

NURSING PEER REVIEW FREQUENTLY ASKED QUESTIONS



Texas Board of Nursing

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GENERAL PEER REVIEW INFORMATION

(1) What is Peer Review? [Nursing Peer Review (NPR) §303.001(5)]

Peer review is the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by nurses, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint including:

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

A Peer Review Committee may review the nursing practice of a LVN, RN, or APN (RN with advanced practice authorization).

There are two kinds of nursing peer review:

- (1) **Incident-based (IBPR)**, in which case peer review is initiated by a facility, association, school, agency, or any other setting that utilizes the services of nurses; or
- (2) **Safe Harbor (SHPR)**, which may be initiated by a LVN, RN or APN prior to accepting an assignment or engaging in requested conduct that the nurse believes would place patients at risk of harm, thus potentially causing the nurse to violate his/her duty to the patient(s). Invoking safe harbor in accordance with rule 217.20 protects the nurse from licensure action by the BON as well as from retaliatory action by the employer.

See revised rules 217.19 (Incident-Based Nursing Peer Review and Whistleblower Protections) and 217.20 (Safe Harbor Peer Review and Whistleblower Projections) {<http://www.bon.state.tx.us/nursinglaw/rr.html>}

(2) What is a nursing peer review committee? [NPR §303.001(4); 22TAC 217.19(a)(14), 217.20(a)(14)]

It is 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 nursing peer review. The nursing peer review process is one of fact-finding, analysis, and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event.

(3) **Who must have a peer review plan? [NPR §303.0015]**

Any person or entity that employs, hires, or contracts for the services of 10 or more nurses (RNs, LVNs or any combination thereof) must have a Peer Review Plan; however, peer review of RNs is not mandatory if the facility employs less than 5 RNs. A person or entity required to have nursing peer review may contract with another entity to conduct nursing peer review.

(4) **What is the Peer Review committee's composition? (NPR §303.003)**

- NPR law, Section **303.003(a)** requires that a Nursing Peer Review Committee that conducts a review that involves the practice of registered nurses and licensed vocational nurses must have registered nurses and licensed vocational nurses as **3/4** of its members;
- NPR Law Section **303.003 (b)** requires that a Nursing Peer Review Committee that conducts a review that involves the practice of licensed vocational nurses must:
 - (a) to the extent feasible, include licensed vocational nurses as members; and
 - (b) have only registered nurses and licensed vocational nurses as voting members.
- Section **303.003(c)** requires that a Nursing Peer Review Committee that conducts a peer review that involves the practice of professional nursing (including a RN with advanced practice authorization) must:
 - (a) have registered nurses as **2/3** of its members;
 - (b) have only registered nurses as voting members; and
 - (c) where feasible, have at least one nurse with a working familiarity of the area of nursing practice of the nurse being reviewed. If APN practice is reviewed, preferably have an APN with authorization in the same role and specialty on peer review or advising peer review.

In addition, rule **217.19(d)(3)(B)** and rule **217.20(h)(2)(B)-(C)** exclude from membership **or attendance** at the Peer Review Committee hearing any person(s) with administrative authority for personnel decisions directly relating to the nurse. A person with administrative authority over the nurse may only appear as a fact witness.

(5) **What part of the Peer Review process is confidential? [NPA §303.006-.007; §303.0075, rule 217.19(h), §217.20(j)]**

All proceedings of the nursing Peer Review committee are confidential and all communications made to the committee are privileged. All information made confidential 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 failure to provide, nursing services. SB993 (80th Legis Session (2007)) added **§303.0075** that addresses protection of information shared between the peer review committee and a patient safety committee under **§ 301.457(g)**.

(6) **To whom may the SHPR Committee disclose privileged information(NPR §303.007)?**

Upon written request, the committee shall disclose written or oral communications 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.

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) a licensing agency of any state;
- (2) a law enforcement agency investigating a criminal matter;
- (3) the association, school, agency, facility, or other organization under whose authority the committee is established (i.e., employer);

- (4) another nursing peer review committee;
- (5) a peer assistance program approved by the board under Chapter 457, Health and Safety Code;
- (6) an appropriate state or federal agency, or accrediting organization that accredits health care facility or school of nursing or surveys a facility for quality of care; or
- (7) a person engaged in bona fide research, if all information that identifies a specific individual is deleted.

(7) ***Is it acceptable to use an informal work group of the peer review committee for either incident-based or safe harbor peer review? Do the same time lines apply for conducting the review when using an informal work group of the peer review committee? [rule 217.19(e) or 217.20(k)]***

Yes, any entity conducting peer review may choose to use a smaller work group of the peer review committee for either incident-based or safe-harbor peer review. A nurse involved as the primary party in peer review does not waive any due process rights by agreeing to work with an informal work group, including the right to have an issue heard by the entire peer review committee. See rule **217.19(e)** or **217.20(k)** for specific requirements when using a smaller workgroup of the peer review committee. Also review rule **217.16 Minor Incidents** regarding use of a smaller work group of the nursing peer review committee.

(8) ***Can we just use the BON Nursing Peer Review statutes and rules as our facility/agency policies and procedures on Nursing Peer Review?***

No, many other details must be included in peer review policies and procedures in order to have an operational peer review committee structure. As the BON does not regulate practice settings of any kind, the Board does not have authority to prescribe every aspect of peer review at the facility or employer level.

Examples of issues that must be addressed in facility policies include (but are not limited to):

- How many nurses (LVN and RN) make up the nursing peer review committee(PRC)?
- How long does a nurse serve on the nursing peer review committee?
- How is the facility’s legal counsel involved in nursing peer review, and how does the facility assure “parity of counsel?”
- How will documents of the nursing PRC and the Patient Safety Committee be marked so that the origin of any “shared” documents can be determined in order to comply with **NPR §303.0075(c)**.
- Requirements specified in both rules when use an Informal Workgroup of Peer Review Committee.

Entities desiring to establish or substantially revise their nursing peer review policies and procedures may find it helpful to contact professional organizations that represent nurses or healthcare settings. Such organizations may have developed generic policies, forms, etc. on nursing peer review for the benefit of their membership, and may have such information available for sale to the public.

(9) ***What records should a peer review committee chairperson maintain, and for how long? What records should the PRC chairperson send to the board when subpoenaed by the BON to send “all nursing peer review records related to “Jane Doe RN?”***

The NPR statute does not specify requirements related to records retention of peer review proceedings, nor has the board established any time frame by rule. With the ability to scan and save documents in a digital format, the BON would encourage facilities and employers to consider this permanent method of archiving peer review documents. There is no statute of limitations on when nursing violations can be reported to the BON, including alleged violations of the nurse’s due process rights in relation to a nursing peer review proceeding. Therefore, if permanent archiving is not possible, then the longest retention period possible is encouraged.

The PRC chair is responsible for maintaining all records pertaining to a peer review proceeding, including but not limited to copies of facility policies in effect at the time of the PRC proceeding, identities of the specific nurses who were members of the PRC and designation of their licensure and area of practice, relevant documents—such as staffing schedules, assignment sheets, staffing plans/policies, medical record numbers and dates of the involved patients, copies of the notice letter sent to the nurse and proof that the nurse received it or that the letter was returned, SHPR forms signed by the nurse and applicable staff throughout the stages of the peer review process, and documents showing the peer review committee’s determination. All documents of this nature related to the peer review proceeding should be included when a subpoena of “all peer review documents” is received from the BON.

- (10) **What whistleblower protections does a nurse have if he/she reports a facility, agency, school or other entity that provides healthcare services, or a physician or other licensed practitioner for endangering patients/clients or engaging in unethical or illegal conduct? [NPA § 301.4025, §301.413]**

The above listed sections of the NPA Chapter 301, and rules 217.19(m) and 217.20(l) address protections a nurse has when reporting unsafe practices of practitioners other than nurses (such as physicians, dentists, etc) or entities (such as hospitals, nursing homes, home health agencies, etc). The BON does not regulate practitioners who are not nurses, or facilities, agencies, or other entities that utilize the services of nurses. Thus, reports regarding other practitioners or entities should be reported to the appropriate licensing or regulatory agency. Should a nurse experience or be threatened with retaliatory measures for reporting unsafe conditions or practitioners, staff advise the nurse to seek his/her own legal counsel for guidance.

INCIDENT-BASED NURSING PEER REVIEW

- (1) **What “due process” rights must the peer review committee provide to the nurse undergoing Incident-Based Peer Review (IBPR)? [rules 217.19(d)]**

Review of NPR Chapter 303 in its entirety is recommended, as compliance with various sections of this chapter is necessary to assure compliance with “due process” and “good faith” peer review requirements. Rule 217.19(d) delineates specific requirements for minimum due process during IBPR. Committee membership and voting requirements are described in NPA §303.003(a)-(d); §303.0015, and §217.19(c) and (d)(3)(B).

The nurse being peer reviewed must receive notification of the peer review process as well as other components that are part of the nurse’s minimum due process rights under §217.19(d) including:

- that his/her practice is being evaluated by the nursing peer review committee,
- that the peer review committee will meet on a specified date not less than 21, but not more than 45 calendar days from the date of notice,
- a copy of the peer review plan, policies and procedures.
- the notice must include:
 - a description of the event(s) to be evaluated in enough detail to inform the nurse of the incident, circumstances and conduct, and should include date(s), time(s), location(s), and individual(s) involved. Any patient or client information shall be identified by initials or number to protect confidentiality, but the nurse shall be provided the name of the patient.
 - the name, address and telephone number of the contact person to receive the nurse’s response (typically the peer review chairperson).
- the nurse is provided the opportunity to review, in person or by attorney, at least 15 calendar days prior to appearing before the committee, documents concerning the event under review.
- the nurse is provided the opportunity to appear before the committee, make a verbal statement, ask questions and respond to questions of the committee and provide a written statement regarding the event under review.
- the nurse shall have the opportunity to:
 - call witnesses, question witnesses, and be present when testimony or evidence is being presented;
 - be provided copies of the witness list and written testimony or evidence at least 48 hours in advance of the proceeding;
 - make an opening statement to the committee;
 - ask questions of the committee and respond to questions of the committee; and
 - make a closing statement to the committee after all evidence is presented.
- the committee must complete its evaluation within 14 calendar days from the date of the peer review hearing.
- within 10 calendar days of completion of the peer review hearing, the peer review committee must notify the nurse in writing of its determination.
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- the nurse shall be given an opportunity, within 10 calendar days, to provide a written rebuttal to the committee's findings which shall become a permanent part of the peer review records.

(2) ***May the employer take disciplinary action prior to conducting Incident-Based Peer Review? [NPA 301.405(e)]***

Employment and licensure issues are separate. An employer may take disciplinary action before review by the peer review committee is conducted, as peer review cannot determine issues related to employment. The role of peer review is to determine if licensure violations have occurred and, if so, if the violations require reporting to the board. If a report to the BON is already required under 301.405(c), then the role of the peer review committee is to investigate whether external factors impacted the error or situation, and to report their findings to a patient safety committee if they determine there were external factors that mitigate or aggravate the circumstances impacting the nurse's actions.

(3) ***Does an employer have to report to the Board if they terminate a nurse, or make an agency nurse a "do-not-return," for practice-related errors? [Section 301.405 (b)]***

If an employer terminates a nurse for non-practice-related reasons (such as too many absences, or non-patient-related misconduct) this is an employment, not licensure, issue and is not board-reportable.

If an employer terminates a nurse (voluntarily or involuntarily), suspends for seven (7) or more days, or takes other substantive disciplinary action against a nurse or substantially equivalent action against an agency nurse for nursing practice errors/concerns, the employer must report to the Board (BON) in writing:

- (1) the identity of the nurse;
- (2) the conduct subject to reporting that resulted in the termination, suspension or other substantive disciplinary action or substantially equivalent action; and
- (3) any additional information the board requires.

(4) ***Does IBPR Committee have to meet if the nurse voluntarily resigns or is involuntarily terminated for practice related reasons? Does the nurse have due process rights under peer review if a report to the BON is already mandatory under NPA §301.405(b) or §301.402(b)? [NPA §301.405(c) and rule 217.19(f)(1)]***

SB993 (80th Legis. Session, 2007) amended NPA (TOC) §301.405(c) requiring that even if a mandatory report by the employer has been, or will be, made to the BON under §301.405(b), the peer review committee must still meet to determine if external factors beyond the nurse's control impacted the nurse's deficiency in care. If the peer review committee believes external factors were involved in the incident (whether or not the nurse is being reported to the BON) the committee is now required to also report the issue to the entity's patient safety committee, or to the CNO/nurse administrator if there is no patient safety committee.

Because the nursing peer review committee is reviewing the incident solely to determine existence of external factors, due process rights of incident-based peer review do not apply. In addition, a peer review committee cannot make a determination that would negate the duty of the employer to report the nurse under §301.405(b) or of the CNO/nurse administrator to report the nurse under §301.402(b).

(5) ***Must the recommendations made by the IBPR Committee be followed by the employer?***

The nursing peer review committee does not have authority to make employment or disciplinary decisions. The employer must make their own decision about appropriate disciplinary actions; however, the employer may choose to utilize the decisions of the peer review committee in determining what action they wish to take with regard to the nurse's employment. In addition, an employer may not prohibit a peer review committee from filing a report to the BON if the PRC has determined in good faith that a nurse's practice must be reported to the Board in compliance with §301.403, rule 217.11(1)(K), and rule 217.19.

(6) ***What is a Minor Incident? [NPA301.419(a), rule §217.16(b)]***

A "minor incident" is defined by Texas Occupations Code (Nursing Practice Act) **§301.419(a)** as "conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client or other person."

(7) ***Are there Exclusions to What Can Be Considered a Minor Incident? [rule 217.16]***

Yes. Rule **217.16(c)** defines 3 types of circumstances in which the conduct cannot be considered a minor incident:

- (1) *Any error that contributed to a patient's death;*
- (2) *Criminal conduct defined in NPA 301.4535; or*
- (3) *A serious violation of the board's Unprofessional Conduct rule 217.12 involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.*

(8) ***What are the criteria for determining if Minor Incidents are Board reportable?***

Rule 217.16(d) establishes when a minor incident is or is not board-reportable:

(d) *Criteria for Determining if Minor Incident is Board-Reportable.*

(1) *A nurse involved in a minor incident need not be reported to the Board unless the conduct:*

- (A) *creates a significant risk of physical, emotional or financial harm to the client;*
- (B) *indicates the nurse lacks a conscientious approach to or accountability for his/her practice;*
- (C) *indicates the nurse lacks the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or*
- (D) *indicates a pattern of multiple minor incidents demonstrating that the nurse's continued practice would pose a risk of harm to clients or others.*

(2) *Evaluation of Multiple Incidents.*

- (A) *Evaluation of Conduct. In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported.*
- (B) *Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse shall be reported to peer review if a nurse commits **five minor incidents within a 12-month period.***

In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period shall be reported to the Board.

(9) ***What is the Peer Review committee required to report? [NPA §301.401, 301.403, & rule 217.11, rule 217.12, rule 217.16]***

A peer review committee is required to make a report to the Board if they believe in good faith that a nurse has engaged in conduct subject to reporting as defined under the Nursing Practice Act (NPA), **§301.401(1)**. This nearly always involves one or more suspected violations of Rules 217.11, Standards of Nursing Practice, or 217.12, Unprofessional Conduct, or may fail to meet the criteria for consideration as a minor incident [**217.16(c) Exclusions, or 217.16(d)** discussed above].

If a Peer Review committee finds that a nurse engaged in conduct that is subject to reporting, the committee must file a signed, written report to the BON that includes:

- (1) the identity of the nurse;
- (2) a description of any corrective action that was taken;
- (3) a recommendation whether the Board should take formal disciplinary action against the nurse and the basis for the recommendation;
- (4) a description of the conduct subject to reporting [defined under **301.401(1)**];

- (5) the extent to which any deficiency in care provided by the nurse was the result of a factor beyond the nurse's control; and
- (6) any additional information the board requires.

* Failure to classify an event appropriately in order to avoid reporting the nurse to the BON may result in action against the nurse or nurses on the peer review committee responsible for reporting, and/or the CNO who failed to report to the board under his/her duty as a nurse in compliance with NPA § 301.402.

- (10) ***If a nurse's practice is suspected of being impaired secondary to chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity, must Peer Review be conducted and a report filed with the Board? [NPA §301.410 & Rule 217.19(g)]***

It depends. If there is no evidence of nursing practice violations, a nurse may be reported to either the BON or to a peer assistance program [rule 217.19(g)(1)].

However, if, during the course of an incident-based peer review process, there is evidence of nursing practice violations in conjunction with evidence of impaired nursing practice, the incident-based peer review process must be suspended, and the nurse reported to the board in accordance with NPA (TOC) §301.410(b) (relating to a required report to the board when practice errors exist with suspected or known impairment of the nurse. The BON will determine in such cases whether or not the nurse is eligible to take part in a peer assistance program.

The IBPR committee may need to re-convene for the sole purpose of determining whether or not external factors contributed to the incident(s) that lead to peer review. Remember that because the nurse's practice is not being reviewed (only the surrounding factors), due process rights for the nurse do not apply.

- (11) ***Who conducts Peer Review for a temporary or contract employee? (NPR §303.004)***

The nurse who works through a temporary agency or contractor may be subject to Peer Review by either the facility where services are provided, the compensating agency, or both. For purposes of exchange of information, the Peer Review committee reviewing the conduct is considered as established under the authority of both so that confidentiality requirements of peer review are enforceable against any nurse involved in the investigation or peer review proceeding. The two entities may choose to have a contract with respect to which entity will conduct Peer Review of the nurse.

SAFE HARBOR PEER REVIEW

- (1) ***What is Safe Harbor? [NPR §303.005(b) and (e); Rule 217.19(a)(15), Rule 217.20(a)(15)]***

Safe Harbor is a nursing peer review process that a nurse may initiate when asked to engage in an assignment or conduct that the nurse believes in good faith would potentially result in a violation of Board Statutes or Rules. When properly invoked, safe harbor protects a nurse from employer retaliation and from licensure sanction by the BON. Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at any time during the work period when the initial assignment changes.

Examples of Safe Harbor situations include clinical assignments related to staffing and/or acuity of patients where the nurse believes patient harm may result {217.11(1)(B) and (T)}, and can involve a request to engage in unprofessional or illegal conduct, such as falsifying medical record documents. The latter is an example of a situation where a prudent nurse would refuse to engage in the conduct requested. {NPA §301.352(a-1), rule 217.20(g)(1)(B)}

Safe Harbor also allows for a nurse to request that a determination be made on the medical reasonableness of a physician's order [NPR 303.005(e)]. {Note: There is now a separate form on the BON web page that can be used for this process.}

- (2) ***What protections of a nurse's license are applicable under Safe Harbor? [NPA §301.352, §301.413; NPR §303.005(c), (d), and (h),]***

A nurse who in good faith requests Safe Harbor peer review:

- (1) may not be disciplined or discriminated against for making the request;

- (2) may engage in the requested conduct pending the peer review;
- (3) is not subject to the reporting requirement under Subchapter I, Chapter 301; and
- (4) may not be disciplined by the board for engaging in that conduct while the peer review is pending.

(3) ***Where do I send my Safe Harbor request? Do I Fax it to the Board of Nursing?***

Please **DO NOT** mail or fax your request for Safe Harbor Nursing Peer Review to the Board of Nursing. The BON cannot conduct Peer Review—this must be done through the facility or agency where the assignment was made to you. Please review the following questions, as well as the instructions on the Comprehensive Request for Safe Harbor form (located under the Nursing Practice link, and then under Nursing Peer Review on the BON web page <http://www.bon.state.tx.us/practice/pdfs/SHPR-CompRequest.pdf> .

(4) ***How does a nurse invoke these protections? [Rule 217.20(d)]***

To activate Safe Harbor protections, the nurse must:

- (1) At the time the nurse is requested to engage in the activity, notify the supervisor making the assignment *in writing* that the nurse is invoking Safe Harbor. The nurse may use the BON’s **Quick Request Form** (or any document that contains the minimum information required by rule), or may use any other means of recording the initial request for safe harbor in writing with at least the minimum information required under §217.20(d)(3)(i)-(v):
 - (A) The nurses(s) name(s) making the safe harbor request and his/her signature(s);
 - (B) The date and time of the request;
 - (C) The location of where the conduct or assignment is to be completed;
 - (D) The name of the person requesting the conduct or making the assignment; and
 - (E) A brief explanation of why safe harbor is being requested.

This written Quick Request for safe harbor may be brief, but before leaving at the end of the work period, the nurse must submit a written Comprehensive Request (detailed account) of his/her request for safe harbor. Additional supporting documents may still be supplied at a later date. **Quick Request** and **Comprehensive Request for Safe Harbor** forms are available on the BON web site under the *Nursing Practice* link. There is also a separate form for requesting a determination regarding the **Medical Reasonableness of a Physician’s Order**. All of these BON forms are optional and do not have to be utilized by the nurse making a written request for Safe Harbor.

(5) ***If a nurse invokes Safe Harbor, and the Supervisor subsequently is able to remedy the situation that caused the nurse to invoke Safe Harbor (such as obtaining more staff), is the nurse’s request for Safe Harbor invalid? Does the nurse have to withdraw his/her request for a nursing peer review committee to evaluate the nurse’s request?***

The nurse’s request for Safe Harbor Peer Review does **not** become invalid and the nurse does **not** have to withdraw his/her request for Safe Harbor just because a supervisor is able to respond with adequate staff, equipment or whatever else was at issue with the original requested assignment. It is the nurse’s choice whether or not he/she wishes to still have a nursing peer review of the situation. {See the Comprehensive Request for Safe Harbor form <http://www.bon.state.tx.us/practice/pdfs/SHPR-CompRequest.pdf> under **Section I The Nurse’s Request, #10 Nurse’s Decision to Sustain or Withdraw Request for Safe Harbor Peer} Review**

(6) ***When Can a Nurse Invoke Safe Harbor and Refuse the Assignment? [NPA (TOC) §301.352, rule 217.20(g)]***

The NPA, section **301.352** permits a nurse to refuse an assignment when the nurse believes in good faith that the requested conduct or assignment could constitute grounds for reporting the nurse to the board under NPA 301.401(1), could constitute a minor incident, or could constitute another violation of the board statutes or rules. Situations involving potential risk of harm to patients or the public are referred to as “violating the nurse’s duty to the patient” because all nurses have a duty under rule **217.11(1)(B)** to maintain a safe environment for

patients/clients and others for whom the nurse is responsible. Safe Harbor enables a nurse in most circumstances to accept the assignment, thus allowing the nurse to protect his/her nursing license from board sanctions while at the same time delivering the best care possible to a patient(s).

Patients are better off with the nurse than without the nurse in the vast majority of cases; however, rule 217.20(g) clarifies that a nurse may engage in an assignment or requested conduct pending peer review determination unless the requested assignment or conduct is one that:

- (1) constitutes a criminal act
- (2) constitutes unprofessional conduct, or
- (3) the nurse lacks the basic knowledge, skills, and abilities necessary to deliver nursing care that is safe and that meets the minimum standards of care to such an extent that accepting the assignment would expose one or more patients to an unjustifiable risk of harm.

A request to falsify a patient record is an example of conduct that a nurse should refuse to engage in while awaiting a peer review committee determination, since there is no legal or factual basis that would support a nurse falsifying a patient record. A request to accept an assignment when a nurse believes the nurse staffing levels are unsafe would be conduct a nurse normally would engage in pending peer review's determination since the supervisor normally would have some reasonable legal or factual basis to support her/his belief that the requested assignment does not violate a nurse's duty to a patient, even if peer review ultimately determines otherwise.

While §217.11(1)(B) establishes the nurse's duty to maintain patient safety, standard §217.11(1)(T) requires each nurse to "accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability." It is also impossible in the rule-writing process to anticipate every possible situation a nurse might face in every practice setting, and where a nurse may believe in good faith that his/her duty to one or more patients is in greater jeopardy to accept the assignment than to refuse it. The BON urges each nurse to consider the duty to the patient(s) as the highest priority in make any determination to accept or refuse an assignment or requested conduct. The ability to invoke Safe Harbor protections and to have a nursing peer review committee evaluate the requested assignment are the same whether the nurse accepts or refuses the assignment.

Note that rule 217.20(g)(2) now requires the nurse and supervisor to collaborate in an effort to identify an assignment that "is within the nurse's scope and enhances the delivery of safe patient care." This is based on the premise that in any staffing crisis, the patients are almost always better off with the nurse, than without the nurse. A collaborative effort with patient safety as the focus will require the nurse and supervisor to set aside any personal animosity and to explore additional options that are safer for both the patient(s) and the nurse(s).

(7) Does Safe Harbor Protect a Nurse from Civil or Criminal Liability? [NPR §303.005(h), 217.20(e)(2) & (3)]

No. Safe Harbor has no effect on a nurse's civil or criminal liability for his/her nursing practice. The BON does not have any authority over civil or criminal liability issues. Safe Harbor does protect the nurse from retaliation by an employer or contracted entity for whom the nurse performs nursing services. There is no expiration of the protection against retaliatory actions such as demotion, forced change of shifts, pay cut, or other retaliatory action against the nurse.

(8) When Can a Smaller Workgroup of the Nursing Peer Review Committee be utilized?

A smaller workgroup of the nursing peer review committee may be used in either Safe Harbor or Incident-Based nursing peer review. The nurse involved in either type of peer review must agree to the use of the smaller workgroup. The nurse does not give up his/her right to review by the full peer review committee just because they initially agree to the smaller workgroup. As stated in the rule, the workgroup must be made up of members of the peer review committee, and must follow the same time lines, due process steps, and other procedures that apply to the full nursing peer review committee.

The peer review rules do not address use of a smaller workgroup of peer review in the event a nurse was terminated for practice related reasons. When a report to the BON is mandated under NPA 301.405(b), peer review is conducted solely to look for the existence of external factors that may have impacted the nurse's actions. Since neither the statute or board rules specifically allow or prohibit the use of the smaller workgroup for this purpose, facility policy and procedure on nursing peer review would need to address if this is an option for peer review under NPA 301.405(c).

(9) Must the recommendations made by the SHPR Committee be followed by the CNO/Nurse Administrator?[NPR §303.005(d); rule 217.20(j)(4)(A)]

NPR law §303.005(d) requires the employer/nurse manager to consider the decision of the SHPR Committee “in any decision to discipline the nurse.” The “non-binding” provision in this statute means that if the CNO/Nurse Administrator believes the SHPR was conducted in “bad faith,” or otherwise made an incorrect determination, the CNO/Administrator must document his/her rationale for disagreeing with the SHPR Committee determination, and this must be retained with the SHPR records. In addition, if the CNO/Nurse Administrator believes the SHPR was done in bad faith, he/she has a duty to report the nurses who participated on the PRC to the BON [see **rule 217.20(j)(4)(C)**].

The BON encourages CNOs/Nurse Administrators to remember that each nurse has a duty to advocate for patient/client safety. This is expressed in rule 217.11(1)(B) and explained in Position Statement 15.14 *Duty of a Nurse in Any Setting*. Both of these documents are located on the BON web page in multiple areas, but most easily found under the “Nursing Practice” link, and then under “Scope of Practice.” Another document located in this section of the web page is the BON’s *Six-Step Decision-Making Model for Determining Nursing Scope of Practice*. Step 3 asks if there is nursing literature, research, or guidance documents from national specialty nursing organizations related to the nursing issue in question. National patient safety organizations, such as the Institute for Safe Medication Practices, would also be applicable with regard to “best practices” in a given area of nursing and patient safety. Safe Harbor peer review can be an opportunity to take stock of how nursing and support departments surrounding nursing are organized, and how safe patient care is helped or hindered by those systems.

***If you have additional questions regarding Peer Review, see Nursing Peer Review (TOC) Chapter 303 and BON Rules 217.19 and 217.20 on the BON web site: <http://www.bon.state.tx.us>.
You may also e-mail questions to webmaster @bon.state.tx.us.***