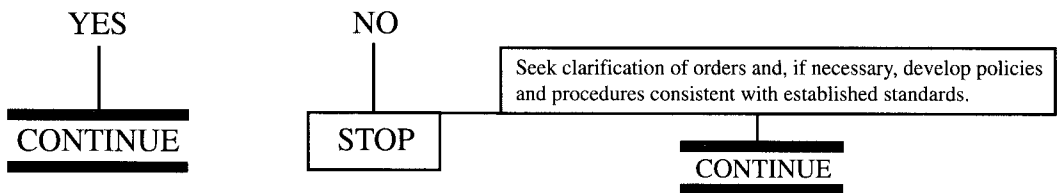
The mission of the Board of Nursing is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a professional registered nurse (RN) in the state of Texas is competent to practice safely. The BNE is committed to proactive regulation by educating registered nurses to make decisions which support safe nursing practice.

### SIX-STEP DECISION MAKING MODEL FOR DETERMINING RN SCOPE OF PRACTICE

1. Is the activity consistent with the Nursing Practice Act, Rules & Regulations, and Board Position Statements?



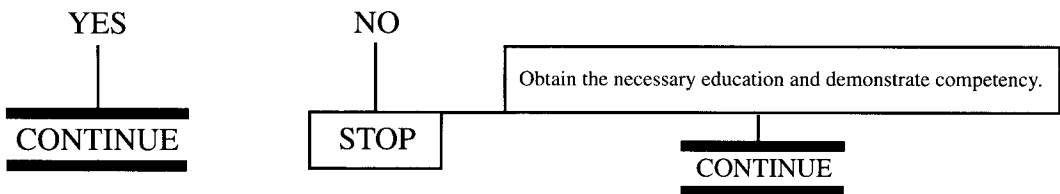
2. Is the activity appropriately authorized by valid order/protocol and in accordance with established policies and procedures?



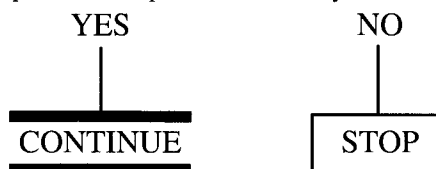
3. Is the act supported by either research reported in nursing & health-related literature or in scope of practice statements by national nursing organizations?



4. Do you possess the required knowledge and have you demonstrated the competency required to carry out this activity safely?



5. Would a reasonable and prudent nurse perform this activity in this setting?



6. Are you prepared to assume accountability for the provision of safe care and the outcome of the care rendered?



## A SIX-STEP DECISION-MAKING MODEL FOR DETERMINING RN SCOPE OF PRACTICE

If you have a question about nursing practice, use this model by following each step. If you are unable to answer your question after going through each step, you may send a written request to the BNE for an opinion. Please include appropriate documentation of issues addressed in each step of the model.

1. Is the act consistent with the Texas Nursing Practice Act? Do the Board's rules or position statement address this specific act? (*This may be all the information you need to make your decision. If not, continue to the next step.*)

Resource documents you might need are listed below:

- a. Nursing Practice Act: Article 4518, Sec 50.
- b. Standards of Professional Nursing: §217.11.
- c. Unprofessional conduct: §217.13
- d. Delegation of Selected Tasks by Professional Nurses to Unlicensed Personnel: §218.
- e. BNE Position Statements - Available upon request.

*If NO, the act is NOT within your scope of practice without the above. If YES, continue to the next step.*

2. Is the activity appropriately authorized by a valid order when necessary, and in accordance with appropriately established policies and procedures? Clarification of the order(s) should be sought as needed. §217.11(5) states the RN must:

"clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the RN makes the decision not to administer the medication or treatment"

*If NO, the act is NOT within your scope of practice without the above. If YES, continue to the next step.*

3. Is the act supported by positive and conclusive data from nursing literature, nursing research, and/or research from a health related field. Has a national nursing organization issued a position statement on this practice?

*If NO, the act is NOT within your scope of practice without the above. If YES, continue to the next step.*

4. Do you personally possess current clinical competence to perform safely from knowledge acquired in a basic nursing education program, post-basic program, or continuing education program? Documentation to validate competency should be maintained in accordance with agency/facility policy and procedure.

*If NO, the act is NOT within your scope of practice without the above. If YES, maintain documented evidence and continue on.*

5. Is the performance of the act within the accepted "standard of care" which would be provided in similar circumstances by reasonable and prudent nurses who have similar training and experience? §217.11(1) states the RN shall:

"know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the RN's current area of nursing practice"

*If NO, the act is NOT within your scope of practice. Performance of the act may place both the nurse and patient at risk. If YES, continue on.*

6. Are you prepared to accept the consequences of your actions?

*If NO, the act is NOT within your scope of practice. If YES then:*

- a. Perform the act - based upon valid order when necessary, and in accordance with appropriately established policies and procedures.
- b. Assume accountability for provisions of safe care.

### ACKNOWLEDGEMENTS

Kentucky State Board of Nursing  
North Carolina State Board of Nursing  
Ohio Board of Nursing Newsletter, 11/94  
ANA, Professional Standards of Practice  
Paper prepared by Barbara Quick, BS, RN  
Masters Student, University of Texas, Fall, 1994

Florida State Board of Nursing  
The National Council of State Board of Nursing  
The Pennsylvania State Board of Nursing - March 18, 1992  
Nevada State Board of Nursing: "Determining Your Scope of Practice", 12/94

ing to the insured's conduct in providing or failing to provide professional nursing care, and with respect to settlement of a claim or lawsuit made on behalf of the insured.

(c) If a registered nurse named as a defendant in a claim arising from providing or failing to provide professional nursing care does not carry or is not covered by professional liability insurance or is insured by a nonadmitted carrier, the information required to be reported under this section shall be the responsibility of the registered nurse.

(d) The following report or data shall be furnished by an insurer or nurse under this section to the Board within 30 days after date of receipt by the insurer of a complaint:

- (1) the name of the person against whom the claim is filed;
- (2) the policy number;
- (3) the policy limits;
- (4) a copy of the petition;
- (5) a copy of the answer; and
- (6) other pertinent data and information within the knowledge of the person required to make the report, as the Board may require.

(e) The following report or data and information shall be furnished by an insurer or nurse under this section to the Board within 30 days after the date of a judgment, dismissal, or settlement of suit involving the insured or nurse or settlement of any claim on behalf of the insured or nurse without the filing of a lawsuit:

- (1) The date of the judgment, dismissal, or settlement;
- (2) whether an appeal has been taken and by which party;
- (3) the amount of the settlement or judgment against the insured or nurse; and
- (4) other pertinent information within the knowledge of the person required to make the report, as the Board may require.

## Sec. 6.

Not later than the 30th day after the date on which a person known to be a registered nurse, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, is convicted of a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, or an offense involving fraud or abuse under the Medicare or Medicaid programs or after a determination by a court that adjudges or includes a finding that a registered nurse is mentally ill or mentally incompetent, whether or not the conviction, adjudication, or finding is entered, withheld, or appealed-under the laws of this state, the attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding was entered to prepare and forward to the Board certified true and correct abstract of the record of the court governing the case. The abstract must include the name and address of the nurse or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The Board shall prepare the form of the abstract and shall distribute copies of it to all district attorney and county attorney offices within this state with appropriate instructions for preparation and filing.

## Sec. 6A.

(a) The Board by rule shall adopt rules governing required reporting under this article to minimize:

- (1) unnecessary duplicative reporting; and
- (2) the reporting of minor incidents.

(b) In this section, “minor incident” means conduct that does not indicate the nurse’s continuing to practice professional nursing poses a risk of harm to a client or other person.

## Sec. 7.

A registered nurse may file a signed, written report to the appropriate licensing board to report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing professional practice.

## Sec. 8.

If a nurse required to be reported under this article is impaired or suspected of being impaired by dependency on chemicals or by mental illness, that nurse, in lieu of being reported to the Board or reviewed by a professional nursing peer review committee, may be reported to a peer assistance program approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon’s Texas Civil Statutes).

## Sec. 9.

An individual, organization, agency, facility, or other person is not liable in any civil action for failure to file a report required by this article, but the appropriate state licensing agency may take action against a licensed practitioner, agency, or facility for not reporting as required.

## Sec.10.

(a) An individual, organization, agency, facility, or other person that, without malice, makes a report required or permitted or reasonably believed to be required or permitted under this article or chapter is immune from civil liability and may not be subjected to any other retaliatory action as a result of making that report.

(b) An individual, organization, agency, facility, or other person named as a defendant in any civil action or subjected to any other retaliatory action as a result of filing a report required, permitted, or reasonably believed to be required or permitted under this article or chapter may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney’s fees and actual and punitive damages if the suit or retaliatory



action is determined to be frivolous, unreasonable, or taken in bad faith.

#### Sec. 11.

(a) No person shall suspend, terminate, or otherwise discipline or discriminate against a person reporting, without malice, under this article. A person has a cause of action against an individual, organization, agency, facility, or other person that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting under this article. The person may recover:

- (1) actual damages, including damages for mental anguish even though no other injury is shown, or \$1,000, whichever amount is greater;
- (2) exemplary damages;
- (3) costs of court; and
- (4) reasonable attorney's fees.

(b) In addition to amounts recovered under Subsection (a) of this section, a person whose employment is suspended or terminated in violation of this section is entitled to:

- (1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most current salary; and
- (2) compensation for wages lost during the period of suspension or termination.

(c) A person who sues under this section has the burden of proof, but in the event of a determination by either the Board or a court of competent jurisdiction that the report or abstract made the subject of the cause of action was authorized or required under Section 1, 1A, 2, 3, 4, 5, 6, 7, or 8 of this article and that it was made without malice, it is a rebuttable presumption that a person's employment was suspended or terminated for reporting under this article if the person is suspended or terminated within 60 days after making the report.

(d) An action under this article may be brought in the district court of the county:

- (1) in which the plaintiff resides;
- (2) in which the plaintiff was employed by the defendant; or
- (3) in which the defendant conducts business.

#### Sec. 12.

(a) The Board shall notify each registered nurse who is reported to the Board under Section 1, 1A, 2, 3, 4, or 5 of this article of the filing of the report unless doing so would jeopardize an active investigation.

(b) The registered nurse or the nurse's authorized representative is entitled on request to review any report submitted to the Board under Section 1, 1A, 2, 3, 4, or 5 of this article unless doing so would jeopardize an active investigation. The identity of the individual making or signing the report may not be revealed.

(c) The registered nurse or authorized representative may place into the record a statement of reasonable length containing the registered nurse's rebuttal of any information existing in the report. That statement shall at all times accompany that part of the report being rebutted. The Board, in investigating the report, shall review that statement and evaluate any reasons asserted by the nurse as justifying his or her conduct.

#### Sec. 12A.

(a) Except as provided by Subsections (b) and (c) of this section, a report under this article shall be handled as a complaint under Section (b), Article 4525, Revised Statutes.

(b) If the Board determines that the conduct reported does not indicate the reported nurse's continuing to practice professional nursing poses a risk of harm to clients or other persons, the Board may, with the written consent of the reported nurse and the person making the report, elect not to proceed with an investigation or to file formal charges. In such event, the Board shall keep a record of the report and shall investigate if it receives two or more reports involving separate incidents on a nurse in any five year period.

(c) The Board is not required to investigate a report filed by an insurer under Section 5 of this article, but shall maintain a record of the report and investigate if it receives two or more reports involving separate incidents on a nurse in any five year period.

#### Sec. 13.

If at any time the Board determines that a report submitted under this article is without merit, the report shall be expunged from the registered nurse's file.

#### Sec. 14.

A report required or authorized under this article and the identity of the person making the report are confidential and may not be disclosed except as follows:

(1) the Board may use the information in connection with an investigation or disciplinary action against a licensee or in the subsequent trial or appeal of a board action or order;

(2) the Board may disclose the information to a licensing or disciplinary authority of another jurisdiction;

(3) the Board may disclose the information to a peer assistance program approved by the Board under Chapter 701, of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes);

(4) the Board may disclose the information to a person engaged in bona fide research or other educational purpose if all individual-identifying information is first deleted;

(5) with respect to any report made under Section 2 of this article, the Board, on the request of any organization or other person required to report under Section 2 of this article, shall provide to the organization or person information about the allegations contained in the report, the findings of the peer review committee, and the status of the Board's investigation; or

(6) the information may be disclosed in any civil suit in which a person is named as a defendant as a result of the person making the report or in the prosecution of any cause of action based on a claim that the person making the report was subject to retaliatory action as a result of making the report.

#### Sec. 15.

(a) This article does not prevent disclosure under Article 4525, Revised Statutes, of formal charges filed by the Board or a final disciplinary action taken by the Board as a result, in whole or in part, of the submitting of a report under this article. In no event may any report or information submitted as required or authorized by this article be available for discovery or court subpoena or introduced into evidence in a professional nursing liability suit arising out of the provision or failure to provide professional nursing services.

(b) The filing of a report under this article with the Board pursuant to this article, an investigation by the Board, or any disposition by the Board does not prevent an individual, agency, facility, or other person from taking disciplinary action against a registered nurse.

(c) The reporting required under this article does not constitute state action on behalf of the person or organization reporting.

(d) The duty to report or any other provisions under this article may not be nullified through contract.

#### Sec. 16.

(a) The Board shall disseminate at least twice a year and at other times determined necessary by the Board information that is of significant interest to professional nurses and employers of professional nurses in Texas. The information shall include summaries of final disciplinary action taken against registered nurses by the Board since its last dissemination of information.

(b) The Board shall inform, in the manner it determines appropriate, registered nurses, facilities, agencies, and other persons of their duty to report under this article.

### **Article 4525b. PEER REVIEW** (amended/added by HB 756; HB 883)

#### Sec. 1. DEFINITIONS.

In this article:

(1) "Nursing peer review committee" means a committee established under the authority of the governing body of a national, state, or local nursing association, a school of nursing, the nursing staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health-care facility, or state agency or political subdivision for the purpose of conducting peer review. A nursing peer review committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other person or organization that is employed by or serves the committee in any capacity.

(2) "Peer review" means 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 accuracy of nursing assessments and observations;

(B) appropriateness and quality of the care rendered by a nurse;

(C) reports made to a nursing peer review committee concerning activities under the committee's review authority;

(D) reports by a nursing peer review committee to other committees or to the Board as permitted or required by law; and

(E) implementation of the duties of a nursing peer review committee by its members, agents, or employees.

(3) "Nurse" means a registered nurse or a licensed vocational nurse.

(4) "Nursing" means professional nursing or vocational nursing.

Sec. 1A. Membership of Committee; Due Process; Rebuttal Statement.  
(added/amended by HB 883)

A nursing peer review committee that conducts a review:

(1) that only involves the practice of professional nursing shall:  
(A) have registered nurses as three-fourths of its members;

and

(B) have only registered nurses as voting members;

(2) that involves only the practice of vocational nursing shall:

(A) have registered nurses and licensed vocational nurses as three-fourths of its members;

(B) to the extent feasible, include licensed vocational nurses as members; and

(C) have only registered nurses and licensed vocational nurses as voting members;

(3) that involves the practice of both professional nursing and licensed vocational nursing shall:

(A) have registered nurses and licensed vocational nurses as four-fifths of its members;

(B) have registered nurses as three-fifths of its members;

(C) to the extent feasible, include licensed vocational nurses as members;

(D) have only registered nurses and licensed vocational nurses as voting members when a licensed vocational nurse is being reviewed; and

(E) have only registered nurses as voting members when a

registered nurse is being reviewed;

(4) to the extent feasible, shall consist of at least one nurse who has a working familiarity with the area of nursing practice in which the nurse being reviewed practices;

(5) shall afford the nurse being reviewed minimum due process, including notice and opportunity for hearing; and

(6) shall afford the nurse the opportunity to file a rebuttal statement as provided by Section 3(c) of this article.

Sec. 1B. Employment by Two Entities; Peer Review by Both. (added/amended by HB 883)

A nurse who, as a temporary agency nurse, faculty member, or similar personnel, practices nursing for a person, educational institution, or health-care facility, agency, or entity other than the one that employs or directly compensates the nurse shall be subject to peer review by both. For the purposes of exchange of information, the peer review committee reviewing the nurse's conduct is considered as established under the authority of both. The two entities may contract with respect to which entity will conduct peer review of the nurse.

Sec. 2. Confidential Nature of Proceedings. (added/amended by HB 883)

(a) Except as otherwise provided by this article, all proceedings of a nursing peer review committee are confidential and all communications made to a nursing peer review committee are privileged. A member, agent, or employee of a nursing peer review committee or a participant in any proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(b) A person who attends a proceeding of a nursing peer review committee may not disclose or be required to disclose any information acquired in connection with or in the course of the proceeding or disclose any opinion, recommendation, or evaluation of the committee or any member of the committee.

(c) The members of a nursing peer review 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.

(d) Except as otherwise permitted by this article, all information made confidential by this section is not subject to subpoena or discovery in any civil matter, is not admissible as evidence in any judicial or administrative proceeding, and may not be introduced into evidence in a nursing liability suit arising out of the provision of or a failure to provide nursing services.

Sec. 3. (added/amended by HB 883)

(a) A nursing peer review committee shall disclose on request written or oral communications made to the committee and the records and proceedings of the committee to:

- (1) the state board of registration or licensure of any state; or
- (2) a law enforcement authority investigating a criminal matter.

(b) A nursing peer review committee may disclose written or oral communications made to the committee and the records and proceedings of the committee to:

- (1) the state board of registration or licensure of any state;
- (2) a law enforcement authority investigating a criminal matter;
- (3) the association, school, agency, facility, or other organization under whose authority the committee is established;
- (4) another nursing peer review committee;
- (5) a peer assistance program approved by the Board under Chapter 467, Health and Safety Code;
- (6) appropriate state or federal agencies or accrediting organizations which accredit health-care facilities or schools of nursing or which survey facilities for quality of care; or
- (7) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) If a nursing peer review committee discloses information under Subsection (a) of this section that could result in the reprimand, suspension, termination, or other disciplinary action of a nurse, or itself recommends or takes such action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation. The nurse shall be permitted an opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. The rebuttal statement shall be included with the information disclosed.

(d) If a committee discloses information under this section, the committee has not by that action waived the privilege of nondisclosure of committee information and proceedings.

(e) The peer review committee disclosing the information and the person receiving information disclosed under this section shall protect, to the extent possible, the identity of patients.

Sec. 4. (added/amended by HB 883)

(a) A member of a nursing peer review committee or a person participating in peer review under this article who is named as a defendant in a civil action or subjected to other retaliatory action as a consequence of the persons participation in peer review may use information that is confidential under this article in defense of the civil action or in a civil action based on an allegation of retaliation for the persons participation in peer review.

(b) If a person discloses information under this section, the person has not by that action waived the privilege of nondisclosure of all other

information privileged under this article.

Sec. 5. Civil Liability. (added/amended by HB 883)

A cause of action does not accrue against the members, agents, or employees of a nursing peer review committee or against a school of nursing, hospital, nursing home, home health agency, health science center, other health-care facility, the nursing staff of such a facility, nursing association, or other organization from any act, statement, determination or recommendation made, or act reported, without malice, in the course of peer review as defined in this article. A person who, without malice, furnishes records, information, or assistance to a nursing peer review committee is not liable in a civil action based on the person's participation or assistance in peer review and may not be subjected to retaliatory action as a result of such act.

Sec. 6. Retaliatory Actions; Counterclaims. (added/amended by HB 883)

A nursing peer review committee, a person participating in peer review, or an organization, named as a defendant in any civil action or subjected to other retaliatory action as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, reasonable attorneys fees and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

Sec. 7. (added/amended by HB 883)

(a) A court may not enjoin the activities of a nursing peer review committee under this article.

(b) The provisions of this article may not be nullified by contract.

Sec. 8. Consultation in Adoption of Rules. (added/amended by HB 883)

In adopting rules under this article, the board shall consult with the Board of Vocational Nurse Examiners.

**Article 4525c. MEMORANDUM OF UNDERSTANDING.** (amended/added by HB 2180)

The Board shall sign a memorandum of understanding with state agencies that license, register, or certify a facility required by law to have a registered nurse peer review committee. The memorandum of understanding shall:

(1) state the actions the Board and agency shall take to encourage compliance with the requirement to have a registered nurse peer review committee; and

(2) be adopted as a rule of the Board and the agency.

**Article 4525d. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT.** (added/amended by HB 883)

(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a registered nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Article 4525a, Revised Statutes, if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes grounds for reporting the nurse to the board or is a violation of this chapter or a rule of the board.

(b) An act by a person under Subsection (a) does not constitute a violation of this article if:

(1) a nursing peer review committee under Article 4525b, Revised Statutes, finds that the act or omission the nurse refused to commit was not conduct that is reportable to the board under Section 1A, Article 4525a, Revised Statutes; or

(2) a nursing peer review committee under Article 4525b, Revised Statutes, finds that the act or omission the nurse refused to commit was conduct that is reportable to the board and the person rescinds any disciplinary or discriminatory action taken against the nurse, compensates the nurse for lost wages, and restores to the nurse any lost benefits.

(c) An appropriate licensing agency may take action against a person who violates this article.

(d) In this article, "person" includes an individual, organization, agency, facility, or other entity.

**Article 4525e. TEMPORARY SUSPENSION OF LICENSE.** (amended/added by HB 2180)

If the majority of the Board or a three-member committee of board members designated by the Board determines from the evidence or information presented to it that a registered nurse by continuation in practice would constitute a continuing and imminent threat to the public welfare, the Board or the three-member committee shall temporarily suspend the license of the registered nurse. The license may be suspended under this article without notice or hearing on the complaint, provided institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under this chapter and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments. The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if probable cause exists that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of temporary suspension.

**Article 4526. LICENSE RENEWAL.** (amended/added by HB 2180)



The Board by rule may adopt a system under which licenses expire on various dates during the year. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half the amount charged by the Board or a designee for examination for the license. If a license has been expired for 90 days but less than one year, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the amount charged by the Board or a designee for examination for the license. The Board shall by rule set a length of time beyond which an expired license may not be renewed. The Board may establish by rule additional requirements that shall apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the Board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the Board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the Board a fee that is equal to the initial fee for the license and the renewal fee. At least 30 days before the expiration of the person's license, the Board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the Board. If any registered nurse continues to practice professional nursing beyond the time for which the nurse is registered, the nurse shall be considered to be an illegal practitioner and the license may be revoked or suspended.

**Article 4526b. INACTIVE STATUS LIST.** (amended/added by HB 756)

Any nurse licensed under the provisions of this law, not actively or actually engaged in the practice of professional nursing, at the expiration of any such license upon written request to the Board in such form and manner as the Board shall determine may be placed on an inactive status list which shall be maintained by the Board. No professional nurse on such inactive status list shall perform any professional nursing services or work or violate any of the provisions of this law or any rule or regulation of the Board so long as on such inactive status. At any time such person desires to reenter the active practice of professional nursing or again begin performing or offering to perform professional nursing services, such person shall notify the Board and upon payment of appropriate fees and meeting requirements as determined by the Board shall be removed from the inactive status list. The Board shall adopt rules permitting a nurse on inactive status under this section who is 65 or older to use the title "Registered Nurse Retired" or "RN Retired."

**Article 4527. FEES.** (amended/added by HB 2180 and HB 756)

Sec. 1.

The Board by rule shall establish reasonable and necessary fees so that

the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this chapter.

The Board may not set a fee for an amount less than the amount of that fee on September 1, 1993.

### Sec. 2.

The Board may receive gifts, grants, or other funds or assets.

All fees received by said Board under this law shall be placed in the State Treasury to the credit of a special fund to be known as the "Professional Nurse Registration Fund" and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, all fees collected by the Board and deposited in the Professional Nurse Registration Fund shall be expended as specified by itemized appropriation in the General Appropriations Act and shall be used by the Board, and under its directions, only for purposes of carrying out this Act. The Board may charge a fee in the amount necessary to produce and disseminate to its licensees the information required under Section 16(a), Article 4525a, Revised Statutes. Such fees shall be expended for a periodic newsletter. Any balance remaining from this fee at the end of a fiscal year will be carried forward for the purposes stated.

### Sec. 3.

The Board may charge a fee in the amount necessary to produce and disseminate to its licensees the information required under Section 16(a), Article 4525a, Revised Statutes. Such fees shall be expended for a periodic newsletter. Any balance remaining from this fee at the end of a fiscal year will be carried forward for the purposes stated.

## **Article 4527a. PROHIBITED PRACTICES**

### Sec. 1.

No person may sell, fraudulently obtain, or fraudulently furnish any nursing diploma, license, renewal license, or record, or assist another to do so.

### Sec. 2.

No person may practice professional nursing under cover of any diploma, license, or record

- (1) obtained unlawfully or fraudulently; or
- (2) signed or issued unlawfully or under false representation.

### Sec. 3.

No person, unless he or she is licensed under this chapter, may practice professional nursing or use in connection with his or her name the title "registered nurse," "professional nurse," or "graduate nurse," the ab-

breviation "R.N.," or any designation tending to imply that he or she is a licensed registered nurse.

#### Sec. 4.

No person may practice professional nursing during the time his or her license is suspended or revoked.

#### **Article 4527b. PENALTIES.** (amended/added by HB 2180)

(a) A person who violates any provision of Article 4527a, Revised Statutes, commits an offense. Except as provided by this section, an offense under that article is a Class A misdemeanor. If it is shown in the trial of a person allegedly in violation of that article that the person has once before been convicted of a violation of Article 4527a, on conviction the person shall be punished for a third degree felony. Each day of violation constitutes a separate offense. On final conviction of an offense under that article, a person forfeits all rights and privileges conferred by virtue of licensure under this chapter.

(b) A person who violates Article 4527a, Revised Statutes, is liable to the state for a civil penalty that does not exceed \$1,000 a day. The civil penalty may be collected in a suit initiated by the Board.

#### **Article 4527c. INJUNCTIVE RELIEF.**

In addition to any other action, proceedings, or remedy authorized by law, the Board shall have the right to institute any action in its own name to enjoin any violation or any provision of this law or rule or regulation of the Board, and in order for the Board to sustain such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof; provided, however, that in any such proceeding for injunction the defendant may assert and prove as a complete defense to such action that the actions or proceedings of the Board were (1) arbitrary or capricious; (2) contrary to legal requirements; or (3) conducted without due process of law. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The Board shall not be required to give any appeal bond in any cause arising under this law.

#### **Article 4527d. ADMINISTRATIVE PENALTIES.** (amended/added by HB 2180)

(a) The Board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for each violation may be in an amount not to exceed \$2,500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The executive director who determines that a violation has occurred may issue to the Board a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the Board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law. The administrative law judge shall promptly issue to the Board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the Board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the

order.

(j) Within 30 days after the date the Board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the executive director by certified mail.

(l) The executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the Board:

- (1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and
- (2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may

uphold or reduce the amount

of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

#### **Article 4528. EXCEPTIONS.**

This law shall not be construed to apply to:

- (1) the gratuitous nursing of the sick by friends;
- (2) the furnishing of nursing care where treatment is by prayer or spiritual means alone;
- (3) acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners;
- (4) Licensed Vocational Nurses;
- (5) acts done by persons licensed by any board or agency of the State of Texas if such acts are authorized by such licensing statutes;
- (6) the practice of nursing that is incidental to a program of study by students enrolled in a board-accredited nursing education program leading to an initial license as a professional nurse;
- (7) the practice of nursing by any registered nurse licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to provide care to a patient being transported into, out of, or through the state, to provide professional nursing consulting services, or to attend or present continuing nursing education programs; or
- (8) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold himself or herself out as a registered or professional nurse unless that person is licensed in another state.

# EXCERPTS FROM THE BOARD OF NURSE EXAMINERS'

## *Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice*

### NOTE:

Registered Nurses (RNs) are required to know and conform to all Board rules as well as the Nursing Practice Act (NPA) and all other laws affecting the nurse's current area of practice. Complete Board rules are found at 22 Texas Administrative Code §211 et seq., and may be purchased for a nominal fee from the Board's office. If interested, please see the Board's mailing address on the front of this copy of the NPA to make your written request.

The following excerpts, which are of particular interest to practicing nurses and nurse employers, are reprinted in this pamphlet as a convenience. These rules may be amended by the Board any time necessary to keep pace with evolving practice. To make it easier to follow those changes, any rule changes are published in the most current RN Update of that time.

The legislature may amend the NPA during any session, generally every two years. Therefore, this pamphlet should be replaced at least every two years and used together with subsequent issues of RN Update that provide the most up-to-date rule changes.

§217.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Direct supervision"—Requires a registered professional nurse to be working on the same unit and readily available to provide consultation and assistance.

§217.3. Temporary Permit.

(a) United States and Canadian candidates eligible for temporary permits.

(1) New graduates of accredited nursing programs in the United States or Canada who are applying for initial licensure in Texas will be issued a temporary permit after they have been determined eligible.

(2) The permit, which is not renewable, is valid for 90 days from the date of eligibility or until NCLEX-RN results are received.

(3) The permit holder must work under the direct supervision of a registered professional nurse who is working on the same unit and is readily available to the GN for consultation and assistance. The GN shall not be placed in a charge position or work in independent practice settings.

§217.10. Change of Name and/or Address.

(a) If a registered nurse/candidate for registration should change his/her name through marriage, divorce, religious order, or for any other reason, a request for a change of name should be sent to the board's office within 10 days of the change of name. An affidavit form will then be mailed to the petitioner. Upon receipt of the duly executed affidavit, the change of name will be entered on the records in the office of the board.

(b) A registered nurse shall notify the board in writing within 10 days of a change of address, providing the old address, the new address and the license number.

§217.11. Standards of Professional Nursing Practice. The responsibility of the Texas Board of Nurse Examiners (board) is to regulate the practice of professional nursing within the State of Texas. The purpose of defining standards of practice is to identify roles and responsibilities of the registered professional nurse (RN) in any health care setting. The standards for professional nursing practice shall establish a minimum acceptable level of professional nursing practice. The RN shall:

(1) know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all Federal, State, or local laws, rules or regulations affecting the RN's current area of nursing practice;

(2) provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, or health problems of the client served;

(3) use a systematic approach to provide individualized, goal-directed nursing care by:

(A) performing nursing assessments regarding the health status of the client;

(B) making nursing diagnoses which serve as the basis for the strategy of care;

(C) developing a plan of care based on assessment and nursing diagnosis;

(D) implementing nursing care; and

(E) evaluating the client's responses to nursing interventions;



(4) institute appropriate nursing intervention which might be required to stabilize a client's condition and/or prevent complications;

(5) clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the RN makes the decision not to administer the medication or treatment;

(6) know the rationale for and the effects of medications and treatments and shall correctly administer the same;

(7) accurately report and document the client's symptoms, responses, and status;

(8) implement measures to promote a safe environment for clients and others;

(9) implement measures to prevent exposure to infectious pathogens and communicable conditions;

(10) respect the client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information;

(11) promote and participate in client education and counseling based on health needs;

(12) collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;

(13) consult with, utilize and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(14) when acting in the role of nurse administrator, assure that adequate strategies are in place to verify the current Texas licensure and credentials of personnel for whom he/she is responsible;

(15) make assignments to others that take into consideration client safety and which are commensurate with the educational preparation, experience, knowledge and ability of the persons to whom the assignments are made;

(16) supervise nursing care provided by others for whom the RN is administratively or professionally responsible;

(17) accept only those nursing assignments that are commensurate with one's own educational preparation, experience, knowledge and ability;

(18) obtain instruction and supervision as necessary when implementing nursing procedures or practices;

(19) be responsible for one's own continuing competence in nursing practice and individual professional growth;

(20) report unsafe nursing practice by an RN which a nurse has reasonable cause to suspect has exposed or is likely to expose a client unnecessarily to risk of harm as a result of failing to provide client care that conforms to the minimum standards of acceptable and prevailing professional practice. The RN should report unsafe practice conditions or other practitioners to the appropriate authority or licensing board. (Repeal and new rule adopted 12/92.)

§217.12. Designations for Registered Nurse/Titles Deemed Misleading.

(a) A person who holds a valid current license issued by the Texas Board of Nurse Examiners may use the title registered nurse or R.N.

(b) Candidates for the National Council Licensure Examination for Registered Nurses holding a valid Texas permit may use the initials G.N. or the title graduate nurse.

(c) A person who is eligible for licensure by endorsement in Texas, holding a valid Texas permit, may use the title registered nurse or R.N.

(d) No other person, other than designated in (a), (b), and (c), of this section, may use, where applicable, titles or abbreviations such as staff nurse, head nurse, charge nurse, supervisor of nursing or nurses, or any other title tending to imply to the public that the person holds a license to practice professional nursing in Texas.

(e) Any person other than as permitted by law or rule who uses any of the above titles or abbreviations deemed by the board misleading or implying that the individual is a licensed professional nurse may be subject to potential violation or prosecution under the applicable law. (4/78)

(f) If a registered nurse holds herself or himself out to the public as being engaged in the practice of professional nursing, or uses the term registered nurse or "RN" or any combination or variation of those terms and abbreviations, alone or in combination with any other terms, then they must practice in accordance with the Nurse Practice Act and the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice. (4/92)

§217.13. Unprofessional Conduct. The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to

identify unprofessional or dishonorable behaviors of the registered professional nurse (RN) which the board believes are likely to deceive, defraud or injure clients or the public. These behaviors include but are not limited to:

(1) failing to know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all Federal, State, or local laws, rules or regulations affecting the RN's current area of nursing practice;

(2) failing to assess and evaluate a client's status or failing to institute nursing interventions which might be required to stabilize a client's condition or prevent complications;

(3) failing to administer medications or treatments or both in a responsible manner;

(4) failing to accurately or intelligibly report and/or document a client's status including signs, symptoms, or responses and the nursing care delivered;

(5) failing to make entries, destroying entries, and/or making false entries in records pertaining to care of clients;

(6) causing or permitting physical, emotional or verbal abuse or injury to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;

(7) disclosing confidential information or knowledge concerning the client except where required or allowed by law;

(8) when acting in the role of nurse administrator, failing to assure that strategies are in place to verify the current Texas licensure/credentials of personnel for whom he/she is administratively responsible;

(9) delegating nursing care functions to a person who lacks the educational preparation, experience, knowledge or ability to perform these functions;

(10) making assignments of nursing care to a person who lacks the ability or knowledge to perform such assignments, or failing to supervise the delivery of nursing care for which the RN is responsible;

(11) accepting an assignment when one's physical or emotional condition prevents the safe and effective delivery of care or accepting an assignment for which one lacks the educational preparation, experience, knowledge or ability;

(12) failing to obtain instruction or supervision when implementing nursing procedures or practices for which one lacks the educational preparation, ability, knowledge and/or experience;

(13) leaving a nursing assignment without notifying one's immediate supervisor;

(14) failing to follow the policy and procedure for the wastage of medications at the facility where the RN was employed or working at the time of the incident;

(15) misappropriating, in connection with the practice of nursing, medications, supplies, equipment or personal items of the client, employer, or any other person or entity or failing to take precautions to prevent such misappropriation;

(16) passing, or attempting to pass forged, altered, falsified or unauthorized prescription(s) by electronic, telephonic, written communication or any other means;

(17) providing information which was false, deceptive, or misleading in connection with the practice of professional nursing or failing to answer specific questions that would have affected the decision to license, employ, certify or otherwise utilize an RN;

(18) offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services;

(19) physically, emotionally or financially exploiting the client or the client's significant other(s);

(20) failing to report to the board or to a board approved peer assistance program, if applicable, within a reasonable time of the occurrence, any violation or attempted violation of the Nurse Practice Act or duly promulgated rules, regulations or orders;

(21) failing to report the unauthorized practice of professional nursing;

(22) failing to repay a guaranteed student loan, as provided in Section 57.491 of the Texas Education Code. (Repeal and new rule adopted 12/92)

#### §217.15. Continuing Education.

(a) Purpose. Continuing education in nursing includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public. Pursuant to authority set forth in Texas Civil Statutes, Article 4518, §7, the board is establishing rules requiring participation in continuing education activities for license renewal. The procedures set forth in these rules pro-

vide a variety of means for licensees to comply with this requirement. The board assumes licensed nurses will maintain the high standards of the profession in selecting quality educational programs to fulfill the continuing education requirement. The board also assumes that providers will plan and implement quality educational programs which meet the criteria of the board.

(b) Requirements. Twenty contact hours of continuing education within the two years immediately preceding renewal of registration are required.

(1) Type I. Ten contact hours shall be obtained by participation in programs approved by a credentialing agency recognized by the board. The program shall meet all criteria listed in subsection (c) of this section. In addition, there shall be a nurse on the planning committee and target audience shall include nurses. The board recognizes agencies/organizations to approve providers and/or programs for Type I credit. A list of these agencies/organizations may be obtained from the board's office.

(2) Type II. The remaining 10 contact hours shall be obtained by participation in additional Type I programs or by participation in activities listed in subsection (c) of this section.

(c) Criteria for acceptable continuing education activity. The following criteria have been established to guide the licensed nurse in selecting appropriate programs and to guide the provider in planning and presenting continuing education programs. Activities which may meet these criteria include: classroom instruction, individualized instruction, academic courses, self-directed study, and institutional-based instruction.

(1) Length. The program shall be at least one contact hour (50 consecutive minutes) in length.

(2) Learner objectives.

(A) Objectives shall be written and shall be the basis for determining content, learning experience, teaching methodologies, and evaluation.

(B) Objectives shall be specific, attainable, measurable, and describe expected outcomes of the learner.

(3) Target audience. The target audience for the program is identified.

(4) Planned program. There shall be evidence of program planning based on needs of potential target audience.

(5) Content.

(A) The content shall be relevant to nursing practice and/or health care and provide for the professional growth of the licensee.

(B) Content is related to and consistent with the program objectives.

(6) Instructor qualification.

(A) There shall be documentation of the instructor's expertise in the content area. The instructor should apply principles of adult learning.

(B) If the program includes a clinical nursing component, a licensed nurse with expertise in that specific component shall provide supervision with a ratio of no more than 12 participants to one faculty.

(C) If the program includes a clinical component other than nursing, an instructor possessing the appropriate credentials of the discipline shall provide supervision.

(7) Teaching methods.

(A) Learning experiences and teaching methods shall be appropriate to achieve the objectives of the program.

(B) Principles of adult education shall be used in the design of the program.

(C) Time allotted for each activity shall be sufficient for the learner to meet the objectives of the program.

(D) A schedule of the program shall be provided which describes content with corresponding time frames.

(E) Facilities and educational resources shall be adequate to implement the program.

(8) Evaluation.

(A) Participants shall complete a written evaluation of the:

(i) teaching effectiveness of each instructor;

(ii) learner's achievement of objectives;

(iii) relevance of content to stated objectives;

(iv) effectiveness of teaching methods; and

(v) appropriateness of physical facilities and educational resources.

(B) If participation is in an academic course or other program in which grades are granted, a grade equivalent to "C" or better shall be required, or "Pass" on a Pass/Fail grading system.

(9) Records.

(A) Records of programs shall be kept by the provider for a minimum period of four years from the date of completion.

(B) Records shall include target audience, program planning materials, content, objectives, outline of instructor qualifications, teaching methods and materials, evaluation tools and summary and a list of participants.

(C) The provider shall furnish each participant a record of attendance specifying the provider; title, date and location of program; number of contact hours; and provider number, grades and organization granting approval, if applicable. This record shall be kept by the nurse for a minimum period of four years from the date of completion.

(d) Additional criteria for specific continuing education programs. In addition to those listed in subsection (c) of this section, the following guidelines shall apply to the selection and/or planning and implementation of specific CE programs:

(1) Academic course.

(A) The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course relevant to nursing practice/ health care.

(B) Participants, upon audit by the board, shall be able to present an official transcript indicating completion of the course with a grade of "C" or better, or a "Pass" on a Pass/Fail grading system.

(C) Academic courses in this category are acceptable for Type I CE credit.

(2) Individualized instruction (home study/programmed instruction). The program shall:

(A) be developed by a professional group such as an educational institution, corporation, professional association or other provider of continuing education;

(B) follow a logical sequence;

(C) involve the learner by requiring an active response to the educational materials presented;

(D) contain a means to measure achievement of learning

objectives of the program; and

(E) provide a record of attendance which complies with subsection (c)(9)(C) of this section concerning records indicating completion of the program.

(F) Up to 20 contact hours of Type I or five contact hours of Type II credit for one renewal period may be obtained through individualized instruction.

(3) Self-directed study.

(A) Program development and presentation.

(i) The program or presentation must not be a part of the licensee's primary employment responsibilities.

(ii) Credit shall be awarded only once regardless of the number of times the program/work was presented.

(iii) Upon audit by the board, the licensee must submit program objectives and an outline including date and location of the presentation not to exceed one page.

(iv) Two hours of Type II credit per program topic may be obtained through this means.

(B) Auditing of academic courses.

(i) Academic courses in nursing or health care may be audited. Audited courses meet Type II requirements.

(ii) Upon audit by the board, the licensee must submit a letter from the course instructor on the academic institution's letterhead indicating that the licensee attended the course.

(iii) Two hours of Type II credit per course may be obtained through this means.

(C) Certification.

(i) A licensee who completes the requirements for certification in a nursing specialty by a national credentialing body may receive Type II continuing education credit.

(ii) This is a one-time approval for initial certification only.

(iii) Upon audit by the board, the licensee must furnish a letter from the national specialty organization indicating initial certification.



(iv) Five hours of Type II credit for initial certification may be obtained through this means.

(D) Authorship.

(i) A licensee may receive CE credit for development and publication of a manuscript related to nursing and health care.

(ii) Credit for publication shall be awarded only once per renewal period.

(iii) Upon audit by the board, the licensee must submit a letter from the publisher indicating acceptance of manuscript for publication or a copy of the published work.

(iv) Five contact hours of Type II credit may be obtained through this means.

(4) Out-of-state programs.

(A) A continuing education program attended or undertaken in a jurisdiction outside of Texas may be accepted:

(i) for Type I credit if all criteria are met and if it is approved by one of the board's recognized credentialing agencies/organizations; and

(ii) for Type II credit if it meets the criteria listed in subsections (c) and (d) of this section concerning criteria for acceptable continuing education activity and additional criteria for specific continuing education programs.

(e) Activities which are not acceptable as continuing education. The following activities do not meet continuing education requirements for licensure renewal.

(1) Basic cardiopulmonary resuscitation (CPR) courses.

(2) Inservice programs. Programs sponsored by the employing agency to provide specific information about the work setting and orientation or other programs which address the institution's philosophy, policies and procedures; on-the-job training; basic cardiopulmonary resuscitation; and equipment demonstration are not acceptable for CE credit.

(3) Refresher courses. Programs designed to update knowledge or current nursing theory and clinical practice, which consist of a didactic and clinical component to ensure entry level competencies into professional practice are not accepted for CE credit.

(4) Orientation programs. A program designed to introduce employees to the philosophy, goals, policies, procedures, role expectations and physical facilities of a specific work place are not acceptable for CE credit.

(f) Responsibilities of individual licensee.

(1) It shall be the licensee's responsibility to select and participate in continuing education activities that will meet the criteria listed in subsection (c) of this section relating to criteria for acceptable continuing education activity.

(2) The licensee shall be responsible for maintaining a record of CE activities. These records shall document attendance as evidenced by original certificates of attendance, contact hour certificates, academic transcripts, or grade slips and copies of these shall be submitted to the board upon audit.

(3) These records shall be maintained by the licensee for a minimum of two consecutive renewal periods or four years.

(g) Relicensure process.

(1) Renewal of license.

(A) Upon renewal of the license, the licensee shall sign a statement attesting that the CE requirements have been met.

(B) The contact hours must have been completed in the biennium immediately preceding the license renewal. CE contact hours from a previous renewal period will not be accepted. Additional contact hours earned may not be used for subsequent renewal periods.

(2) Persons licensed by examination. A candidate licensed by examination shall be exempt from the CE requirement for issuance of the initial license and for the immediate renewal period following licensure.

(3) Persons licensed by endorsement. An applicant licensed by endorsement shall be exempt from the CE requirement for the issuance of the initial Texas license and for the immediate renewal period following initial Texas licensure.

(4) Delinquent license.

(A) A license that has been delinquent for less than four years may be renewed by the licensee showing evidence of having completed 20 contact hours of acceptable continuing education within two years immediately preceding the application for relicensure and by meeting all other board requirements. A licensee shall be exempt from the continuing education requirement for the immediate renewal period following renewal of the delinquent license.

(B) A license that has been delinquent for four or more years may be renewed upon completion of requirements listed in §217.7(b) of this title (relating to Failure to Renew Certificate of

Reregistration).

(5) Reactivation of a license.

(A) A license that has been inactive for less than four years may be reactivated by the licensee submitting verification of having completed at least 20 contact hours of continuing education within the past two years immediately prior to application for reactivation.

(B) A license that has been inactive for four or more years may be reactivated upon completion of requirements in §217.8(b) of this title (relating to Reactivation from Inactive Status).

(6) Reinstatement of a license. A licensee whose license has been revoked and subsequently applies for reinstatement must show evidence that the CE requirement and other board requirements have been met prior to reinstatement of the license by the board.

(h) Audit process. The board shall select a random sample of licensees for each renewal month. Audit forms shall be sent to selected licensees to substantiate compliance with the continuing education requirements.

(1) Within 30 days following notification of audit these selected licensees shall submit audit form, documentation as specified in subsections (c) and (d) of this section concerning criteria for acceptable continuing education activity and additional criteria for specific continuing education programs and any additional documentation the board deems necessary to verify compliance with continuing education requirements for the period of licensure being audited.

(2) The board shall notify the licensee of the results of the audit.

(3) Failure to notify the board of a current mailing address will not absolve the licensee from audit requirements.

(4) By this rule, an audit shall be automatic for a licensee who has been found non-compliant in an immediately preceding audit.

(5) Failure to complete the audit satisfactorily or falsification of records shall constitute unprofessional conduct and provide grounds for disciplinary action.

(i) Appeals.

(1) Any individual who wishes to appeal a determination of non-compliance with continuing education requirements must submit a letter of appeal within 20 days of notification of the audit results.

(2) The board or its designee shall conduct a review in which the appellant may appear in person to present reasons why the audit decision should be set aside or modified.

(3) The decision of the board after the appeal shall be considered final and binding.

(j) Consequences of non-compliance. Licensees found non-compliant shall be referred to the board's practice and compliance department for possible disciplinary action. (6/91)

§217.18. Copying the License/Permit/Permanent Certificate of a Registered Nurse/ Graduate Nurse.

(a) The licensee or permit holder has the responsibility to protect his or her license/permit/permanent certificate from loss and potential fraudulent or unlawful use.

(b) A licensee or permit holder shall only allow his or her license/permit/permanent certificate to be copied for the purpose of licensure verification by employers, licensing boards, professional organizations and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the board's office in writing or by phone to verify licensure. (7/95)



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**Rev. effective 9/95**