

Texas Safe Harbor Nursing Peer Review

The Nursing Practice Act [Texas Occupations Code (TOC), Chapter 301 et. seq.] and Board Rules and Regulations [Texas Administrative Code (TAC)] are written broadly so they can be applied by every nurse to any practice setting and specialty area in nursing across Texas. Nursing peer review, inclusive of safe harbor, is based on the employment setting [please see [TOC Section 303.0015](#)].

The table below contains excerpts from the statutes found in the TOC, rules from the TAC, and resources from the Texas Board of Nursing (BON) website as well as additional resources or references. The table is divided into three columns with the left column containing sections of the TOC located in Chapter 303, related to Nursing Peer Review, with a concentration on those relevant to Safe Harbor Nursing Peer Review (SHNPR). These references appear in sequential order. The middle column contains selections from the rule related to SHNPR (22 TAC §217.20, *Safe Harbor Peer Review for Nurses and Whistleblower Protections*) and these references are placed in near alignment with the TOC and are therefore *not* in sequential order based on appearance within the rules and regulations. The column on the right contains additional sections of the statutes (TOC); rules (TAC); BON position statements; frequently asked questions or forms; and additional references and resources.

Statute –TOC	Rule –TAC	Website and Additional Resources
Chapter 303, Nursing Peer Review	217.20, Safe Harbor Peer Review for Nurses and Whistleblower Protections	Website Resources: Practice- Peer Review: Incident-Based or Safe Harbor webpage: https://www.bon.state.tx.us/practice_peer_review.asp
General Information about Nursing Peer Review as a foundation for Safe Harbor Nursing Peer Review (SHNPR)		
303.001, Definitions		
(4) “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.		Hospital regulation from the Texas Department of State Health Services : "... A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Occupations Code ... (relating to and Nursing Peer Review respectively), and with the rules adopted by the Board of Nurse Examiners in 22 TAC ... and §217.20 (relating to Safe Harbor Peer Review for Nurses and

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<p>(5) “Peer review” means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint.</p> <p>The term includes...</p> <p>... (E) the provision of information, advice, and assistance to nurses and other persons relating to:</p> <p>(i) the rights and obligations of and protections for nurses who raise care concerns or report under Chapter 301 or other state or federal law;</p> <p>(ii) the rights and obligations of and protections for nurses who request nursing peer review under this chapter;</p> <p>(iii) nursing practice and patient care concerns; and</p> <p>(iv) the resolution of workplace and practice questions relating to nursing and patient care.</p>	<p>(a)(14) Peer Review--Defined by TOC §303.001(5) (NPR Law) as the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint.</p> <p>The term also includes the provision of information, advice, and assistance to nurses and other persons relating to</p> <p>the rights and obligations of and protections for nurses who raise care concerns, report under Chapter 301, request peer review, and</p> <p>the resolution of workplace and practice questions relating to nursing and patient care.</p> <p>The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant</p>	<p>Whistleblower Protections)" [TAC §133.41(o)(6)].</p>

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	information about an event. Peer review conducted by any entity must comply with NPR Law and with applicable Board rules related to incident-based or safe harbor peer review.	
<u>303.0015, Required Establishment of Nursing Peer Review Committee</u>		
(a) A person shall establish a nursing peer review committee to conduct nursing peer review under this chapter and Chapter 301: (1) for vocational nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses; and (2) for professional nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses, at least five of whom are registered nurses.	(c) Applicability of Safe Harbor Nursing Peer Review. (1) TOC §303.0015 (NPR Law) requires a person who regularly employs, hires or contracts for the services of ten (10) or more nurses (for peer review of an RN, at least 5 of the 10 must be RNs) <i>to permit a nurse to request Safe Harbor Peer Review when the nurse is requested or assigned to engage in conduct that the nurse believes is in violation of his/her duty to a patient.</i>	The <i>italicized section</i> , in the middle column, relates specifically to TOC 303.005 (b) (referenced a little further down the table in left column).
Minimum Due Process		
<u>303.002, General Provisions Regarding Peer Review</u>	(h) Minimum Due Process.	
(e) The committee shall give the nurse being reviewed at least minimum due process, including notice and opportunity for a hearing.	(h)(2)(D) Permit the nurse requesting safe harbor to: (i) appear before the committee; (ii) ask questions and respond to questions of the committee; and (iii) make a verbal and/or written statement to explain why he or she	

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	believes the requested conduct or assignment would have violated a nurse's duty to a patient.	
<p><u>Sec. 303.003, Committee Membership</u></p> <p>(a) A nursing peer review committee must have nurses as three-fourths of its members.</p> <p>(b) A nursing peer review committee that conducts a peer review that involves the practice of vocational nursing, to the extent feasible, must include vocational nurses as members and may have only registered nurses and vocational nurses as voting members.</p> <p>(c) A nursing peer review committee that conducts a peer review that involves the practice of professional nursing must have registered nurses as two-thirds of its members, and may have only registered nurses as voting members.</p> <p>(d) The committee shall include to the extent feasible at least one nurse who has a</p>	<p>(h) (2) In order to meet the minimum due process required by TOC Chapter 303, the nursing peer review committee shall:</p> <p>(A) comply with the membership and voting requirements as set forth in TOC §303.003;</p>	

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<p>working familiarity with the area of nursing practice in which the nurse being reviewed practices.</p>	<p>(B) exclude from the committee membership, any persons or person with administrative authority for personnel decisions directly affecting the nurse; (C) limit attendance at the Safe Harbor Nursing Peer Review hearing by a CNO, nurse administrator, or other individual with administrative authority over the nurse, including the individual who requested the conduct or made the assignment, to appearing before the safe harbor peer review committee to speak as a fact witness; and (D) listed above)</p>	
SHNPR		
<p><u>Sec. 303.005, Request for Peer Review Committee Determination</u></p>	<p>(a)(15) Safe Harbor--A process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination, and licensure sanction when a nurse makes a good faith request for peer review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NPA or Board rules. Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at anytime during the work period when</p>	<p><u>BON Website FAQs:</u> Safe Harbor Peer Review FAQs: https://www.bon.state.tx.us/faq_peer_review.asp#t2</p> <p><u>Associated Rule:</u> 22 TAC §217.20(a) (1) Assignment--Designated responsibility for the provision or supervision of nursing care for a defined period of time in a defined work setting. This includes but is not limited to the specified functions, duties, practitioner orders, supervisory directives, and amount of work designated as the individual nurse's responsibility. Changes in the nurse's assignment may occur at any time during the work period.</p>

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303.005 (a) In this section, “duty to a patient” means conduct required by standards of practice or professional conduct adopted by the board for nurses. The term includes administrative decisions directly affecting a nurse’s ability to comply with that duty.	the initial assignment changes. (a)(5) Duty to a patient--A nurse's duty is to always advocate for patient safety, including any nursing action necessary to comply with the standards of nursing practice (§217.11 of this title) and to avoid engaging in unprofessional conduct (§217.12 of this title). This includes administrative decisions directly affecting a nurse's ability to comply with that duty.	Board Rules 217.11 and 217.12 are specifically cited in the safe harbor rule, and address the minimum standards all nurses must meet and describe unprofessional conduct, respectively. Position Statement 15.14, Duty of a Nurse in any Practice Setting , applies 22 TAC §217.11, Standards of Nursing Practice , and uses a landmark court decision to illustrate the nurse's responsibility to advocate and intervene for patient safety. The nurses duty to a patient also mentioned in BON Position Statement 15.6, Board Rules Associated With Alleged Patient "Abandonment" with a discussion of SHNPR in relation to assignments that could potentially violate a nurse’s duty to the patient.
303.005 (a-1) For purposes of this section, a nurse or nurse administrator acts in good faith in connection with a request made or an action taken by the nurse or nurse administrator if there is a reasonable factual or legal basis for the request or action.	(a)(6) Good Faith--Taking action supported by a reasonable factual or legal basis. Good faith precludes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process.	TOC 301.4011, Good Faith Report by Nurse , includes a definition of good faith: and is located in the reporting subchapter of the Nursing Practice Act (Texas Occupations Code, Chapter 301, et. seq.).
Invoking SHNPR		
303.005 (b) If a person who is required to establish a nursing peer review committee under Section 303.0015 requests a nurse to engage in conduct that the nurse believes violates a nurse’s duty to a patient, the nurse may request,	(d) Invoking Safe Harbor. (1) Safe Harbor must be invoked prior to engaging in the conduct or assignment and at any of the following times: (A) when the conduct is requested or assignment made; (B) when changes occur in the request	FAQs: When Does a Nurse's Duty to a Patient Begin and End?: http://www.bon.texas.gov/faq_nursing_practice.asp#t4 Floating to Unfamiliar Practice Settings: http://www.bon.texas.gov/faq_nursing_practice.asp#t3 Mandatory Overtime/Consecutive Shifts: http://www.bon.texas.gov/faq_nursing_practice.asp#t1

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<p>on a form developed or approved by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a nurse’s duty to a patient.</p>	<p>or assignment that so modify the level of nursing care or supervision required compared to what was originally requested or assigned that a nurse believes in good faith that patient harm may result; or</p> <p>(C) when the nurse refuses to engage in the requested conduct or assignment.</p> <p>(2) The nurse must notify the supervisor requesting the conduct or assignment in writing that the nurse is invoking Safe Harbor. ...</p>	<p>Staffing Ratios: http://www.bon.texas.gov/faq_nursing_practice.asp#t2</p>
	<p>(3) Quick Request Form.</p> <p>(A) A nurse wishing to invoke Safe Harbor must make an initial request in writing that at a minimum includes the following:</p> <p>(i) the nurse(s) name making the safe harbor request and his/her signature(s);</p> <p>(ii) the date and time of the request;</p> <p>(iii) the location of where the conduct or assignment is to be completed;</p> <p>(iv) the name of the person requesting the conduct or making the assignment; and</p> <p>(v) a brief explanation of why safe harbor is being requested.</p> <p>(4) Comprehensive Written Request for Safe Harbor Peer Review.</p> <p>(A) A nurse who invokes Safe Harbor</p>	<p>Forms:</p> <p>Safe Harbor Forms: Nursing Peer Review: https://www.bon.state.tx.us/forms_safe_harbor.asp</p> <p>Quick Request Form: https://www.bon.state.tx.us/pdfs/safe_harbor_forms_pdfs/SHPR-QuickRequest.pdf</p> <p>Comprehensive Request Form: https://www.bon.state.tx.us/pdfs/safe_harbor_forms_pdfs/SHPR-CompRequest.pdf</p>

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	<p>must supplement the initial written request ... by submitting a comprehensive request in writing before leaving the work setting at the end of the work period. This comprehensive written request must include a minimum of the following information:</p> <ul style="list-style-type: none"> (i) the conduct assigned or requested, including the name and title of the person making the assignment or request; (ii) a description of the practice setting, e.g., the nurse's responsibilities, resources available, extenuating or contributing circumstances impacting the situation; (iii) a detailed description of how the requested conduct or assignment would have violated the nurse's duty to a patient or any other provision of the NPA and Board Rules. <p>... (v) any other copies of pertinent documentation available at the time. Additional documents may be submitted to the committee when available at a later time; and</p> <ul style="list-style-type: none"> (vi) the nurse's name, title, and relationship to the supervisor making the assignment or request. 	
Safe Harbor Protections		
	<p>(e) Safe Harbor Protections.</p> <p>(1) To activate protections outlined in</p>	

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<p>303.005 (c) A nurse who in good faith requests a peer review determination under Subsection (b):</p> <p>(1) may not be disciplined or discriminated against for making the request; <i>(2) may engage in the requested conduct pending the peer review;</i></p> <p>(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.</p>	<p>TOC §303.005(c) and paragraph (2) of this subsection, the nurse shall:</p> <p style="padding-left: 20px;">(A) invoke Safe Harbor in good faith; (B) notify the supervisor in writing that he/she intends to invoke Safe Harbor ...</p> <p>...</p> <p>(2) TOC §303.005(c) and (h) (NPR Law) and §301.352 provide the following protections:</p> <p style="padding-left: 20px;">(A) A nurse may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for requesting Safe Harbor in good faith. (B) A nurse or other person may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for advising a nurse in good faith of the nurse's right to request a determination, or of the procedures for requesting a determination. (C) A nurse is not subject to being reported to the Board and may not be disciplined by the Board for engaging in the conduct awaiting the determination of the peer review committee as permitted by subsection (g) of this section. A nurse's protections from disciplinary action by the Board for engaging in the conduct or assignment awaiting peer review determination remain in place for 48 hours after the</p>	<p>TOC §301.352, <i>Protection for Refusal to Engage in Certain Conduct</i>: https://www.bon.state.tx.us/npa1.asp#352</p> <p>The text in TOC 303.005 (c)(2) (<i>italicized in the left column</i>) is included in 22 TAC §217.20(g)(1) (<i>and is italicized below in the middle column</i>)</p> <p>The left hand column references Subchapter I, Chapter 301 of the TOC related to reporting. The phrase “conduct subject to reporting” as well as the term “minor incident” are defined in TOC §301.401. Definitions. Individual nurses, employers, and others have reporting requirements as detailed in the referenced Chapter.</p>

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	nurse is advised of the peer review committee's determination....	
303.005 (d) If a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review,	<p>(g) Nurse's Right to Refuse to Engage in Certain Conduct Pending Nursing Safe Harbor Peer Review Determination.</p> <p><i>(1) A nurse invoking safe harbor may engage in the requested conduct or assignment while awaiting peer review determination unless the conduct or assignment is one in which:</i></p> <p style="padding-left: 40px;">(A) the nurse lacks the basic knowledge, skills, and abilities that would be necessary to render the care or engage in the conduct requested or assigned at a minimally competent level such that engaging in the requested conduct or assignment would expose one or more patients to an unjustifiable risk of harm; or</p> <p style="padding-left: 40px;">(B) the requested conduct or assignment would constitute unprofessional conduct and/or criminal conduct such as fraud, theft, patient abuse, exploitation, or falsification....</p>	
the determination of the peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct, but the	<p>(j) General Provisions.</p> <p>... (4) If a nurse requests a Safe Harbor Peer Review determination under TOC §303.005(b) and refuses to engage in the requested conduct or assignment pending the safe harbor peer review, the determinations of the committee are not binding if the CNO or nurse</p>	

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<p>determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse’s duty.</p> <p>This subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.</p>	<p>administrator believes in good faith that the committee has incorrectly determined a nurse's duty.</p> <p>(A) In accordance with TOC §303.005(d), the determination of the safe harbor peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct.</p> <p>... (D) This section does not affect the protections under TOC §303.005(c)(1) and §301.352 relating to a nurse's protection from disciplinary action or discrimination for making a request for Safe Harbor Peer Review.</p>	<p>TOC §301.352, <i>Protection for Refusal to Engage in Certain Conduct.</i>: https://www.bon.state.tx.us/npa1.asp#352</p>
Questioning the Medical Reasonableness of a Physician’s Order		
<p>303.005 (e) If the conduct for which the peer review is requested under Subsection (b) involves the medical reasonableness of a physician’s order, the medical staff or medical director shall be requested to make a determination as to the medical reasonableness of the physician’s order, and that determination is determinative of that issue.</p>	<p>(d) (6) A nurse may invoke Safe Harbor to question the medical reasonableness of a physician's order in accordance with TOC §303.005(e) (NPR Law). In this situation, the medical staff or medical director shall determine whether the order was reasonable.</p>	<p>Forms: Safe Harbor Request to Question the Medical Reasonableness of a Physician’s Order: https://www.bon.state.tx.us/pdfs/safe_harbor_forms_pdfs/SHPR-MDOrder.pdf Associated Rule: 22 TAC §217.11 (1)(N)</p>
Nurse’s Rights and Requirement to Comply		
<p>303.005 (f) A nurse’s rights under this section may not be nullified by a contract.</p>		
<p>303.005 (g) An appropriate</p>	<p>(c) Applicability of Safe Harbor Nursing</p>	

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licensing agency may take action against a person who violates this section.	<p>Peer Review.</p> <p>... (2) Any person or entity that conducts Safe Harbor Nursing Peer Review is required to comply with the requirements of this rule.</p> <p>(j) General Provisions.</p> <p>... (2) Safe Harbor Nursing Peer Review must be conducted in good faith. A nurse who knowingly participates in nursing peer review in bad faith is subject to disciplinary action by the Board.</p>	<p>22 TAC §217.20(a)(2) “Bad Faith--Knowingly or recklessly taking action not supported by a reasonable factual or legal basis. The term includes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process.”</p>
Safe Harbor Protections		
303.005 (h) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a nurse who in good faith requests a peer review determination under this section or a person who advises a nurse of the nurse’s right to request a determination or of the procedures for requesting a determination.	<p>(e) Safe Harbor Protections.</p> <p>... (2) TOC §303.005(c) and (h) (NPR Law) and §301.352 provide the following protections:</p> <p>(A) A nurse may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for requesting Safe Harbor in good faith.</p> <p>(B) A nurse or other person may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for advising a nurse in good faith of the nurse's right to request a determination, or of the procedures for requesting a determination.</p> <p>... This time limitation does not affect the nurse's protections from retaliation by the facility, agency, entity or</p>	

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A violation of this subsection is subject to Section 301.413.	<p>employer under TOC §303.005(h) (NPR Law) for requesting Safe Harbor.</p> <p>(3) If retaliation occurs, TOC §301.413 (NPA) provides a nurse the right to file civil suit to recover damages....</p>	<p>TOC §301.413, <i>Retaliatory Action</i>: https://www.bon.state.tx.us/npa1.asp#413</p>
<p>Policy and Procedure <i>(minimum due process)</i></p>		
303.005 (i) A person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) shall adopt and implement a policy to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.	<p>(h) Minimum Due Process.</p> <p>(1) A person or entity required by TOC §303.005(i) to provide nursing peer review shall adopt and implement a policy to inform nurses of their right to request a nursing peer review committee determination (Safe Harbor Nursing Peer Review) and the procedure for making a request.</p>	
<p>Confidentiality and Disclosure of Information</p>		
<p><u>303.006. Confidentiality of Peer Review Proceedings.</u> (a) Except as otherwise provided by this chapter, a nursing peer review committee proceeding is confidential and any communication made to a nursing peer review committee is privileged.</p>	<p>(j) General Provisions. ...</p> <p>(3) The peer review committee and participants shall comply with the confidentiality requirement of TOC §303.006 and</p>	
<p><u>Sec. 303.007. Disclosure of Information.</u> ... (b) A nursing peer review committee may disclose written or oral communications made to the</p>	<p>§303.007 relating to confidentiality and limited disclosure of peer review information.</p>	

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<p>committee and the records and proceedings of the committee to:</p> <ul style="list-style-type: none"> (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; (4) another nursing peer review committee; (5) a peer assistance program approved by the board under Chapter 467, Health and Safety Code; (6) an appropriate state or federal agency or accrediting organization that accredits a 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. ... 		