

**NURSING PRACTICE ACT,
NURSING PEER REVIEW,
& NURSE LICENSURE COMPACT**

**TEXAS OCCUPATIONS CODE AND
STATUTES REGULATING THE PRACTICE OF NURSING**

As Amended September 2017



*Texas Board of Nursing
William P. Hobby Building
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Agency Mission

The mission of the Texas Board of Nursing (BON or Board) is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in this state is competent to practice safely. The Board fulfills its mission through the regulation of the practice of nursing and the approval of nursing educational programs. This mission, derived from the Nursing Practice Act, supersedes the interest of any individual, the nursing profession, or any special interest group.

Notice

The 85th Regular Session of the Texas Legislature passed two bills which amended the Nursing Practice Act (NPA). House Bill (HB) 2950 relates to the continuation and functions of the Board and to the regulation of the practice of Nursing. HB 2950, Sunset bill for the BON, continues the agency for 12 years until September 1, 2029. This bill: requires the BON to develop a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Texas programs; requires the BON to ensure that license denials and disciplinary actions are connected to the applicant's or license holder's conduct, and that the conduct is determined to affect the person's ability to practice nursing; and, not later than March 1, 2019, requires the Board to remove a nurse's disciplinary action from the BON website if the nurse and action meet certain criteria: (1) the disciplinary action is the only disciplinary action taken against the nurse; (2) the disciplinary action was taken by the Board for a violation that is not related to the practice of nursing; (3) the disciplinary action did not result in the suspension or revocation of, or the probation of the suspension or revocation of the nurse's license; (4) the disciplinary action does not provide any indication that continued practice by the nurse may risk harm to a patient; and (5) the nurse has successfully completed the requirements imposed by the Board in the disciplinary order related to the disciplinary action. HB 2950 prohibits the BON from charging a nurse for the administrative costs of conducting a hearing at the state office for administrative hearings. The BON is also required to develop guidelines in rule to establish individualized requirements for participants in a peer assistance program, and to create a formal process that allows a nursing student to request a re-evaluation of the requirement to participate in the peer assistance program upon initial licensure. HB 2950 also requires the Board to develop guidelines to establish meaningful performance goals for evaluating the success of the peer assistance program. HB 2950 repeals the current Nurse Licensure Compact and replaces it with an updated version of the Compact (see pages 4-5). HB 2950 also discontinues two reporting requirements regarding pilot programs and records of the Board's proceedings. HB 2950 also permits advanced practice registered nurses (APRNs) to complete the medical certification for a death certificate if the patient is receiving palliative care or has executed a written certification of terminal illness and is receiving hospice care from a qualified hospice provider. The medical certification must be completed not later than five days after receiving the death certificate.

HB 3296 relates to persons required to establish nursing peer review committees. Following passage of HB 3296, a nursing peer review committee is required to conduct peer review for licensed vocational nurses if the person regularly hires, employs, or contracts for the services of 8 or more nurses and for registered nurses (RNs), if the person regularly hires, employs, or contracts for the services of 8 or more nurses, at least 4 of whom are RNs.

Introduction

Welcome to the practice of nursing in the State of Texas. As you continue to practice as a nurse in Texas, it is your responsibility to be aware of changes to the law and the Board's rules and regulations. Changes are reported in the Board's quarterly newsletter mailed to all nurses licensed in Texas as well as posted on the BON web site. To assist you in being aware of these changes, the Board offers the following information and detailed table of contents.

Chapter 301 of the Texas Occupations Code (TOC) contains the Nursing Practice Act (NPA) which creates the BON and defines its responsibility for regulating nursing education, licensure and practice. Chapter 303 relates to Nursing Peer Review and Chapter 304 relates to the Nurse Licensure Compact. These chapters of the TOC define nursing practice and give the Board the authority to make rules which implement and interpret the NPA. Licensees are required to comply with the NPA and the Board's rules. The NPA and the Rules are amended from time to time. Only the Legislature can change the NPA, so statutory changes only occur 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 necessary, therefore, that you keep up with the changes. You may print copies of this pamphlet by accessing our web page at **www.bon.texas.gov**.

Any person practicing or offering to practice nursing in this state 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" or "LVN" and are required to wear a name tag identifying yourself as a "RN" or "LVN" while providing patient care.

You must keep the Board informed of your current address at all times. To inform the Board of your address change or a name change, send written notice, clearly marked "change of address" or "name change" to the Board's office within ten (10) days of the occurrence. Failure to do so can result in a lapse of your license and potential disciplinary action.

Nurses practicing in this state are expected to know and practice in compliance with chapters 301, 303, and 304 of the TOC and with the Board's Rules. Please refer to the following "Quick Reference" section. A complete set of the Board's Rules and Regulations Relating to Nurse Education, Licensure and Practice can be found at our web site.

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Subchapter A. General Provisions

Sec. 301.001. Short Title.

This chapter may be cited as the Nursing Practice Act.

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Sec. 301.002. Definitions.

In this chapter:

- (1) Board means the Texas Board of Nursing.
- (1-a) Chief nursing officer means the registered nurse who is administratively responsible for the nursing services at a facility.
- (1-b) Patient safety committee has the meaning assigned by Section 303.001.
- (2) Professional nursing means the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on 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. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves:
 - (A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes;
 - (B) the maintenance of health or prevention of illness;
 - (C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist;
 - (D) the supervision or teaching of nursing;
 - (E) the administration, supervision, and evaluation of nursing practices, policies, and procedures;
 - (F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an advanced practice registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157;
 - (G) the performance of an act delegated by a physician under Section 157.0512, 157.054, 157.058, or 157.059; and
 - (H) the development of the nursing care plan.
- (3) Nurse means a person required to be licensed under this chapter to engage in professional or vocational nursing.
- (4) Nursing means professional or vocational nursing.
- (5) Vocational nursing means a directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Vocational nursing involves:

- (A) collecting data and performing focused nursing assessments of the health status of an individual;
- (B) participating in the planning of the nursing care needs of an individual;
- (C) participating in the development and modification of the nursing care plan;
- (D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual;
- (E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs; and
- (F) engaging in other acts that require education and training, as prescribed by board rules and policies, commensurate with the nurse's experience, continuing education, and demonstrated competency.

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Sec. 301.003. *Application of Sunset Act.*

The Texas Board of Nursing 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, 2029.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.004. *Application of Chapter.*

- (a) This chapter does not apply to:
 - (1) gratuitous nursing care of the sick that is provided by a friend;
 - (2) 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 the person out as a nurse unless the person is licensed in another state;
 - (3) nursing care in which treatment is solely by prayer or spiritual means;
 - (4) an act performed by a person under the delegated authority of a person licensed by the Texas Medical Board;
 - (5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;
 - (6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education program approved under Section 301.157(d) leading to an initial license as a nurse; or
 - (7) the practice of nursing by a person licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:
 - (A) provide care to a patient being transported into, out of, or through this state;
 - (B) provide nursing consulting services; or
 - (C) attend or present a continuing nursing education program.
- (b) This chapter does not authorize the practice of medicine as defined by Chapter 151.

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Sec. 301.005. *Reference in Other Law.*

- (a) A reference in any other law to the former Board of Nurse Examiners means the Texas Board of Nursing.
- (b) A reference in any other law to an “advanced nurse practitioner” or “advanced practice nurse” means an advanced practice registered nurse.

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Sec. 301.006. *Claim or Defense for Prohibited Rule or Policy.*

- (a) The board may not adopt a rule, regulation, or policy that violates Chapter 110, Civil Practice and Remedies Code.
- (b) A person may assert a violation of Subsection (a) as an affirmative defense in an administrative hearing or as a claim or defense in a judicial proceeding under Chapter 37, Civil Practice and Remedies Code.

[Added by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Subchapter B. *Texas Board of Nursing*

Sec. 301.051. *Board Membership.*

- (a) The Texas Board of Nursing consists of 13 members appointed by the governor with the advice and consent of the senate as follows:
 - (1) six nurse members, including:
 - (A) one advanced practice nurse;
 - (B) two registered nurses who are not advanced practice nurses or members of a nurse faculty; and
 - (C) three vocational nurses who are not members of a nurse faculty;
 - (2) three members who are nurse faculty members of schools of nursing:
 - (A) one of whom is a nurse faculty member of a school of nursing offering a baccalaureate degree program in preparing registered nurses;
 - (B) one of whom is a nurse faculty member of a school of nursing offering an associate degree program in preparing registered nurses; and
 - (C) one of whom is a nurse faculty member of a school of nursing at an institution of higher education preparing vocational nurses; and
 - (3) four members who represent the public.
- (b) Appointments to the Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

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Sec. 301.052. *Member Eligibility.*

- (a) A person is not eligible for appointment as a registered nurse or vocational nurse member of the board unless the person has practiced nursing in the role for which the member was appointed for at least three of the five years preceding the date of appointment.
- (b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:
 - (1) is registered, certified, or 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:
 - (A) provides health care services;
 - (B) sells, manufactures, or distributes health care supplies or equipment; or
 - (C) is regulated by or receives money from the board;
 - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:
 - (A) provides health care services;
 - (B) sells, manufactures, or distributes health care supplies or equipment; or
 - (C) is regulated by or receives money from the board; 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.

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Sec. 301.053. *Membership and Employee Restrictions.*

- (a) In this section, Texas Trade Association means a cooperative and voluntarily joined statewide 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.
- (b) A person may not be a member of the board and may not be a board employee employed in a bona fide executive, administrative, or professional capacity, as that phrase is used for the purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:
 - (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
 - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.
- (c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the board's operation.

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Sec. 301.054. Terms.

Members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible expiring on January 31 of each odd-numbered year.

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Sec. 301.055. Grounds for Removal.

- (a) It is a ground for removal from the Board that a member:
 - (1) does not have at the time of taking office the qualifications required by Section 301.051(a);
 - (2) does not maintain during service on the board the qualifications required by Section 301.051(a);
 - (3) is ineligible for membership under Section 301.053;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; 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 the action 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 potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.
- (d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 889, § 74(1), eff. September 1, 2007.

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Sec. 301.056. Per Diem; Reimbursement.

- (a) Each board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the Board.
- (b) A board member is entitled to reimbursement for travel expenses incurred while conducting board business, including expenses for transportation, meals, and lodging, as provided by the General Appropriations Act.

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Sec. 301.057. Officers.

- (a) The Governor shall designate a member of the Board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) The Board shall elect other officers from its members.

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Sec. 301.058. Meetings.

The presiding officer shall call a special Board meeting on the written request of at least two board members.

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Sec. 301.059. Training.

- (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted in attendance at a meeting of the board until the person completes a training program that complies with this section.
- (b) The training program must provide the person with information regarding:
- (1) the law governing the board's operations;
 - (2) the programs, functions, rules, and budget of the board;
 - (3) the scope of and limitations on the board's rulemaking authority;
 - (4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:
 - (A) regulate the scope of practice of persons in a profession or business the board regulates;
 - (B) restrict advertising by persons in a profession or business the board regulates;
 - (C) affect the price of goods or services provided by persons in a profession or business the board regulates;and
 - (D) restrict participation in a profession or business the board regulates;
 - (5) the results of the most recent formal audit of the board;
 - (6) the requirements of:
 - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
 - (B) other laws applicable to members of the board in performing their duties; and
 - (7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.
- (d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

[Subsection (b) amended and Subsection (d) added by by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Subchapter C. *Executive Director and Personnel*

Sec. 301.101. *Executive Director.*

- (a) The Board shall employ an executive director. The Executive Director may not be a member of the Board.
- (b) Under the direction of the Board, the Executive Director shall perform the duties required by this chapter or designated by the Board.

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Sec. 301.103. *Public Records; Registry.*

- (a) The Executive Director shall keep:
 - (1) a record of each meeting of the Board; and
 - (2) a registry of the name of each nurse registered under this chapter.
- (b) Information maintained under this section is open to public inspection at all times.

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Sec. 301.104. *Personnel; Employment Practices.*

The Board shall employ persons as necessary to carry on the work of the Board.

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Sec. 301.105. *Division of Responsibilities.*

- (a) The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.
- (b) The Board shall determine the salaries and compensation to be paid to employees and persons retained by the Board.

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Sec. 301.106. *Qualifications and Standards of Conduct Information.*

The Board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

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Sec. 301.107. *Career Ladder Program; Performance Evaluations.*

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

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Sec. 301.108. *Equal Employment Opportunity Policy; Report.*

- (a) The Executive Director or the Executive Director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program 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 requirements of Chapter 21, Labor Code;
 - (2) a comprehensive analysis of the Board workforce that meets federal and state guidelines;
 - (3) procedures by which a determination can be made of significant under use in the board workforce 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) must:
 - (1) cover an annual period;
 - (2) be updated annually;
 - (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
 - (4) be filed with the Governor.
- (c) The Governor shall deliver a biennial report to the Legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

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Subchapter D. *General Powers and Duties of Board*

Sec. 301.151. *General Rulemaking Authority.*

The Board may adopt and enforce rules consistent with this chapter and necessary to:

- (1) perform its duties and conduct proceedings before the Board;
- (2) regulate the practice of professional nursing and vocational nursing;
- (3) establish standards of professional conduct for license holders under this chapter; and
- (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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Sec. 301.152. *Rules Regarding Specialized Training.*

- (a) In this section, “advanced practice registered nurse” means a registered nurse licensed by the board to practice as an advanced practice registered 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. The term is synonymous with “advanced nurse practitioner” and “advanced practice nurse.”
- (b) The board shall adopt rules to:
 - (1) license a registered nurse as an advanced practice registered nurse;
 - (2) establish:
 - (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054;
 - (B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and
 - (C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under Paragraph (B); and
 - (3) concurrently renew any license or approval granted to an advanced practice registered nurse under this subsection and a license renewed by the advanced practice registered nurse under Section 301.301.
- (c) At a minimum, the rules adopted under Subsection (b)(2) must:
 - (1) require completion of pharmacology and related physiopathophysiology_education for initial approval; and
 - (2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303.
- (d) The signature of an advanced practice registered nurse attesting to the provision of a legally authorized service by the advanced practice registered nurse satisfies any documentation requirement for that service established by a state agency.

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Sec. 301.1525. *Nurse First Assistants.*

[Repealed by Acts 2005 (H.B. 1718), 79th Leg., eff. Sept. 1, 2005. Replaced by Sec. 301.353]

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Sec. 301.1526. *Certain Nurses Directly Assisting in Surgery.*

[Repealed by Acts 2005 (H.B. 1718), 79th Leg., eff. Sept. 1, 2005. Replaced by Sec. 301.353.]

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Sec. 301.1527. *Certain Nurses Directly Assisting in Surgery in Small Hospitals.*

[Repealed by Acts 2005 (H.B. 1718), 79th Leg., eff. Sept. 1, 2005. Replaced by Sec. 301.353.]

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Sec. 301.153. *Rules Regarding Advertising and Competitive Bidding.*

- (a) The Board may not adopt rules restricting advertising or competitive bidding by a person except to prohibit false, misleading, or deceptive practices by the person.
- (b) 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 use of a trade name in advertising by the person.

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Sec. 301.154. *Rules Regarding Delegation of Certain Medical Acts.*

- (a) The Board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered nurses and vocational nurses licensed by the Board. In making a recommendation, the Board may distinguish between nurses on the basis of special training and education.
- (b) A recommendation under Subsection (a) shall be treated in the same manner as a petition for the adoption of a rule by an interested party under Chapter 2001, Government Code.

- (c) The Board in recommending a rule and the Texas State Board of Medical Examiners in acting on a recommended rule shall, to the extent allowable under state and federal statutes, rules, and regulations, act to enable the state to obtain its fair share of the federal funds available for the delivery of health care in this state.

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Sec. 301.1545. *Rules on Consequences of Criminal Conviction or Deferred Adjudication.*

- (a) The board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.
- (b) In its rules under this section, the board shall list the offenses for which a conviction would constitute grounds for the board to take action under Section 53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the board to take action under this chapter.

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Sec. 301.155. *Fees.*

- (a) The Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.
- (b) The Board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under Section 301.158.
- (c) The board shall assess a surcharge of not less than \$3.00 or more than \$5.00 for a registered nurse and a surcharge of not less than \$2.00 or more than \$3.00 for a vocational nurse to the fee established by the board under Subsection (a) for a license holder to renew a license under this chapter. The board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under Section 105.002, Health and Safety Code. The board is not required to collect the surcharge if the board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

[Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.156. *Gifts and Grants.*

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

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Sec. 301.157. *Programs of Study and Approval.*

- (a) The board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under this chapter as follows:
 - (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing;
 - (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and
 - (3) a diploma program that is conducted by a single purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

- (a-1) A diploma program of study in this state that leads to an initial license as a registered nurse under this chapter and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

- (b) The board shall:
 - (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under this chapter as follows:
 - (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and
 - (B) a program conducted by a hospital;
 - (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses;
 - (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses;
 - (4) approve schools of nursing and educational programs that meet the board's requirements;
 - (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the board to have acceptable standards, to accredit schools of nursing and educational programs; and
 - (6) deny or withdraw approval from a school of nursing or educational program that:
 - (A) fails to meet the prescribed course of study or other standard under which it sought approval by the board;
 - (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the board under Subdivision (5) under which it was approved or sought approval by the board; or
 - (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

- (b-1) The board may not require accreditation of the governing institution of a school of nursing. The board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher

Education Coordinating Board under provisions leading to accreditation of the institution in due course.

- (c) A program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.
- (d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that:
 - (1) is approved by the board;
 - (2) is accredited by a national nursing accreditation agency determined by the board to have acceptable standards; or
 - (3) is approved by a state board of nursing of another state and the board, subject to Subsection (d-4).
- (d-1) A school of nursing or educational program is considered approved by the board and, except as provided by Subsection (d-7), is exempt from board rules that require ongoing approval if the school or program:
 - (1) is accredited and maintains accreditation through a national nursing accrediting agency selected by the board under Subsection (b)(5); and
 - (2) maintains an acceptable pass rate as determined by the board on the applicable licensing examination under this chapter.
- (d-2) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under this chapter is subject to review by the board. The board may assist the school or program in its effort to achieve compliance with the board's standards.
- (d-3) A school or program from which approval has been withdrawn under this section may reapply for approval.
- (d-4) The board may recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The board shall adopt rules to ensure that the other state's standards are substantially equivalent to the board's standards. The board by rule shall develop a process for students enrolled in a school of nursing or educational program operated in another state that does not meet standards substantially equivalent to the board's standards to apply for an initial license under this chapter.
- (d-5) The board shall streamline the process for initially approving a school of nursing or educational program under this section by identifying and eliminating tasks performed by the board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.
- (d-6) The board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must:
 - (1) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission;

- (2) require the approval process identified under Subdivision (1) to precede the approval process conducted by the board; and
 - (3) be made available on the Board's Internet website and in a written form.
- (d-7) A school of nursing or educational program approved under Subsection (d-1) shall:
- (1) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the board;
 - (2) notify the board of any change in accreditation status; and
 - (3) provide other information required by the board as necessary to evaluate and establish nursing education and workforce policy in this state.
- (d-8) For purposes of Subsection (d-4), a nursing program is considered to meet standards substantially equivalent to the board's standards if the program:
- (1) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state;
 - (2) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation;
 - (3) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation;
 - (4) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and
 - (5) graduates students who:
 - (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse;
 - (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and
 - (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the board's required passage rate for students of approved in-state programs.
- (d-9) A graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under this chapter if:
- (1) the program does not make any substantial changes in the length or content of its clinical competency assessment without the board's approval; and
 - (2) the program remains in good standing with the state board of nursing or other regulatory body in the other state.
- (d-10) In this section, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by Section 105.008, Health and Safety Code.

- (d-11) If a clinical competency assessment program operated in another state graduates students who pass the National Council Licensure Examination for Registered Nurses at a rate lower than the board's required passage rate for graduating students of approved in-state programs, not later than May 31 of the next school year the program shall:
- (1) for the first year the student passage rate is lower than the board's required passage rate for students of approved in-state programs, complete and submit to the board for review and comment a self-study of the program in accordance with the board's guidelines;
 - (2) for the second consecutive year the student passage rate is lower than the board's required passage rate for students of approved in-state programs, allow the board to conduct a desk review to evaluate the program using the criteria typically used in an on-site visit and make recommendations to improve the program; and
 - (3) for the third consecutive year the student passage rate is lower than the board's required passage rate for students of approved in-state programs, provide notice on the program's Internet website that prospective students of the program may need to complete additional requirements to apply for an initial license in this state because the program has failed to meet the board's standards related to the required passage rate on the National Council Licensure Examination for Registered Nurses.
- (d-12) A clinical competency assessment program operated in another state is not considered to meet standards substantially equivalent to the board's standards if the program fails to meet the applicable requirements under Subsection (d-11) or if the program's graduating student passage rate on the National Council Licensure Examination for Registered Nurses is lower than the board's required passage rate for graduating students of approved in-state programs for four consecutive years. A student enrolled in a program described by this subsection before December 31 of the fourth consecutive year is eligible to apply for an initial license under this chapter. The program shall notify a student who enrolls in the program after December 31 of the fourth consecutive year that the student is required to complete additional requirements established by the board under Subsection (d-4) to apply for an initial license under this chapter.
- (e) The Board shall give each person, including an organization, affected by an order or decision of the board under this section reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The Board shall hear each protest or complaint from a person affected by a rule or decision regarding:
- (1) the inadequacy or unreasonableness of any rule or order the Board adopts; or
 - (2) the injustice of any order or decision of the Board.
- (f) Not later than the 30th day after the date an order is entered and approved by the Board, a person is entitled to bring an action against the Board in a district court of Travis County to have the rule or order vacated or modified, if that person:
- (1) is affected by the order or decision;
 - (2) is dissatisfied with any rule or order of the Board; and
 - (3) sets forth in a petition the principal grounds of objection to the rule or order.
- (g) An appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

(h) The Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

[Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Subsections (d-8), (d-9), (d-10), and (d-11) added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Subsections (d-4), (d-8), (d-9), and (d-11) amended and new Subsection (d-12) added by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.158. *Dissemination of Information.*

The Board shall disseminate, at least twice a year and at other times the Board determines necessary, information that is of significant interest to nurses and employers of nurses in this state, including summaries of final disciplinary action taken against nurses by the Board since its last dissemination of information.

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Sec. 301.1581. *Information Provided to License Holders.*

At least once each biennium, the Board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

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Sec. 301.1582. *Poison Control Center Information.*

The Board shall provide to license holders information regarding the services provided by poison control centers.

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Sec. 301.1583. *Disciplinary Action.*

- (a) The board shall remove a disciplinary action from the nurse licensure verification page on the board's Internet website if:
 - (1) the disciplinary action is the only disciplinary action taken against the nurse;

- (2) the disciplinary action was taken by the board for a violation that is not related to the practice of nursing;
- (3) the disciplinary action did not result in the suspension or revocation of, or the probation of the suspension or revocation of, the nurse's license;
- (4) the disciplinary action does not provide any indication that continued practice by the nurse may risk harm to a patient; and
- (5) the nurse has successfully completed the requirements imposed by the board in the disciplinary order related to the disciplinary action.

(b) A disciplinary action that is removed from the nurse licensure verification page on the board's Internet website under Subsection (a) shall be removed from the public portion of the coordinated licensure information system, as defined by Section 304.0015 in Article II of the Nurse Licensure Compact.

[Added by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.159. *Board Duties Regarding Complaints.*

- (a) The board by rule shall:
 - (1) adopt a form to standardize information concerning complaints made to the board; and
 - (2) prescribe information to be provided to a person when the person files a complaint with the Board.
- (b) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

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Sec. 301.1595. *Advisory Committees.*

- (a) The board may appoint advisory committees to perform the advisory functions assigned by the board.
- (b) An advisory committee shall provide independent expertise on board functions and policies, but may not be involved in setting board policy.
- (c) The board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on:
 - (1) the purpose, role, responsibility, and goal of an advisory committee;
 - (2) the size and quorum requirements for an advisory committee;
 - (3) the composition and representation of an advisory committee;
 - (4) the qualifications of advisory committee members, such as experience or area of residence;
 - (5) the appointment procedures for advisory committees;
 - (6) the terms of service for advisory committee members;
 - (7) the training requirements for advisory committee members, if necessary;
 - (8) the method the board will use to receive public input on issues addressed by an advisory committee; and
 - (9) the development of board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

- (d) A board member may not serve as a member of an advisory committee, but may serve as a liaison between an advisory committee and the board. A board member liaison that attends advisory committee meetings may attend only as an observer and not as a participant. A board member liaison is not required to attend advisory committee meetings. The role of a board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.
- (e) To the extent of any conflict with Chapter 2110, Government Code, this section and Board rules adopted under this section control.

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Sec. 301.160. *Pilot Programs.*

[Repealed by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.1605. *Pilot Programs for Innovative Applications.*

- (a) The Board may approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.
- (b) The Board shall specify the procedures to be followed in applying for approval of a pilot program. The Board may condition approval of a program on compliance with this section and rules adopted under this section.
- (c) In approving a pilot program, the Board may grant the program an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. The Board may not grant an exception to:
 - (1) the education requirements of this chapter unless the program includes alternate but substantially equivalent requirements; or
 - (2) the mandatory reporting requirements unless the program:
 - (A) is designed to evaluate the efficiency of alternative reporting methods; and
 - (B) provides consumers adequate protection from nurses whose continued practice is a threat to public safety.

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Sec. 301.1606. *Pilot Programs on Nurse Reporting Systems.*

- (a) The Board may solicit proposals for pilot programs designed to evaluate the efficacy and effect on protection of the public of reporting systems designed to encourage identification of system errors.
- (b) The Board may grant a pilot program approved under this section an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to

the practice of nursing, including education and reporting requirements for nurses. If the board grants an exception, the board may require that the program:

- (1) provide for the remediation of the deficiencies of a nurse who has knowledge or skill deficiencies that unless corrected may result in an unreasonable risk to public safety;
- (2) provide for supervision of the nurse during remediation of deficiencies under Subdivision (1);
- (3) require reporting to the board of a nurse:
 - (A) who fails to satisfactorily complete remediation, or who does not make satisfactory progress in remediation, under Subdivision (1);
 - (B) whose incompetence in the practice of nursing would pose a continued risk of harm to the public; or
 - (C) whose error contributed to a patient death or serious patient injury; or
- (4) provide for a nursing peer review committee to review whether a nurse is appropriate for remediation under Subdivision (1).

(c) The Board may require that the entity conducting a pilot program under this section reimburse the board for the cost of monitoring and evaluating the pilot program.

(d) The Board may contract with a third party to perform the monitoring and evaluation.

(e) The Board may limit the number of pilot programs that it approves under this section.

[Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009]

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Sec. 301.1607. *Pilot Program on Deferral of Final Disciplinary Action.*

[Repealed by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013]

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Sec. 301.161. *Enforcement.*

(a) The Board shall aid in the enforcement of this chapter.

(b) The Board may:

- (1) issue a subpoena;
- (2) compel the attendance of a witness;
- (3) administer an oath to a person giving testimony at hearings; and
- (4) cause the prosecution of each person violating this chapter.

(c) The Attorney General shall provide legal assistance necessary to enforce this chapter. This subsection does not relieve a local prosecuting officer of any duty under the law.

(d) The Board may establish a criminal investigations unit to investigate suspected criminal acts relating to the practice of nursing as authorized by this chapter.

- (e) The Board may assist federal, state, or local law enforcement agencies in the investigation and prosecution of crimes related to the practice of nursing.

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Sec. 301.1615. *Obtaining Criminal History Record Information; Hearing.*

- (a) In addition to the information to which the board is entitled under Section 411.125, Government Code, the Board may request and receive criminal history record information from the Federal Bureau of Investigation as provided by Section 411.087, Government Code.
- (b) Criminal history record information received by the Board may be used only by the board and is privileged. The information may not be disclosed to any person other than:
 - (1) as required under a court order; or
 - (2) to a nursing board that is a member of the nurse licensure compact under Chapter 304.
- (c) If, on the basis of criminal history record information obtained by the Board, the board proposes to deny an application for a license, refuse to renew a license, or suspend or revoke a license or temporary permit, the applicant or license holder is entitled to a hearing under Section 301.454.

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Sec. 301.162. *Legal Counsel.*

The Board may retain legal counsel to represent the Board if first:

- (1) the Board requests the Attorney General to represent the Board; and
- (2) the Attorney General certifies to the Board that the Attorney General cannot provide those services.

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Sec. 301.163. *Record of Proceedings; Report.*

[Repealed by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.164. *Assistance of Prosecutor.*

A board member may present to a prosecuting officer a complaint relating to a violation of this chapter. The Board, through its members, officers, counsel, or agents, shall assist in the trial of a case involving an alleged violation of this chapter, subject to the control of the prosecuting officers.

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Sec. 301.165. Annual Report.

[Repealed by Acts 2011 (S.B. 1179), 82nd Leg., eff. June 17, 2011]

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Sec. 301.166. Use of Technology.

The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

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Sec. 301.167. Negotiated Rulemaking; Alternative Dispute Resolution.

- (a) The board shall develop and implement a policy to encourage the use of:
 - (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
 - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.
- (b) The Board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The Board shall designate a trained person to:
 - (1) coordinate the implementation of the policy adopted under Subsection (a);
 - (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
 - (3) collect data concerning the effectiveness of those procedures, as implemented by the board.

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Sec. 301.168. Duties Regarding Prescriptive Authority Agreements.

The board shall in conjunction with the Texas Medical Board and the Texas Physician Assistant Board perform the functions and duties relating to prescriptive authority agreements assigned to the board in Sections 157.0512 and 157.0513.

[Added by Acts 2013 (S.B. 406), 83rd Leg., eff. Nov. 1, 2013.]

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Subchapter E. *Public Interest Information and Complaint Procedures*

Sec. 301.201. *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.
- (b) The Board shall make the information available to the public and appropriate state agencies.

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Sec. 301.202. *Complaints.*

- (a) 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 notice:
 - (1) on each registration form, application, or written contract for services of a person regulated by the Board;
 - (2) on a sign prominently displayed in the place of business of each person regulated by the Board; or
 - (3) in a bill for service provided by a person regulated by the Board.
- (c) The Board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

[Subsection (b) repealed by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.203. *Records and Analysis of Complaints.*

- (a) The Board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about:
 - (1) parties to the complaint;
 - (2) the subject matter of the complaint;
 - (3) a summary of the results of the review or investigation of the complaint; and
 - (4) the complaint's disposition.
- (b) The Board shall make information available describing its procedures for complaint investigation and resolution.
- (c) The Board shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless notice would jeopardize an undercover investigation.
- (d) The Board shall develop a method for analyzing the sources and types of complaints and violations and establish categories for the complaints and violations. The Board shall use the analysis to focus its information and education efforts on specific problem areas identified through the analysis.

- (e) The Board shall analyze complaints filed with the Board to identify any trends or issues related to certain violations, including:
 - (1) the reason for each complaint;
 - (2) how each complaint was resolved; and
 - (3) the subject matter of each complaint that was not within the jurisdiction of the board and how the Board responded to the complaint.

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Sec. 301.204. *General Rules, Policies, and Procedures Regarding Complaint Investigation and Disposition.*

- (a) The Board shall adopt rules, policies, and procedures concerning the investigation of a complaint filed with the Board. The rules, policies, or procedures adopted under this subsection must:
 - (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;
 - (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; and
 - (6) by rule allow appropriate employees of the board to dismiss a complaint if an investigation demonstrates that:
 - (A) a violation did not occur; or
 - (B) the subject of the complaint is outside the Board's jurisdiction.
- (b) The Board shall:
 - (1) dispose of all complaints in a timely manner; and
 - (2) establish a schedule 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 Board receives the complaint.
- (c) The Board shall notify the parties of the projected time requirements for pursuing the complaint.
- (d) The Board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.
- (e) The Executive director of the Board shall notify the Board of a complaint that is unresolved after the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.
- (f) At each public meeting of the board, the executive director shall report to the Board each complaint dismissed under Subsection (a)(6) since the Board's last public meeting.

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Sec. 301.205. *Public Participation.*

- (a) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the Board’s jurisdiction.
- (b) 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.

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Sec. 301.206. *Confidentiality of Information Collected for Emergency Relief Programs.*

- (a) In this section, “emergency relief program” means a program operated or sponsored by the federal government, the state, or a nonprofit organization to provide nurses to assist in providing health care to victims or potential victims of a disaster or state or local emergency.
- (b) A nurse’s personal contact information, including e-mail addresses, telephone numbers, and fax numbers, collected by the board for use by an emergency relief program is:
 - (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
 - (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than for the purpose of contacting the nurse to assist in an emergency relief program.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.207. *Confidentiality of Information Provided for Licensure.*

The following information that a person submits to the board for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466:

- (1) information, including diagnosis and treatment, regarding a person’s physical or mental condition, intemperate use of drugs or alcohol, or chemical dependency;
- (2) information regarding a person’s criminal history; and
- (3) any other information in the petition for declaratory order of eligibility.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Subchapter F. *License Requirements*

Sec. 301.251. *License Required.*

- (a) A person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by this chapter.
- (b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:
 - (1) the title Registered Nurse, Professional Nurse, Licensed Vocational Nurse, Vocational Nurse, Licensed Practical Nurse, Practical Nurse, or Graduate Nurse;
 - (2) the abbreviation R.N., L.V.N., V.N., L.P.N., or P.N.; or
 - (3) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.
- (c) This section does not apply to a person entitled to practice nursing in this state under Chapter 304.
- (d) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:
 - (1) the title nurse; or
 - (2) any other designation tending to imply that the person is licensed to provide nursing care.

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Sec. 301.2511. *Criminal History Record Information for License Applicants.*

- (a) An applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of this subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.
- (b) The Board may deny a license to an applicant who does not comply with the requirement of Subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under this section.
- (c) The board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the board a set of fingerprints that meets the requirements of Subsection (a). The board may develop a similar system for an applicant for enrollment in a nursing educational program. The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

[Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.252. License Application.

- (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:
- (1) has good professional character related to the practice of nursing;
 - (2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and
 - (3) has passed the jurisprudence examination approved by the board as provided by Subsection (a-1).
- (a-1) The jurisprudence examination shall be conducted on the licensing requirements under this chapter and board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The board shall adopt rules for the jurisprudence examination under Subsection (a)(3) regarding:
- (1) the development of the examination;
 - (2) applicable fees;
 - (3) administration of the examination;
 - (4) reexamination procedures;
 - (5) grading procedures; and
 - (6) notice of results.
- (a-2) An applicant who provides satisfactory evidence that the applicant has not committed a violation of this chapter or a rule adopted under this chapter is considered to have good professional character related to the practice of nursing. A determination by the board that an applicant does not have good professional character related to the practice of nursing must be based on a showing by the board of a clear and rational connection between a violation of this chapter or a rule adopted under this chapter and the applicant's ability to effectively practice nursing.
- (b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:
- (1) a professional nursing school approved under Section 301.157(d); or
 - (2) a school of professional nurse education located in another state or a foreign country.
- (c) The board by rule shall determine acceptable levels of education under Subsection (b).

[Amended by Acts 2007 (H.B. 2426), 80th Leg., eff. Sept. 1, 2007. The requirement to pass a jurisprudence examination, as amended by this Act, applies only to an individual who applies for a license as a nurse on or after September 1, 2008. Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.253. Examination.

- (a) Except as provided by Section 301.452, an applicant is entitled to take the examination prescribed by the Board if:
- (1) the Board determines that the applicant meets the qualifications required by Section 301.252; and
 - (2) the applicant pays the fees required by the Board.

- (b) Each examination administered under this section must be prepared by a national testing service or the board. The board shall ensure that the examination is administered in various cities throughout the state.
- (c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.
 - (c-1) The board shall:
 - (1) adopt policies and guidelines detailing the procedures for the testing process, including test admission, test administration, and national examination requirements; and
 - (2) post on the board's Internet website the policies that reference the testing procedures by the national organization selected by the board to administer an examination.
- (d) The Board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those required by the majority of the states.
- (e) A written examination prepared, approved, or offered by the Board, including a standardized national examination, must be validated by an independent testing professional.
- (f) The board shall develop a written refund policy regarding examination fees that:
 - (1) defines the reasonable notification period and the emergencies that would qualify for a refund; and
 - (2) does not conflict with any examination fee or refund policy of the testing service involved in administering the examination.
- (g) The board may recommend to a national testing service selected by the board to offer examinations under this section the board's written policy for refunding an examination fee for an applicant who:
 - (1) provides advance notice of the applicant's inability to take the examination; or
 - (2) is unable to take the examination because of an emergency.

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Sec. 301.254. Examination Results.

- (a) The Board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. 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.
- (b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day.
- (c) If requested in writing by a person who fails an examination, the Board shall provide to the person an analysis of the person's performance on the examination.

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Sec. 301.255. *Reexamination.*

The Board by rule shall establish conditions under which an applicant who fails an examination may retake the examination. For an applicant who fails the examination two or more times, the Board may:

- (1) require the applicant to fulfill additional educational requirements; or
- (2) deny the applicant the opportunity to retake the examination.

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Sec. 301.256. *Issuance of License.*

If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the Board under that section, the Board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the Board's Presiding Officer and the Executive Director and attested by the Board's Seal.

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Sec. 301.257. *Declaratory Order of License Eligibility.*

- (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and:
 - (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or
 - (2) is an applicant for a license.
- (b) The petition must state the basis for the person's potential ineligibility.
- (c) The Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.
- (d) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.
- (e) If the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's determination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.
- (f) 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 person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

- (g) The Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the Board for a declaratory order under this section. Instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.
- (h) The information required under Subsection (g) must be submitted in a form approved by the Board.
- (i) If, as a result of information provided under Subsection (g), the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.
- (j) The board may file a petition under this section based on the results of a criminal history record information check conducted under Section 301.2511. The board by rule shall adopt requirements for the petition and determination under this subsection. The rules must:
 - (1) identify the criminal offenses that constitute grounds for the board to file the petition; and
 - (2) describe the documents required by the board to make a determination of license eligibility.
- (k) The board shall make a determination of license eligibility under Subsection (j) not later than the 120th day after the date the person submits the required documents to the board under that subsection.
- (l) The board may require in a declaratory order under this section that a person begin participation in a peer assistance program at the time of receipt of an initial license under this chapter. The board shall notify the person that, on issuance of the person's initial license, the person may request reevaluation of the person's required participation in the peer assistance program.
- (m) The board by rule shall develop a process to determine whether a person should continue to be required to participate in a peer assistance program. In making the determination, the board shall:
 - (1) review the person's criminal history record information and, if applicable, determine whether participation in the program is warranted based on the time that has elapsed since the conviction or end of community supervision;
 - (2) reevaluate or require a contractor administering a peer assistance program to reevaluate the treatment plan or the time the person is required to participate in the peer assistance program based on the person's individualized needs; and
 - (3) authorize, as appropriate, a waiver of peer assistance program completion if the board is satisfied the person has achieved a satisfactory period of treatment or documented sobriety, as defined by board rules, and continued participation is not necessary.

[Amended by Acts 2009 (H.B. 3961), 80th Leg., eff. June 1, 2009. Subsections (j) and (k) added by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013. Subsections (l) and (m) added by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.258. *Temporary Permit.*

- (a) Pending the results of a licensing examination, the Board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.
- (b) The Board may not issue a permit under this section to an applicant who has previously failed an examination administered by the Board or another state.
- (c) A permit issued under Subsection (a) expires on the date of receipt of:
 - (1) a permanent license; or
 - (2) a notice from the Board that the permit holder has failed the examination.
- (d) The Board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the Board necessary for:
 - (1) renewal of an expired license;
 - (2) reactivation of an inactive license; or
 - (3) reissuance of a suspended, revoked, or surrendered license.
- (e) A permit issued under Subsection (d) expires on the earlier of:
 - (1) the date of receipt of a permanent license; or
 - (2) six months after the date the permit is issued.
- (f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the Board as a condition of issuing the permit.

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Sec. 301.259. *Reciprocal License by Endorsement for Certain Foreign Applicants.*

On payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

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Sec. 301.260. *Temporary License by Endorsement.*

- (a) An applicant for a license under this chapter who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the Board:

- (1) an endorsement fee as determined by the Board and a completed sworn application in the form prescribed by the Board;
 - (2) evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and
 - (3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.
- (b) A holder of a temporary license under this section is entitled to receive a permanent license if the applicant:
- (1) verifies the applicant's academic and professional credentials; and
 - (2) satisfies any other requirement established by statute.
- (c) The Board shall grant or deny an application for a permanent license not later than the 180th day after the date the Board receives all required forms or information. The Board may extend that deadline to allow for the receipt and tabulation of examination results.

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Sec. 301.261. *Inactive Status.*

- (a) The Board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the Board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.
- (b) The Board shall maintain a list of each person whose license is on inactive status.
- (c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.
- (d) The Board shall remove a person's license from inactive status if the person:
- (1) requests that the Board remove the person's license from inactive status;
 - (2) pays each appropriate fee; and
 - (3) meets the requirements determined by the Board.
- (e) The board by rule shall permit a person whose license is on inactive status and who was in good standing with the board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the board.

[Subsection (e) amended by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.262. *Special License.* [Expired Sept. 1, 2013]

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Subchapter G. License Renewal

Sec. 301.301. License Renewal.

- (a) The Board by rule may adopt a system under which licenses expire on various dates during the year.
- (b) A person may renew an unexpired license issued under this chapter on payment to the board of the required renewal fee before the expiration date of the license and compliance with any other renewal requirements adopted by the board. A person whose license has expired may not engage in activities that require a license until the license has been renewed.
- (c) A person whose license has been expired for 90 days or less may renew the license by paying to the Board the required renewal fee and a late fee in the amount considered appropriate by the board to encourage timely renewal.
- (c-1) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the Board all unpaid renewal fees and a late fee that is equal to twice the amount of a late fee under Subsection (c).
- (d) The Board by rule shall set a length of time beyond which an expired license may not be renewed. The Board by rule may establish additional requirements that 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.
- (e) 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.
- (f) A registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.3011. Criminal History Record Information Requirement for Renewal.

- (a) The Board may require that an applicant for renewal of an unexpired license submit to the board, in addition to satisfying any other requirements for license renewal, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

- (b) The Board may refuse to renew the license of a person who does not comply with the requirement of Subsection (a). Renewal of a license by the board is conditioned on the Board obtaining the person's criminal history record information under this section.

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Sec. 301.302. *Renewal of Expired License by Out-of-State Practitioner.*

- (a) A person who was licensed to practice professional nursing or vocational nursing 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 may obtain a new license without examination.
- (b) The person must pay to the Board a fee that is equal to the amount of the initial fee for the license and the renewal fee.

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Sec. 301.303. *Continuing Competency.*

- (a) The Board may recognize, prepare, or implement continuing competency programs for license holders under this chapter and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including:
 - (1) completion of targeted continuing education programs; and
 - (2) consideration of a license holder's professional portfolio, including certifications held by the license holder.
- (b) The Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.
- (c) If the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.
- (d) [Repealed by Acts 2007.]
- (e) The Board may adopt other rules as necessary to implement this section.
- (f) The Board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.
- (g) The Board by rule may establish guidelines for targeted continuing education required under this chapter. The rules adopted under this subsection must address:
 - (1) the nurses who are required to complete the targeted continuing education program;
 - (2) the type of courses that satisfy the targeted continuing education requirement;
 - (3) the time in which a nurse is required to complete the targeted continuing education;
 - (4) the frequency with which a nurse is required to meet the targeted continuing education requirement; and

(5) any other requirement considered necessary by the Board.

[Subsection (d) repealed by Acts 2007 (S.B. 993), 80th Leg., eff. Sept. 1, 2007.]

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Sec. 301.304. *Continuing Education in Tick-Borne Diseases.*

- (a) As part of the continuing education requirements under Section 301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases.
- (b) The board shall adopt rules to identify the license holders who are encouraged to complete continuing education under Subsection (a) and establish the content of that continuing education. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal.
- (c) If relevant, the board shall consider a license holder's participation in a continuing education course approved under Subsection (b) if:
 - (1) the license holder is being investigated by the board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and
 - (2) the license holder completed the course not more than two years before the start of the investigation.
- (d) The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

[Added by Acts 2011 (H.B. 2975, S.B. 1360), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.305. *Continuing Education in Nursing Jurisprudence and Nursing Ethics.*

- (a) As part of a continuing competency program under Section 301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period.
- (b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).
- (c) The board may not require a license holder to complete more than four hours of continuing education under this section.

[Added by Acts 2013 (S.B. 1058), 83rd Leg., applicable to licensing period that begins on or after Jan. 1, 2014. Sec. 301.305. *Bioterrorism Response Component in Continuing Education* expired Sept. 1, 2007.]

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Sec. 301.306. *Forensic Evidence Collection Component in Continuing Education.*

- (a) As part of continuing education requirements under Section 301.303, a license holder who is employed to work in an emergency room setting and who is required under Board rules to comply with this section shall complete at least two hours of continuing education relating to forensic evidence collection not later than:
 - (1) September 1, 2008; or
 - (2) the second anniversary of the initial issuance of a license under this chapter to the license holder.
- (b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).
- (c) The Board shall adopt rules to identify the license holders who are required to complete continuing education under Subsection (a) and to establish the content of that continuing education. The Board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

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Sec. 301.307. *Continuing Education in Older Adult or Geriatric Care.*

- (a) As part of a continuing competency program under Section 301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations.
- (b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).
- (c) The board may not require a license holder to complete more than six hours of continuing education under this section.

[Added by Acts 2013 (S.B. 1058), 83rd Leg., applicable to licensing period that begins on or after Jan. 1, 2014.]

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Subchapter H. *Practice by License Holder*

Sec. 301.351. *Designations.*

- (a) A person who holds a license as a registered nurse under this chapter:
 - (1) is referred to as a registered nurse; and
 - (2) may use the abbreviation R.N.

- (b) A person who holds a license as a vocational nurse under this chapter:
 - (1) is referred to as a licensed vocational nurse or vocational nurse; and
 - (2) may use the abbreviation L.V.N. or V.N.

- (c) While interacting with the public in a nursing role, each nurse shall wear a clearly legible insignia identifying the nurse as a registered or vocational nurse. The insignia may not contain information other than:
 - (1) the registered or vocational nurse designation;
 - (2) the nurse's name, certifications, academic degrees, or practice position;
 - (3) the name of the employing facility or agency, or other employer;
 - (4) a picture of the nurse; or
 - (5) any other information authorized by the board.

- (d) The Board may adopt rules establishing specifications for the insignia.

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Sec. 301.352. *Protection for Refusal to Engage in Certain Conduct.*

- (a) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against:
 - (1) a nurse who refuses to engage in an act or omission as provided by Subsection (a-1); or
 - (2) a person who advises a nurse of the nurse's rights under this section.

- (a-1) A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board under Subchapter I, that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:
 - (1) constitutes grounds for reporting the nurse to the Board; or
 - (2) 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 section if a nursing peer review committee under Chapter 303 determines:
 - (1) that the act or omission the nurse refused to engage in was not:
 - (A) conduct reportable to the board under Section 301.403;
 - (B) a minor incident; or
 - (C) a violation of this chapter or a board rule; or
 - (2) that:
 - (A) the act or omission in which the nurse refused to engage was conduct reportable to the board, a minor incident, or a violation of this chapter or a board rule; and
 - (B) the person:
 - (i) rescinds any disciplinary or discriminatory action taken against the nurse;
 - (ii) compensates the nurse for lost wages; and
 - (iii) restores to the nurse any lost benefits.

- (c) A nurse's rights under this section may not be nullified by a contract.

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

(e) [Repealed by Acts 2007]

(f) A violation of this section is subject to Section 301.413.

[Subsection (e) deleted by Acts 2007 (S.B. 993), 80th Leg., eff. Sept. 1, 2007. Subsection (a) amended by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011. Subsection (b) amended by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.353. *Supervision of Vocational Nurse.*

The practice of vocational nursing must be performed under the supervision of a registered nurse, physician, physician assistant, podiatrist, or dentist.

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Sec. 301.354. *Nurse First Assistants; Assisting at Surgery by Other Nurses.*

(a) In this section, nurse first assistant means a registered nurse who:

- (1) has completed a nurse first assistant educational program approved or recognized by an organization recognized by the Board; and
- (2) is either:
 - (A) certified in perioperative nursing by an organization recognized by the Board; or
 - (B) recognized by the Board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.

(b) Unless the person is a nurse first assistant, the person may not use:

- (1) the title nurse first assistant or registered nurse first assistant;
- (2) the abbreviation R.N.F.A.; or
- (3) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under this section.

(c) A health maintenance organization or an insurer, including an insurer offering a preferred provider benefit plan, may not, by contract or any other method, require a physician to use the services of a nurse first assistant.

(d) A nurse who is not a nurse first assistant may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:

- (1) assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;
- (2) is in the same sterile field as the physician, podiatrist, or dentist;
- (3) is employed by:
 - (A) the physician, podiatrist, or dentist;
 - (B) a group to which the physician, podiatrist, or dentist belongs; or
 - (C) a hospital licensed or owned by the state; and

(4) is qualified by education, training, or experience to perform the tasks assigned to the nurse.

(e) A patient or third-party insurer may not be billed separately for the services performed by a nurse described by Subsection (d).

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Sec. 301.355. *Policies Applicable to Nurses Employed by Medical and Dental Units.*

[Repealed by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.356. *Refusal of Mandatory Overtime.*

The refusal by a nurse to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, does not constitute patient abandonment or neglect.

[Added by Acts 2009 (S.B. 476), 81st Leg., eff. Sept. 1, 2009]

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Subchapter I. *Reporting Violations and Patient Care Concerns*

Sec. 301.401. *Definitions.*

In this subchapter:

- (1) Conduct subject to reporting means conduct by a nurse that:
 - (A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;
 - (B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;
 - (C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or
 - (D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.
- (2) Minor incident means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person. This term is synonymous with "minor error" or "minor violation of this chapter or board rule."
- (3) Nursing educational program means an educational program that is considered approved by the Board that may lead to an initial license as a registered nurse or vocational nurse.
- (4) Nursing student means an individual who is enrolled in a nursing educational program.

[Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.4011. *Good Faith Report by Nurse.*

In this subchapter, a report is considered to be made in good faith if:

- (1) the person reporting believed that the report was required or authorized; and
- (2) there was a reasonable factual or legal basis for that belief.

[Added by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.402. *Mandatory Report by Nurse.*

- (a) [Repealed by Acts 2007]
- (b) A nurse shall report to the Board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:
 - (1) another nurse has engaged in conduct subject to reporting; or
 - (2) the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.
- (c) [Repealed by Acts 2007]
- (d) A report by a nurse under Subsection (b) must:
 - (1) be written and signed; and
 - (2) include the identity of the nurse or student and any additional information required by the Board.
- (e) Instead of reporting to the Board under Subsection (b), a nurse may make a report required under:
 - (1) Subsection (b)(1) to a nursing peer review committee under Chapter 303; or
 - (2) Subsection (b)(2) to the nursing educational program in which the student is enrolled.
- (f) A person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:
 - (1) reports in good faith under this section; or
 - (2) advises a nurse of the nurse's rights and obligations under this section.
- (g) A violation of Subsection (f) is subject to Section 301.413.

[Subsections (a) and (c) repealed by Acts 2007 (S.B. 993), 80th Leg., eff. Sept. 1, 2007. Subsection (f) amended and Subsection (g) added by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.4025. *Optional Report by Nurse.*

- (a) In a written, signed report to the appropriate licensing board or accrediting body, a nurse may 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:
- (1) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or
 - (2) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.
- (b) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.
- (c) A person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:
- (1) reports in good faith under this section; or
 - (2) advises a nurse of the nurse's right to report under this section.
- (d) A violation of Subsection (c) is subject to Section 301.413.

[Subsection (c) amended and Subsection (d) added by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.403. *Duty of Peer Review Committee to Report.*

- (a) Except as provided by Subsection (b), a nursing peer review committee operating under Chapter 303 that determines that a nurse has engaged in conduct subject to reporting shall file with the Board a written, signed report that includes:
- (1) the identity of the nurse;
 - (2) a description of any corrective action taken against the nurse;
 - (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;
 - (5) the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control; and
 - (6) any additional information the Board requires.
- (b) A report under Subsection (a) is not required if:
- (1) the nursing peer review committee determines that the reported conduct was a minor incident that is not required to be reported under board rule; or
 - (2) the nurse has been reported to the board for the conduct under Section 301.405.

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Sec. 301.404. *Duty of Nursing Educational Program to Report.*

A nursing educational program that has reasonable cause to suspect that the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the Board a written, signed report that includes the identity of the student and any additional information the Board requires.

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Sec. 301.405. *Duty of Person Employing Nurse to Report.*

- (a) This section applies only to a person who employs, hires, or contracts for the services of a nurse, including:
- (1) a health care facility, including a hospital, health science center, nursing home, or home health agency;
 - (2) a state agency;
 - (3) a political subdivision;
 - (4) a school of nursing; and
 - (5) a temporary nursing service.
- (b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the Board, against a nurse, or a substantially equivalent action against a nurse who is a staffing agency nurse, because the nurse engaged in conduct subject to reporting shall report in writing to the board:
- (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.
- (c) If a person who makes a report required under Subsection (b) is required under Section 303.0015 to establish a nursing peer review committee, the person shall submit a copy of the report to the nursing peer review committee. The nursing peer review committee shall review the conduct to determine if any deficiency in care by the reported nurse was the result of a factor beyond the nurse's control. A nursing peer review committee that determines that there is reason to believe that the nurse's deficiency in care was the result of a factor beyond the nurse's control shall report the conduct to the patient safety committee at the facility where the reported conduct occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.
- (d) [Repealed by Acts 2007]
- (e) The requirement under Subsection (c) that a nursing peer review committee review the nurse and the incident does not subject a person's administrative decision to discipline a nurse to the peer review process.
- (f) [Repealed by Acts 2007]
- (g) [Repealed by Acts 2007]

(h) [Repealed by Acts 2007]

[Subsections (d), (f), (g), and (h) repealed by Acts 2007 (S.B. 993), 80th Leg., eff. Sept. 1, 2007.]

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Sec. 301.406. *Duty of Certain Professional Associations and Organizations to Report.*

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

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Sec. 301.407. *Duty of State Agency to Report.*

- (a) This section applies only to a state agency that:
 - (1) licenses, registers, or certifies:
 - (A) a hospital;
 - (B) a nursing home;
 - (C) a health science center;
 - (D) a home health agency; or
 - (E) another health care facility or agency; or
 - (2) surveys a facility or agency listed in Subdivision (1) regarding the quality of nursing care provided by the facility or agency.
- (b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe that a nurse has engaged in conduct subject to reporting shall report the nurse in writing to the Board or to a nursing peer review committee under Chapter 303.

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Sec. 301.408. *Duty of Liability Insurer to Report.*

- (a) Each insurer that provides to a nurse liability insurance that covers claims arising from providing or failing to provide nursing care shall submit to the Board the report or data required by this section at the time prescribed.
- (b) The report or data must be provided for:
 - (1) a complaint filed in court against a nurse that seeks damages related to the nurse's conduct in providing or failing to provide nursing care; and
 - (2) a settlement of a claim or lawsuit made on behalf of a nurse.
- (c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the Board:
 - (1) the name of the nurse 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 relevant information known by the insurer, as required by the Board.
- (d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the Board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:
- (1) whether an appeal has been taken from the judgment and by which party;
 - (2) the amount of the settlement or judgment against the nurse; and
 - (3) other relevant information known by the insurer, as required by the Board.
- (e) A nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide nursing care and the nurse:
- (1) does not carry or is not covered by liability insurance; or
 - (2) is insured by a non-admitted carrier.

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Sec. 301.409. *Duty of Prosecuting Attorney to Report.*

- (a) The attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the Board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:
- (1) a person known to be a nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:
 - (A) a felony;
 - (B) a misdemeanor involving moral turpitude;
 - (C) a violation of a state or federal narcotics or controlled substance law; or
 - (D) an offense involving fraud or abuse under the Medicare or Medicaid program; or
 - (2) a court finds that a nurse is mentally ill or mentally incompetent.
- (b) A prosecuting attorney shall comply with Subsection (a) even if the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state.
- (c) The abstract required under Subsection (a) must include:
- (1) the name and address of the nurse or applicant;
 - (2) a description of the nature of the offense committed, if any;
 - (3) the sentence, if any; and
 - (4) the judgment of the court.
- (d) The board shall prepare the form of the abstract and distribute a copy to each district attorney and county attorney in this state with appropriate instructions for preparation and filing.

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Sec. 301.410. *Report Regarding Impairment by Chemical Dependency, Mental Illness, or Diminished Mental Capacity.*

- (a) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the Board under Chapter 467, Health and Safety Code, instead of reporting to the Board or requesting review by a nursing peer review committee.
- (b) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.

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Sec. 301.4105. *Board Responsibility Following Report.*

The board shall determine whether a nurse violated this chapter or a rule adopted under this chapter for any case reported to the board in which the nurse's ability to perform the practice of nursing was impaired or suspected of being impaired by chemical dependency or diminished mental capacity and in which the nurse is suspected of committing a practice violation. The board, in deciding whether to take disciplinary action against the nurse for a violation of this chapter or board rules, shall balance the need to protect the public and the need to ensure the impaired nurse seeks treatment.

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Sec. 301.4106. *Peer Assistance Programs.*

The board by rule shall develop guidelines to:

- (1) outline the roles and responsibilities of the board and a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;
- (2) outline the process for a peer assistance program to refer to the board complaints alleging a violation of the practice of nursing;
- (3) establish requirements for successfully completing a peer assistance program and for notification of the board of the successful completion by a nurse the board has ordered to attend or referred to the program;
- (4) establish a clear procedure based on meaningful performance goals for evaluating the success of a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;
- (5) establish individualized requirements for participants in a peer assistance program, including the duration of participation in a peer assistance program for substance use, based on the individual's diagnosis and needs; and

- (6) ensure that participation requirements and treatment plans for peer assistance program participants who are referred to peer assistance for similar reasons are administered consistently.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.411. *Effect of Failure to Report.*

- (a) A person is not liable in a civil action for failure to file a report required by this subchapter.
- (b) The appropriate state licensing agency may take action against a person regulated by the agency for a failure to report as required by this subchapter.

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Sec. 301.412. *Reporting Immunity.*

A person who in good faith makes a report required or authorized under this subchapter, or a person who advises a nurse of the nurse's right or obligation to report under this subchapter:

- (1) is immune from civil and criminal liability that, in the absence of the immunity, might result from making the report or giving the advice; and
- (2) may not be subjected to other retaliatory action as a result of making the report or giving the advice.

[Amended by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.413. *Retaliatory Action.*

- (a) A person may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if:
 - (1) the person is named as a defendant in a civil action or subjected to other retaliatory action as a result of:
 - (A) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352;
 - (B) requesting in good faith a nursing peer review committee determination under Section 303.005; or
 - (C) providing advice to a person regarding:
 - (i) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352; or
 - (ii) requesting in good faith a nursing peer review committee determination under Section 303.005; and
 - (2) the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.
- (b) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a person who:
 - (1) reports in good faith under this subchapter;

- (2) requests, in good faith, a nursing peer review committee determination under Section 303.005;
 - (3) refuses to engage in conduct as authorized by Section 301.352; or
 - (4) advises a nurse of the nurse's right to:
 - (A) report under this subchapter;
 - (B) request a nursing peer review committee determination under Section 303.005; or
 - (C) refuse to engage in conduct as authorized by Section 301.352.
- (b-1) A person suspected of violating Subsection (b) may be reported to the appropriate licensing agency and, notwithstanding any other provision, that agency may impose an administrative penalty not to exceed \$25,000 against the person if the agency finds a violation of Subsection (b). An administrative penalty imposed under this subsection is in addition to other penalties the agency is authorized to impose and is subject to the procedural requirements applicable to the appropriate licensing agency.
- (c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review committee determination under Section 303.005, or a person who advises a nurse of the nurse's right to report under this subchapter, refuse to engage in conduct as authorized by Section 301.352, or request a nursing peer review committee determination under Section 303.005, has a cause of action against a person who violates Subsection (b), and may recover:
- (1) the greater of:
 - (A) actual damages, including damages for mental anguish even if no other injury is shown; or
 - (B) \$5,000;
 - (2) exemplary damages;
 - (3) court costs; and
 - (4) reasonable attorney's fees.
- (d) In addition to the amount recovered under Subsection (c), 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 recent salary; and
 - (2) compensation for wages lost during the period of suspension or termination.
- (e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, for requesting a peer review committee determination under Section 303.005, or for providing advice to a person regarding reporting under this subchapter, refusing to engage in conduct as authorized by Section 301.352, or requesting a peer review committee determination under Section 303.005 if:
- (1) the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against within 60 days after the date the report, refusal, or request was made or the advice was given; and
 - (2) the board or a court determines that:
 - (A) the report that is the subject of the cause of action was:
 - (i) authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and
 - (ii) made in good faith;

- (B) the request for a peer review committee determination that is the subject of the cause of action was:
 - (i) authorized under Section 303.005; and
 - (ii) made in good faith;
 - (C) the refusal to engage in conduct was authorized by Section 301.352; or
 - (D) the advice that is the subject of the cause of action was given in good faith.
- (f) An action under this section may be brought in a district court of the county in which:
- (1) the plaintiff resides;
 - (2) the plaintiff was employed by the defendant; or
 - (3) the defendant conducts business.
- (g) Subject to Subsection (h), a nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of Subsection (b) may sue the state or local governmental entity for relief under this section, and the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in state court to obtain that relief. Relief under this section is in addition to any other remedies a nurse may have under state or federal law as a public employee. In this subsection:
- (1) “Local governmental entity,” “public employee,” and “state governmental entity” have the meanings assigned by Section 554.001, Government Code.
 - (2) “Hospital” has the meaning assigned by Section 241.003, Health and Safety Code, and includes a mental hospital licensed under Chapter 577, Health and Safety Code.
- (h) Relief may be granted in a lawsuit brought under Subsection (g) for an alleged violation of Subsection (b)(1) based on a report made by a nurse under Section 301.4025(b) only if the nurse:
- (1) made the report:
 - (A) in writing, which may be provided electronically; or
 - (B) verbally, if authorized by the nurse’s employer or another entity at which the nurse is authorized to practice;
 - (2) made the report to:
 - (A) the nurse’s supervisor;
 - (B) a committee authorized under state or federal law to receive reports under Section 301.4025(b); or
 - (C) an individual or committee authorized by the nurse’s employer or another entity at which the nurse is authorized to practice; and
 - (3) made the report not later than:
 - (A) the fifth day after the date the nurse became aware of the situation if the situation involves a single incident; or
 - (B) the fifth day after the date the nurse became aware of the most recent occurrence of the situation if the situation involves multiple incidents or a pattern of behavior.
- (i) For purposes of Subsection (h), “supervisor” means an individual who has authority over the responsibilities of the nurse making the report or an individual who is in the nurse’s chain of command.
- (j) The following provisions of Chapter 554, Government Code, apply to a lawsuit under Subsection (g):
- (1) the type of relief and the amount of damages available to a public employee under Section 554.003;
 - (2) the time during which a public employee must seek relief under Section 554.005; and

(3) the requirement that a public employee use the grievance or appeal procedures of the state or local governmental entity before suing for relief under Section 554.006.

- (k) A lawsuit under Subsection (g) against a state governmental entity shall be brought in a district court in Travis County or a county in which all or part of the acts or omissions giving rise to the cause of action occurred.
- (l) A lawsuit under Subsection (g) against a local governmental entity shall be brought in a district court in a county in which all or part of the entity is located.

[Amended by Acts 2009 (S.B.476), 81st Leg., eff. Sept. 1, 2009. Subsections (a), (b), (c), and (e) amended and Subsection (b-1) added by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011. Subsections (g), (h), (i), (j), (k), and (l) added by Acts 2013 (H.B. 581), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.414. *Notice and Review of Report.*

- (a) The Board shall notify each nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.
- (b) The nurse or the nurse's authorized representative is entitled on request to review any report submitted to the Board under a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The Board may not reveal the identity of the person making or signing the report.

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Sec. 301.415. *Rebuttal Statement.*

- (a) A nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the Board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the Board.
- (b) The statement made under Subsection (a) must accompany the part of the report being rebutted.
- (c) In investigating the report, the board shall:
 - (1) review the statement made under Subsection (a); and
 - (2) evaluate each reason asserted by the nurse to justify the nurse's conduct.

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Sec. 301.416. *Investigation.*

- (a) Except as provided by Subsections (b) and (c), a report under this subchapter shall be treated as a complaint under Section 301.457.
- (b) If the Board determines that the reported conduct does not indicate that the continued practice of nursing by the nurse poses a risk of harm to a client or other person, the Board, with the written consent of the nurse and the

person making the report, may elect not to proceed with an investigation or to file formal charges. The Board shall:

- (1) maintain a record of the report; and
- (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

- (c) The Board is not required to investigate a report filed by an insurer under Section 301.408, but shall:
- (1) maintain a record of the report; and
 - (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

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Sec. 301.417. Confidentiality Requirements; Disclosure of Information.

- (a) A report required or authorized under this subchapter and the identity of the person making the report are confidential and may not be disclosed except as provided by this section and Section 301.414.
- (b) The Board may disclose the information to the same extent that the board may disclose information relating to a complaint under Section 301.466.
- (c) [Repealed.]
- (d) In addition to the other authorizations of this section, the information may be disclosed in:
- (1) a civil action in which a reporting person is named as a defendant as a result of making the report; or
 - (2) the prosecution of a cause of action based on a claim that the reporting person was subject to retaliatory action as a result of making the report.

[Subsection (c) repealed by Acts 2005 (S.B. 1000), Section 18, 79th Leg., eff. May 20, 2005.]

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Sec. 301.418. Disclosure of Charges or Disciplinary Action.

- (a) This subchapter does not prevent disclosure under Section 301.466 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 submission of a report under this subchapter.
- (b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide nursing services may not be made available in a liability action for:
- (1) discovery;
 - (2) court subpoena; or
 - (3) introduction into evidence.
- (c) A person is not prevented from taking disciplinary action against a nurse by:
- (1) the filing of a report under this subchapter with the Board;

- (2) an investigation by the Board; or
- (3) the disposition of a matter by the Board.

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Sec. 301.419. General Provisions Regarding Duty to Report; Minor Incidents.

- (a) [Repealed by Acts 2007]
- (b) The Board shall adopt rules governing reporting required under this subchapter to minimize:
 - (1) unnecessary duplicative reporting; and
 - (2) the reporting of a minor incident.
- (c) If the Board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the nurse's file.
- (d) The Board shall inform, in the manner the board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this subchapter.
- (e) The reporting required under this subchapter does not constitute state action on behalf of the person reporting.
- (f) The duty to report or any other requirement of this subchapter may not be nullified by a contract.

[Subsection (a) repealed by Acts 2007 (S.B. 993), 80th Leg., eff. Sept. 1, 2007.]

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Subchapter J. Prohibited Practices and Disciplinary Actions

Sec. 301.451. Certain Prohibited Practices.

A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice nursing under a diploma, license, or record that was:
 - (A) obtained unlawfully or fraudulently; or
 - (B) signed or issued unlawfully or under false representation; or
- (4) practice nursing in a period in which the person's license is suspended or revoked.

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Sec. 301.4515. *Use of Certain Nursing Titles.*

Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:

- (1) the title nurse aide, nurse assistant, or nurse technician; or
- (2) any other similar title.

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Sec. 301.452. *Grounds for Disciplinary Action.*

- (a) In this section, intemperate use includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.
- (b) A person is subject to denial of a license or to disciplinary action under this subchapter for:
 - (1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;
 - (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;
 - (3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;
 - (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
 - (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
 - (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
 - (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;
 - (8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law;
 - (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
 - (10) unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public;
 - (11) adjudication of mental incompetency;
 - (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or
 - (13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.
- (c) The Board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

- (d) The Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the board under this section is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.
- (e) The board shall adopt rules to ensure that license denials and disciplinary action under Subsection (b)(10) are based on the application of objective criteria that are clearly and rationally connected to the applicant's or license holder's conduct and that any negative outcome resulting from that conduct is determined to affect the person's ability to effectively practice nursing.

[Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013. Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.4521. *Physical and Psychological Evaluation.*

- (a) In this section:
 - (1) "Applicant" means:
 - (A) a petitioner for a declaratory order of eligibility for a license; or
 - (B) an applicant for an initial license or renewal of a license.
 - (2) "Evaluation" means a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.
- (b) The board may require a nurse or applicant to submit to an evaluation only if the board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of:
 - (1) physical impairment;
 - (2) mental impairment; or
 - (3) chemical dependency or abuse of drugs or alcohol.
- (c) A demand for an evaluation under Subsection (b) must be in writing and state:
 - (1) the reasons probable cause exists to require the evaluation; and
 - (2) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.
- (d) If the nurse or applicant refuses to submit to the evaluation, the board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the board's demand for an evaluation. The order may not be vacated or modified under Section 2001.058, Government Code.

- (e) If a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under Subsection (d), the board may:
 - (1) refuse to issue or renew a license;
 - (2) suspend a license; or
 - (3) issue an order limiting the license.

- (f) The board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than a reason listed in Subsection (b). A request for an evaluation under this subsection must be in writing and state:
 - (1) the reasons for the request;
 - (2) the type of evaluation requested;
 - (3) how the board may use the evaluation;
 - (4) that the nurse or applicant may refuse to submit to an evaluation; and
 - (5) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

- (g) If a nurse or applicant refuses to consent to an evaluation under Subsection (f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant:
 - (1) not later than the 30th day before the date of the hearing, notifies the board that an evaluation will be introduced into evidence at the hearing;
 - (2) provides the board the results of that evaluation;
 - (3) informs the board of any other evaluations by any other practitioners; and
 - (4) consents to an evaluation by a practitioner that meets board standards established under Subsection (h).

- (h) The board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under this section. The board shall maintain a list of qualified practitioners. The board may solicit qualified practitioners located throughout the state to be on the list.

- (i) A nurse or applicant shall pay the costs of an evaluation conducted under this section.

- (j) The results of an evaluation under this section are:
 - (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
 - (2) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be:
 - (A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under this chapter;
 - (B) included in the findings of fact and conclusions of law in a final board order; and
 - (C) disclosed to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, and to which the board has referred the nurse.

- (k) If the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the board's records.

- (l) The board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under this section.
- (m) The authority granted to the board under this section is in addition to the board's authority to make licensing decisions under this chapter.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Subsection (j) amended by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.453. *Disciplinary Authority of Board; Methods of Discipline.*

- (a) If the Board determines that a person has committed an act listed in Section 301.452(b), the Board shall enter an order imposing one or more of the following:
 - (1) denial of the person's application for a license, license renewal, or temporary permit;
 - (2) issuance of a written warning;
 - (3) administration of a public reprimand;
 - (4) limitation or restriction of the person's license, including:
 - (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or
 - (B) stipulating periodic board review;
 - (5) suspension of the person's license;
 - (6) revocation of the person's license; or
 - (7) assessment of a fine.
- (b) In addition to or instead of an action under Subsection (a), the Board, by order, may require the person to:
 - (1) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license;
 - (2) participate in a program of education or counseling prescribed by the Board, including a program of remedial education;
 - (3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;
 - (4) perform public service the Board considers appropriate; or
 - (5) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.
- (c) The Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.
- (d) If the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

[Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.4531. *Schedule of Sanctions.*

- (a) The Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under this chapter. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.
- (b) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider:
 - (1) whether the person:
 - (A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or
 - (B) has previously been the subject of disciplinary action by the Board and has previously complied with board rules and this chapter;
 - (2) the seriousness of the violation;
 - (3) the threat to public safety; and
 - (4) any mitigating factors.
- (c) In the case of a person described by:
 - (1) Subsection (b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and
 - (2) Subsection (b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

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Sec. 301.4535. *Required Suspension, Revocation, or Refusal of License for Certain Offenses.*

- (a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:
 - (1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;
 - (2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;
 - (3) sexual assault under Section 22.011, Penal Code;
 - (4) aggravated sexual assault under Section 22.021, Penal Code;
 - (5) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code;
 - (6) aggravated assault under Section 22.02, Penal Code;
 - (7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;
 - (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code;
 - (9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;

- (10) an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072, Penal Code, punished as a felony;
- (11) an agreement to abduct a child from custody under Section 25.031, Penal Code;
- (12) the sale or purchase of a child under Section 25.08, Penal Code;
- (13) robbery under Section 29.02, Penal Code;
- (14) aggravated robbery under Section 29.03, Penal Code;
- (15) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
- (16) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

- (a-1) An applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the board establishes by rule criteria that would permit the issuance or renewal of the license.
- (b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.
- (c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

[NOTE: Section 301.4535, Occupations Code, applies only to a person who is initially convicted of an offense or placed on deferred adjudication after a plea of guilty or nolo contendere for an offense on or after September 1, 2005. A person initially convicted of an offense or placed on deferred adjudication before that date is governed by the law in effect on the date the conviction or plea occurred, and the former law is continued in effect for that purpose. Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Subsection (a) amended by Acts 2013 (S.B. 743), 83rd Leg., eff. Sept.1, 2013.]

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Sec. 301.454. Notice and Hearing.

- (a) Except in the case of a temporary suspension authorized under Section 301.455 or 301.4551 or an action taken in accordance with an agreement between the board and a license holder, the board may not take any disciplinary action relating to a license unless:
 - (1) the board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and
 - (2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.
- (b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.
- (c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the Board proposes to:
 - (1) refuse to admit the person to examination;

- (2) refuse to issue a license or temporary permit;
- (3) refuse to renew a license; or
- (4) suspend or revoke the person's license or permit.

- (d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the Board for any sanction imposed as the result of a hearing conducted by that office.
- (e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:
 - (1) fails to submit a renewal application; or
 - (2) submits an application that:
 - (A) is incomplete;
 - (B) shows on its face that the person does not meet the renewal requirements; or
 - (C) is not accompanied by the correct fee.

[Subsection (a) amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.455. *Temporary License Suspension or Restriction.*

- (a) The license of a nurse shall be temporarily suspended or restricted on a determination by a majority of the Board or a three-member committee of board members designated by the Board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.
- (b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:
 - (1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension or determination to restrict; and
 - (2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.
- (c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 17th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists. The probable cause hearing shall be conducted as a de novo hearing.
- (d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension or restriction.

[Subsection (c) amended by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.4551. *Temporary License Suspension for Drug or Alcohol Use.*

- (a) The board shall temporarily suspend the license of a nurse as provided by Section 301.455 if the nurse is under a board order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse:
 - (1) tests positive for alcohol or a prohibited drug;
 - (2) refuses to comply with a board order to submit to a drug or alcohol test; or
 - (3) fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to the board for noncompliance.
- (b) For the purposes of Section 301.455(c), proof of the elements required for the board to suspend a license under this section is proof that probable cause of a continuing and imminent threat to the public welfare exists.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 301.456. *Evidence.*

A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

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Sec. 301.457. *Complaint and Investigation.*

- (a) The Board or any person may initiate a proceeding under this subchapter by filing with the Board a complaint against a nurse. The complaint must be in writing and signed by the complainant.
- (b) Except as otherwise provided by this section, the Board or a person authorized by the board shall conduct each investigation. Each complaint against a nurse that requires a determination of nursing competency shall be reviewed by a board member, consultant, or employee with a nursing background the Board considers sufficient.
- (c) On the filing of a complaint, the board:
 - (1) may conduct a preliminary investigation into the identity of the nurse named or described in the complaint;
 - (2) shall make a timely and appropriate preliminary investigation of the complaint; and
 - (3) may issue a warning or reprimand to the nurse.
- (d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the Board shall notify the nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the Board shall either attempt an informal disposition of the complaint or file a formal charge against the nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.
- (e) The Board shall conduct an investigation of the complaint to determine:

- (1) whether the nurse's continued practice of nursing poses a risk of harm to clients or other persons; and
- (2) whether probable cause exists that a nurse committed an act listed in Section 301.452(b) or that violates other law.

- (f) In making a determination under Subsection (e), the board shall review the evidence to determine the extent to which a deficiency in care by the registered nurse was the result of deficiencies in the registered nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a registered nurse must be based on the extent to which the registered nurse's conduct was the result of a deficiency in the registered nurse's judgment, knowledge, training, or skill.
- (g) If the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control, the board shall report that determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

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Sec. 301.458. *Initiation of Formal Charges; Discovery.*

- (a) Unless there is an agreed disposition of the complaint under Section 301.463, if probable cause is found under Section 301.457(e)(2), the Board or the Board's authorized representative shall file formal charges against the nurse.
- (b) A formal charge must:
 - (1) be written;
 - (2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and
 - (3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.
- (c) A copy of the formal charge shall be served on the nurse or the nurse's counsel of record.
- (d) The Board shall adopt reasonable rules to promote discovery by each party to a contested case.

[Subsection (a) amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.459. *Formal Hearing.*

- (a) The board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. An administrative law judge employed by the State Office of Administrative Hearings shall conduct a formal hearing. After receiving the administrative law judge's findings of fact and conclusions of law for a contested case, the board shall dispose of the case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law.

(a-1) Notwithstanding Section 2001.058(e), Government Code, the board in a contested case may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Section 2001.058(f)(5), Government Code. For each case, the administrative law judge may make a recommendation regarding an appropriate action or sanction. The board has the sole authority and discretion to determine the appropriate action or sanction.

(b) In any hearing under this section, a nurse is entitled to appear in person or by counsel.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.460. *Access to Information.*

(a) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the Board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:

- (1) all known exculpatory information in the Board's possession; and
- (2) information in the Board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

(b) The Board is not required to provide:

- (1) Board investigative reports or investigative memoranda;
- (2) the identity of non-testifying complainants;
- (3) attorney-client communications;
- (4) attorney work product; or
- (5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

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Sec. 301.461. *Assessment of Costs Prohibited.*

The Board may not assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 301.462. *Voluntary Surrender of License.*

The Board may revoke a nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the Board and executes a sworn statement that the nurse does not desire to be licensed.

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Sec. 301.463. *Agreed Disposition.*

- (a) Unless precluded by this chapter or other law, the Board may dispose of a complaint by:
 - (1) stipulation;
 - (2) agreed settlement;
 - (3) agreed order; or
 - (4) dismissal.
- (b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.
- (c) An agreed order is a public record.
- (d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

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Sec. 301.464. *Informal Proceedings.*

- (a) The Board by rule shall adopt procedures governing:
 - (1) informal disposition of a contested case under Section 2001.056, Government Code; and
 - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) Rules adopted under this section must:
 - (1) provide the complainant and the license holder an opportunity to be heard; and
 - (2) require the presence of a representative of the Board's legal staff or of the Attorney General to advise the Board or the Board's employees.

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Sec. 301.465. *Subpoenas; Request for Information.*

- (a) Notwithstanding Section 2001.089, Government Code, the Board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator or by certified mail.

- (b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the Board. A request or subpoena may not be refused, denied, or resisted unless the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.
- (c) The Board may pay a reasonable fee for photocopies subpoenaed at the Board's request. The amount paid may not exceed the amount the Board charges for copies of its records.
- (d) The Board shall protect, to the extent possible, the identity of each patient named in information received by the Board.

[Subsection (a) amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.466. Confidentiality.

- (a) A complaint and investigation concerning a nurse under this subchapter, all information and material compiled by the board in connection with the complaint and investigation, and the information described by Subsection (d) are:
 - (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
 - (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the Board or a board employee or agent involved in license holder discipline.
- (b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:
 - (1) a person involved with the Board in a disciplinary action against the nurse;
 - (2) a nursing licensing or disciplinary board in another jurisdiction;
 - (3) a peer assistance program approved by the Board under Chapter 467, Health and Safety Code;
 - (4) a law enforcement agency; or
 - (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.
- (c) The filing of formal charges against a 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 552, Government Code.
- (d) Notwithstanding Subsection (c), if the board orders a nurse to participate in a peer assistance program approved by the board under Section 467.003, Health and Safety Code, the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings are subject to disclosure:
 - (1) only to the same extent as information regarding a complaint is subject to disclosure under Subsection (b); or
 - (2) in a subsequent matter relating to the board order or a subsequent violation of this chapter or a board rule.

[Subsection (a) amended and Subsection (d) added by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.467. Reinstatement.

- (a) On application, the Board may reinstate a license to practice nursing to a person whose license has been revoked, suspended, or surrendered.
- (b) An application to reinstate a revoked license:
 - (1) may not be made before the first anniversary of the date of the revocation; and
 - (2) must be made in the manner and form the Board requires.
- (c) If the Board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

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Sec. 301.468. Probation.

- (a) The Board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the Board sets as the terms of probation, including a condition:
 - (1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing;
 - (2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the Board; or
 - (3) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the board.
- (b) At the time the probation is granted, the Board shall establish the term of the probationary period.
- (c) At any time while the person remains subject to the probation order, the Board may hold a hearing and rescind the probation and enforce the Board's original action in denying or suspending the license. The hearing shall be called by the presiding officer of the Board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:
 - (1) sets the time and place for the hearing; and
 - (2) contains the charges or complaints against the probationer.
- (d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the Board's records.
- (e) A hearing under this section is limited to a determination of whether the person violated the terms of the probation order under Subsection (a) and whether the board should:
 - (1) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or
 - (2) enter an order denying, suspending, or revoking the person's license.
- (f) If one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by:
 - (1) a positive drug or alcohol test result;
 - (2) refusal to submit to a drug or alcohol test as required by the board; or

- (3) a letter of noncompliance from the peer assistance program.

[Amended by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.469. *Notice of Final Action.*

If the Board takes a final disciplinary action, including a warning or reprimand, against a nurse under this subchapter, 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.

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Sec. 301.470. *Refund.*

- (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.
- (b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to a nurse for a service regulated by this chapter or the actual amount stolen or defrauded from a patient by the nurse. The board may not require payment of other damages or estimate harm in a refund order.

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Sec. 301.471. *Emergency Cease and Desist Order.*

- (a) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of professional nursing or vocational nursing and the board determines that the unauthorized activity constitutes a clear, imminent, or continuing threat to the public health and safety, the board may:
 - (1) issue an emergency cease and desist order prohibiting the person from engaging in the activity; and
 - (2) report the activity to a local law enforcement agency or the attorney general for prosecution.
- (b) An order issued under Subsection (a) must:
 - (1) be delivered on issuance to the person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;
 - (2) state the acts or practices alleged to be an unauthorized activity and require the person immediately to cease and desist from the unauthorized activity; and
 - (3) contain a notice that a request for hearing may be filed under this section.
- (c) Unless the person against whom the emergency cease and desist order is directed requests a board hearing in writing before the 11th day after the date it is served on the person, the order is final and nonappealable as to that person. A request for a board hearing must:
 - (1) be in writing and directed to the board; and

(2) state the grounds for the request to set aside or modify the order.

- (d) On receiving a request for a hearing, the board shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the board receives the request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.
- (e) After the hearing, the board shall affirm, modify, or set aside wholly or partly the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.
- (f) An order under this section continues in effect unless the order is stayed by the board. The board may impose any condition before granting a stay of the order.
- (g) The board may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.
- (h) A violation of an order issued under this section constitutes grounds for imposing an administrative penalty under this chapter.

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Subchapter K. *Administrative Penalty*

Sec. 301.501. *Imposition of Penalty.*

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

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Sec. 301.502. *Amount of Penalty.*

- (a) The amount of the administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (b) The amount of the penalty shall be based on:
 - (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of any prohibited acts; and
 - (B) 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 a future violation;

- (5) efforts made to correct the violation; and
- (6) any other matter that justice may require.

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Sec. 301.503. *Report and Notice of Violation and Penalty.*

- (a) If the Executive Director determines that a violation has occurred, the Executive Director may issue to the Board a report stating:
 - (1) the facts on which the determination is based; and
 - (2) the Director's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.
- (b) Not later than the 14th day after the date the report is issued, the Executive Director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:
 - (1) include a brief summary of the alleged violation;
 - (2) state the amount of the recommended penalty; and
 - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

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Sec. 301.504. *Penalty to be Paid or Hearing Requested.*

- (a) Not later than the 20th day after the date the person receives the notice, the person may:
 - (1) accept the Executive Director's determination and recommended administrative penalty in writing; or
 - (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.
- (b) If the person accepts the Executive Director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

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Sec. 301.505. *Hearing.*

- (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the Executive Director shall set a hearing and give notice of the hearing to the person.
- (b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.
- (c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

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Sec. 301.506. *Decision by Board.*

- (a) Based on the findings of fact, conclusions of law, and proposal for decision, the Board by order may:
 - (1) find that a violation occurred and impose an administrative penalty; or
 - (2) find that a violation did not occur.
- (b) The notice of the Board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

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Sec. 301.507. *Options Following Decision: Pay or Appeal.*

- (a) Not later than the 30th day after the date the Board's order becomes final, the person shall:
 - (1) pay the administrative penalty;
 - (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
 - (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.
- (b) Within the 30-day period, a person who acts under Subsection (a)(3) may:
 - (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court and that:
 - (i) is for the amount of the penalty; and
 - (ii) is effective until 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 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.
- (c) If the Executive Director receives a copy of an affidavit under Subsection (b)(2), the Executive Director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.
- (d) 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 penalty and to give a supersedeas bond.

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Sec. 301.508. *Collection of Penalty.*

If the person does not pay 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 penalty.

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Sec. 301.509. *Determination by Court.*

- (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.
- (b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

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Sec. 301.510. *Remittance of Penalty and Interest.*

- (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:
 - (1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or
 - (2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.
- (b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

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Sec. 301.511. *Administrative Procedure.*

A proceeding under this subchapter is subject to Chapter 2001, Government Code.

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Subchapter L. *Other Penalties and Enforcement Provisions*

Sec. 301.551. *Injunction.*

- (a) In addition to any other action authorized by law, the Board may institute an action in its name to enjoin a violation of this chapter or a board rule.
- (b) To obtain an injunction under this section, it is not necessary to allege or prove that:
 - (1) an adequate remedy at law does not exist; or
 - (2) substantial or irreparable damage would result from the continued violation.

- (c) Notwithstanding Subsection (b), in a proceeding for an injunction under Subsection (a), the defendant may assert and prove as a complete defense to the action that the Board's actions or proceedings were:
- (1) arbitrary or capricious;
 - (2) contrary to legal requirements; or
 - (3) conducted without due process of law.
- (d) Either party to an action under Subsection (a) may appeal. The Board is not required to give an appeal bond in a cause arising under this section.

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Sec. 301.552. *Monitoring of License Holder.*

The Board by rule shall develop a system for monitoring the compliance of license holders with the requirements of this chapter. Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the Board to perform certain acts; and
- (2) identify and monitor each license holder who represents a risk to the public.

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Sec. 301.553. *Civil Penalty.*

- (a) A person who violates Section 301.451 or Section 301.251 is liable to the state for a civil penalty not to exceed \$1,000 a day.
- (b) The civil penalty may be collected in a suit initiated by the Board.

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Sec. 301.554. *Criminal Penalty.*

- (a) A person commits an offense if the person violates Section 301.451 or Section 301.251.
- (b) An offense under Subsection (a) is a Class A misdemeanor, except that if it is shown on the trial of the offense that the defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.
- (c) Each day of violation constitutes a separate offense.
- (d) On final conviction of an offense under Subsection (a), the defendant forfeits all rights and privileges conferred by a license issued under this chapter.

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Sec. 301.555. *Appeal.*

- (a) A person against whom the Board has taken adverse action under this chapter may appeal to a district court in the county of the person's residence or in Travis County.
- (b) The Board's decision may not be enjoined or stayed except on application to the district court after notice to the Board.

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Subchapter M. *Anesthesia in Outpatient Setting*

Sec. 301.601. *Definition.*

In this subchapter, outpatient setting means a facility, clinic, center, office, or other setting that is not part of a licensed hospital or a licensed ambulatory surgical center.

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Sec. 301.602. *Rules.*

- (a) The Board by rule shall establish minimum standards for anesthesia services provided in an outpatient setting by a person licensed by the Board.
- (b) The rules adopted under this section must be designed to protect the health, safety, and welfare of the public and must include requirements relating to:
 - (1) general anesthesia, regional anesthesia, and monitored anesthesia care;
 - (2) patient assessment, counseling, and preparation;
 - (3) patient monitoring to be performed and equipment to be used during a procedure and during post-procedure monitoring;
 - (4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;
 - (5) the documentation necessary to demonstrate compliance with this subchapter; and
 - (6) the period in which protocols or procedures covered by rules of the Board shall be reviewed, updated, or amended.
- (c) The Board shall cooperate with the Texas State Board of Medical Examiners in the adopting rules under this subchapter to eliminate, to the extent possible, conflicts between the rules adopted by each board.

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Sec. 301.603. *Applicability.*

Rules adopted by the board under Section 301.602 do not apply to:

- (1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;
- (2) a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;
- (3) a licensed ambulatory surgical center;
- (4) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;
- (5) a facility maintained or operated by a state or local governmental entity;
- (6) a clinic directly maintained or operated by the United States;
- (7) an outpatient setting accredited by:
 - (A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;
 - (B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or
 - (C) the Accreditation Association for Ambulatory Health Care.

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Sec. 301.604. *Registration Required.*

- (a) The Board shall require each certified registered nurse anesthetist who provides anesthesia services in an outpatient setting to register biennially by applying to the Board on a form prescribed by the board and paying to the Board a fee in an amount established by the Board.
- (b) The Board shall coordinate the registration required under this section with the license renewal requirements of Subchapter G so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimal administrative burden for the Board and certified registered nurse anesthetists.

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Sec. 301.605. *Compliance With Rules.*

- (a) A certified registered nurse anesthetist providing anesthesia services in an outpatient setting shall comply with the rules adopted by the Board under Section 301.602.
- (b) The Board may require a certified registered nurse anesthetist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the nurse anesthetist's provision of anesthesia in an outpatient setting in accordance with this chapter or board rule.

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Sec. 301.606. *Inspections.*

- (a) The Board may conduct inspections to enforce this subchapter, including inspections of the equipment owned or leased by a certified registered nurse anesthetist and of documents of a certified registered nurse anesthetist's practice that relate to providing anesthesia in an outpatient setting. The Board may contract with another state agency or qualified person to conduct these inspections.
- (b) Unless it would jeopardize an ongoing investigation, the Board must provide notice at least five business days before the date of conducting an on-site inspection under this section.
- (c) This section does not require the Board to make an on-site inspection of an outpatient setting in which a certified registered nurse anesthetist provides anesthesia.

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Sec. 301.607. *Requests for Inspection and Advisory Opinion.*

- (a) The Board may consider a request by a certified registered nurse anesthetist for an inspection of equipment owned or leased by the nurse anesthetist and of documents of the nurse anesthetist's practice that relate to the provision of anesthesia in an outpatient setting. The Board, on payment of a fee set by the board, may conduct the requested inspection and issue an advisory opinion.
- (b) An advisory opinion issued by the Board under this section is not binding on the board. Except as provided by Subsection (c), the board may take any action under this chapter relating to the situation addressed by the advisory opinion as the board considers appropriate.
- (c) A certified registered nurse anesthetist who requests and relies on a board advisory opinion may use the opinion as mitigating evidence in an action or proceeding by the Board to impose an administrative penalty or to assess a fine under this chapter. On receipt of proof of reliance on an advisory opinion, the Board shall consider the reliance and mitigate imposition of an administrative penalty or assessment of a fine accordingly.

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Subchapter N. *Corrective Action Proceeding and Deferred Action*

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

Sec. 301.651. *Definitions.*

In this subchapter:

- (1) "Corrective action" means a fine or remedial education imposed under Section 301.652.
- (2) "Deferred action" means an action against a person licensed or regulated under this chapter that is deferred by the board as provided by this subchapter.

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Sec. 301.652. *Imposition of Corrective Action.*

- (a) The board may impose a corrective action on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. The corrective action:
- (1) may be a fine, remedial education, or any combination of a fine or remedial education;
 - (2) is not a disciplinary action under Subchapter J; and
 - (3) is subject to disclosure only to the extent a complaint is subject to disclosure under Section 301.466.
- (b) The board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.653. *Report and Notice of Violation and Corrective Action.*

If the executive director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under Section 301.652(b), the executive director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the recommended corrective action; and
- (3) inform the person of the person's options in responding to the notice.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.654. *Response.*

Not later than the 20th day after the date the person receives the notice under Section 301.653, the person may:

- (1) accept in writing the executive director's determination and recommended corrective action; or
- (2) reject the executive director's determination and recommended corrective action.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009.]

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Sec. 301.655. *Action Following Response.*

- (a) If the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed.
- (b) If the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by the board or fails to respond in a timely manner to the executive director's notice as provided by Section 301.654, the executive director shall:
 - (1) terminate corrective action proceedings; and
 - (2) dispose of the matter as a complaint under Subchapter J.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.6555. *Deferred Action.*

- (a) For any action or complaint for which the board proposes to impose on a person a sanction other than a reprimand or a denial, suspension, or revocation of a license, the board may:
 - (1) defer the final action the board has proposed if the person conforms to conditions imposed by the board, including any condition the board could impose as a condition of probation under Section 301.468; and
 - (2) if the person successfully meets the imposed conditions, dismiss the complaint.
- (b) Except as provided by this subsection, a deferred action by the board is not confidential and is subject to disclosure in accordance with Chapter 552, Government Code. If the person successfully meets the conditions imposed by the board in deferring final action and the board dismisses the action or complaint, the deferred action of the board is confidential to the same extent as a complaint is confidential under Section 301.466.

[Added by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.656. *Report to Board.*

The executive director shall report periodically to the board on the corrective or deferred actions imposed under this subchapter, including:

- (1) the number of actions imposed; and
- (2) the types of violations for which actions were imposed.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Sec. 301.657. *Effect on Acceptance of Corrective or Deferred Action.*

- (a) Except to the extent provided by this section, a person's acceptance of a corrective or deferred action under this subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.
- (b) The board may treat a person's acceptance of corrective or deferred action as an admission of a violation if the board imposes a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.
- (c) The board may consider a corrective or deferred action taken against a person to be a prior disciplinary action under this chapter when imposing a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

[Added by Acts 2009 (H.B. 3961), 81st Leg., eff. June 19, 2009. Amended by Acts 2013 (S.B. 1058), 83rd Leg., eff. Sept. 1, 2013.]

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Chapter 303. *Nursing Peer Review*

Sec. 303.001. *Definitions.*

In this chapter:

- (1) Board means the Texas Board of Nursing.
- (2) Nurse means a registered nurse or a vocational nurse licensed under Chapter 301.
- (3) Nursing has the meaning assigned by Section 301.002.
- (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. The committee includes an employee or agent of the committee, including an assistant, an investigator, an intervenor, an attorney, and any other person who serves the committee in any capacity.
- (4-a) Patient safety committee means a committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety, including:
 - (A) the entity's medical staff composed of individuals licensed under Subtitle B; or
 - (B) a medical committee under Subchapter D, Chapter 161, Health and Safety Code.
- (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. The term includes:
 - (A) the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;

- (B) a report made to a nursing peer review committee concerning an activity under the committee's review authority;
- (C) a report made by a nursing peer review committee to another committee or to the Board as permitted or required by law;
- (D) implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee; and
- (E) the provision of information, advice, and assistance to nurses and other persons relating to:
 - (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;
 - (ii) the rights and obligations of and protections for nurses who request nursing peer review under this chapter;
 - (iii) nursing practice and patient care concerns; and
 - (iv) the resolution of workplace and practice questions relating to nursing and patient care.

[Amended by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011.]

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Sec. 303.0015. *Required Establishment of Nursing Peer Review Committee.*

- (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 eight or more nurses; and
 - (2) for professional nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses, at least four of whom are registered nurses.
- (b) A person required to establish a nursing peer review committee under this section may contract with another entity to conduct the peer review for the person.

[Amended by Acts 2017 (H.B. 3296), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 303.002. *General Provisions Regarding Peer Review.*

- (a) [Repealed.]
- (b) The board shall enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing peer review committee. The memorandum of understanding must:
 - (1) state the actions the board and agency are to take to encourage compliance with the requirement to have a nursing peer review committee; and
 - (2) be adopted as a rule of the board and the agency.
- (c) A court may not enjoin the activities of a nursing peer review committee under this chapter.

- (d) This chapter may not be nullified by a contract.
- (e) The committee shall give the nurse being reviewed at least minimum due process, including notice and opportunity for a hearing.

[Subsection (a) repealed by Acts 2003, 78th Leg., ch. 553, § 3.001.]

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Sec. 303.003. *Committee Membership.*

- (a) A nursing peer review committee must have nurses as three-fourths of its members.
- (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.
- (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.
- (d) The committee shall include to the extent feasible at least one nurse who has a working familiarity with the area of nursing practice in which the nurse being reviewed practices.

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Sec. 303.004. *Peer Review by Two Entities.*

- (a) A nurse who, as a temporary agency nurse, faculty member, or similar staff member, practices nursing for an educational institution, health care facility, agency, or entity, or a person other than the person who employs or directly compensates the nurse is subject to peer review by both the employer and the other person.
- (b) For the purposes of exchanging information, the peer review committee reviewing the nurse's conduct is considered to be established under the authority of both entities.
- (c) The two entities may contract as to which entity will conduct peer review of the nurse.

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Sec. 303.005. *Request for Peer Review Committee Determination.*

- (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.

- (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.
- (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, 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.
- (c) A nurse who in good faith requests a peer review determination under Subsection (b):
- (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.
- (d) If a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review, 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 determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. This subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.
- (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.
- (f) A nurse's rights under this section may not be nullified by a contract.
- (g) An appropriate licensing agency may take action against a person who violates this section.

[Text of subsection (h) as repealed by Acts 2007, 80th Leg., R.S., Ch. 803, § 21. Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 803, § 18. Without reference to the amendment of this subsection, this subsection was repealed by Acts 2007, 80th Leg., R.S., Ch. 803, § 21(6), eff. September 1, 2007. Subsection (h) reenacted by Acts 2011 (S.B. 1303), 82nd Leg., eff. Sept. 1, 2011.]

- (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. A violation of this subsection is subject to Section 301.413.
- (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.

[Subsection (a-1) and (i) added, Subsections (b), (d) and (h) amended, and Subsection (h) repealed by Acts 2007 (S.B. 993), 80th Leg., eff. Sept. 1, 2007. Subsection (a-1) amended by Acts 2011 (S.B. 192), 82nd Leg., eff. Sept. 1, 2011.]

Sec. 303.006. Confidentiality of Peer Review Proceedings.

- (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.
- (b) A member, agent, or employee of a nursing peer review committee or a participant in a 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.
- (c) A person who attends a nursing peer review committee proceeding may not disclose or be required to disclose:
 - (1) information acquired in connection with the proceeding; or
 - (2) an opinion, recommendation, or evaluation of the committee or a committee member.
- (d) A nursing peer review committee member and a person who provides information to the committee may not be questioned about:
 - (1) the person's testimony before the committee; or
 - (2) an opinion formed as a result of the committee proceedings.
- (e) Except as permitted by this chapter, information that is confidential under this section:
 - (1) is not subject to subpoena or discovery in any civil matter;
 - (2) is not admissible as evidence in a judicial or administrative proceeding; and
 - (3) may not be introduced into evidence in a nursing liability suit arising out of the provision of or a failure to provide nursing services.
- (f) If a peer review committee determines that a nurse has not engaged in conduct required to be reported to the nurse's licensing board, a member of the peer review committee whose knowledge of the nurse's conduct was acquired only through the peer review may not report that nurse to the licensing board for that conduct. A committee member is not prohibited from reporting:
 - (1) the nurse, if the member has knowledge of the nurse's conduct independently of peer review; or
 - (2) the peer review committee to the licensing board, if the member believes the committee made its determination in bad faith.

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Sec. 303.007. Disclosure of Information.

- (a) A nursing peer review committee on request shall disclose written or oral communications made to the committee and the records and proceedings of the committee to:
 - (1) a licensing authority of any state; or
 - (2) a law enforcement agency 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) 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.
- (c) If a committee discloses information under this section, the committee does not by that action waive the privilege of non-disclosure of committee information and proceedings.
- (d) A peer review committee that discloses information under this section and each person who receives the information shall protect, to the extent possible, the identity of each patient.

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Sec. 303.0075. *Sharing of Information.*

- (a) A nursing peer review committee and a patient safety committee established by the same entity may share information.
- (b) A record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee. The privileges under this subsection may be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee. This subsection does not affect the application of Section 303.007 to a nursing peer review committee.
- (c) A committee that receives information from another committee shall forward any request to disclose the information to the committee that provided the information.

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Sec. 303.008. *Rebuttal Statement.*

- (a) If a nursing peer review committee makes an adverse finding against a nurse, the committee shall provide the nurse with a detailed description of the basis of its finding.
- (b) The peer review committee shall give the nurse the opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. Any rebuttal statement must be included with any information disclosed by the committee under Section 303.007.

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Sec. 303.009. *Retaliatory Actions.*

- (a) A nursing peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including court costs, reasonable attorney's 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.
- (b) A nursing peer review committee member or a person participating in peer review under this chapter named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may use information that is otherwise confidential under this chapter to defend the civil action or a civil action that alleges retaliation for the person's participation in peer review.
- (c) A person who discloses information under Subsection (b) does not by that action waive the privilege of non-disclosure of all other information privileged under this chapter.

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Sec. 303.010. *Civil Liability.*

- (a) A cause of action does not accrue for an act, statement, determination, or recommendation made, or act reported, without malice, in the course of peer review against:
 - (1) a member, agent, or employee of a nursing peer review committee; or
 - (2) a school of nursing, hospital, nursing home, home health agency, health science center, or other health care facility, the nursing staff of such a facility, or a nursing association or other organization.
- (b) A person who, without malice, provides records, information, or assistance to a nursing peer review committee:
 - (1) is not liable in a civil action based on the person's participation or assistance in peer review; and
 - (2) may not be subjected to retaliatory action as a result of that act.

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Sec. 303.011. *Evaluation by Committee.*

- (a) In evaluating a nurse's conduct, the nursing peer review committee shall review the evidence to determine the extent to which a deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.
- (b) The nursing peer review committee shall report a deficiency in care that the committee determines was the result of a factor beyond the nurse's control to a patient safety committee for evaluation. The patient safety committee shall evaluate the influence of the factors on the conduct of the nurse being evaluated and on the

practice of other nurses within the entity that established the committee. The committee shall report its findings to the nursing peer review committee.

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Sec. 303.012. Error Classification System.

- (a) The board may develop a standardized error classification system for use by a nursing peer review committee in evaluating the conduct of a nurse. The board shall make the system available to the committee at no cost.
- (b) Information collected as part of an error classification system is a record of the nursing peer review committee and is confidential under Section 303.006.
- (c) A nursing peer review committee may report the information collected using the error classification system to the board. The committee may not report to the board under this section information that includes the identity of an individual nurse or patient.
- (d) Information the board receives under this section that contains information identifying a specific patient, nurse, or health care facility, the committee, or the sponsoring organization of the committee is confidential and is not subject to disclosure under Chapter 552, Government Code. The board must remove the identifying information from the information before making the remaining information available to the public.
- (e) This section does not affect the obligation or authority of a nursing peer review committee to disclose information under Section 303.007.

[Added by Acts 2011 (S.B. 193), 82nd Leg., eff. Sept. 1, 2011.]

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Chapter 304. Nurse Licensure Compact

Sec. 304.001. Nurse Licensure Compact.

The Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which is as follows:

Nurse Licensure Compact

[Repealed by Acts 2017 (H.B. 2950), 85th Leg., eff. Dec. 31, 2018.]

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Sec. 304.0015. Nurse Licensure Compact.

The Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which reads as follows:

Nurse Licensure Compact

Article I. Findings and Declaration of Purpose

(a) The party states find that:

- (1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
- (2) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
- (3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
- (4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;
- (5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and
- (6) uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(b) The general purposes of this compact are to:

- (1) facilitate the states' responsibility to protect the public's health and safety;
- (2) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- (3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;
- (4) promote compliance with the laws governing the practice of nursing in each jurisdiction;
- (5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
- (6) decrease redundancies in the consideration and issuance of nurse licenses; and
- (7) provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

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Article II. Definitions

As used in this compact:

- (a) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation

on the licensee’s practice, or any other encumbrance on licensure affecting a nurse’s authorization to practice, including issuance of a cease and desist action.

- (b) “Alternative program” means a nondisciplinary monitoring program approved by a licensing board.
- (c) “Coordinated licensure information system” means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.
- (d) “Current significant investigative information” means:
 - (1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proven true, would indicate more than a minor infraction; or
 - (2) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
- (e) “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
- (f) “Home state” means the party state which is the nurse’s primary state of residence.
- (g) “Licensing board” means a party state’s regulatory body responsible for issuing nurse licenses.
- (h) “Multistate license” means a license to practice as a registered or a licensed practical/vocational nurse (LPN/ VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.
- (i) “Multistate licensure privilege” means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.
- (j) “Nurse” means RN or LPN/VN, as those terms are defined by each party state’s practice laws.
- (k) “Party state” means any state that has adopted this compact.
- (l) “Remote state” means a party state, other than the home state.
- (m) “Single-state license” means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.
- (n) “State” means a state, territory, or possession of the United States and the District of Columbia.
- (o) “State practice laws” means a party state’s laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. “State practice laws” do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

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Article III. General Provisions and Jurisdiction

- (a) A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.
- (b) A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.
- (c) Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:
 - (1) meets the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;
 - (2) (i) has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or
(ii) has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;
 - (3) has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;
 - (4) has successfully passed an NCLEX-RN or NCLEX-PN Examination or a recognized predecessor, as applicable;
 - (5) is eligible for or holds an active, unencumbered license;
 - (6) has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;
 - (7) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;
 - (8) has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;
 - (9) is not currently enrolled in an alternative program;
 - (10) is subject to self-disclosure requirements regarding current participation in an alternative program; and
 - (11) has a valid United States social security number.
- (d) All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated

licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

- (e) A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.
- (f) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact shall affect the requirements established by a party state for the issuance of a single-state license.
- (g) Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:
 - (1) a nurse, who changes primary state of residence after this compact's effective date, must meet all applicable Article III(c) requirements to obtain a multistate license from the new home state; or
 - (2) a nurse who fails to satisfy the multistate licensure requirements in Article III(c) due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("commission").

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Article IV. Applications for Licensure in a Party State

- (a) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.
- (b) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.
- (c) If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.
 - (1) The nurse may apply for licensure in advance of a change in primary state of residence.
 - (2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

- (d) If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

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Article V. Additional Authorities Invested in Party State Licensing Boards

- (a) In addition to the other powers conferred by state law, a licensing board shall have the authority to:
- (1) take adverse action against a nurse's multistate licensure privilege to practice within that party state.
 - (i) Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.
 - (ii) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.
 - (2) issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.
 - (3) complete any pending investigation of a nurse who changes primary state of residence during the course of such investigation. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.
 - (4) issue subpoenas for both hearings and investigations that require the attendance and testimony of a witness, as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedures of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.
 - (5) obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.
 - (6) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.
 - (7) take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.
- (b) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

- (c) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

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Article VI. *Coordinated Licensure Information System and Exchange of Information*

- (a) All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.
- (b) The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.
- (c) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.
- (d) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.
- (e) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.
- (f) Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
- (g) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.
- (h) The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:
 - (1) identifying information;
 - (2) licensure data;
 - (3) information related to alternative program participation; and
 - (4) other information that may facilitate the administration of this compact, as determined by commission rules.
- (i) The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

Article VII. *Establishment of Interstate Commission of Nurse Licensure Compact Administrators*

- (a) The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.
- (1) The commission is an instrumentality of the party states.
 - (2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
 - (3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.
- (b) Membership, Voting, and Meetings
- (1) Each party state shall have and be limited to one administrator. The head of the state licensing board or a designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.
 - (2) Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and the creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.
 - (3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.
 - (4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.
 - (5) The commission may convene in a closed, nonpublic meeting if the commission must discuss:
 - (i) noncompliance of a party state with its obligations under this compact;
 - (ii) the employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
 - (iii) current, threatened, or reasonably anticipated litigation;
 - (iv) negotiation of contracts for the purchase or sale of goods, services, or real estate;
 - (v) accusing any person of a crime or formally censuring any person;
 - (vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;
 - (vii) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (viii) disclosure of investigatory records compiled for law enforcement purposes;
 - (ix) disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or
 - (x) matters specifically exempted from disclosure by federal or state statute.

- (6) If a meeting or portion of a meeting is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
- (c) The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including but not limited to:
- (1) establishing the fiscal year of the commission;
 - (2) providing reasonable standards and procedures:
 - (i) for the establishment and meeting of other committees; and
 - (ii) governing any general or specific delegation of any authority or function of the commission;
 - (3) providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;
 - (4) establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the commission;
 - (5) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission; and
 - (6) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.
- (d) The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.
- (e) The commission shall maintain its financial records in accordance with the bylaws.
- (f) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
- (g) The commission shall have the following powers:
- (1) to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states;
 - (2) to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;
 - (3) to purchase and maintain insurance and bonds;

- (4) to borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;
- (5) to cooperate with other organizations that administer state compacts related to the regulation of nursing, including, but not limited to, sharing administrative or staff expenses, office space, or other resources;
- (6) to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
- (7) to accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;
- (8) to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;
- (9) to sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
- (10) to establish a budget and make expenditures;
- (11) to borrow money;
- (12) to appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;
- (13) to provide and receive information from, and to cooperate with, law enforcement agencies;
- (14) to adopt and use an official seal; and
- (15) to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

(h) Financing of the Commission

- (1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
- (2) The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.
- (3) The commission shall not incur an obligation of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the party states, except by and with the authority of such party state.
- (4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(i) Qualified Immunity, Defense, and Indemnification

- (1) The compact administrators, officers, executive directors, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision shall be construed to protect any such person from suit or liability for any damages, loss, injury, or liability caused by the intentional, wilful, or wanton misconduct of that person.
- (2) The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, wilful, or wanton misconduct.
- (3) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional, wilful, or wanton misconduct of that person.

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Article VIII. Rulemaking

- (a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.
- (b) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.
- (c) Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
 - (1) on the website of the commission; and
 - (2) on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.
- (d) The notice of proposed rulemaking shall include:
 - (1) the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
 - (2) the text of the proposed rule or amendment, and the reason for the proposed rule;
 - (3) a request for comments on the proposed rule from any interested person; and
 - (4) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

- (e) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.
- (f) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
- (g) The commission shall publish the place, time, and date of the scheduled public hearing.
 - (1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.
 - (2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
- (h) If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.
- (i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
- (j) The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- (k) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing; provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, and in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
 - (1) meet an imminent threat to public health, safety, or welfare;
 - (2) prevent a loss of commission or party state funds; or
 - (3) meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.
- (l) The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

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Article IX. Oversight, Dispute Resolution, and Enforcement

- (a) Oversight
 - (1) Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

(2) The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(b) Default, Technical Assistance, and Termination

- (1) If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
 - (i) provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and
 - (ii) provide remedial training and specific technical assistance regarding the default.
- (2) If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- (3) Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.
- (4) A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of the termination, including obligations that extend beyond the effective date of termination.
- (5) The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.
- (6) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) Dispute Resolution

- (1) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.
- (2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.
- (3) In the event the commission cannot resolve disputes among party states arising under this compact:
 - (i) the party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and
 - (ii) the decision of a majority of the arbitrators shall be final and binding.

(d) Enforcement

- (1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

- (2) By majority vote, the commission may initiate legal action in the U.S. District Court for the District of Columbia or in the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.
- (3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

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Article X. *Effective Date, Withdrawal, and Amendments*

- (a) This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this compact that also were parties to the prior Nurse Licensure Compact, superseded by this compact ("prior compact"), shall be deemed to have withdrawn from said prior compact within six (6) months after the effective date of this compact.
- (b) Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until the party state has withdrawn from the prior compact.
- (c) Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.
- (d) A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.
- (e) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.
- (f) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.
- (g) Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

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Article XI. *Construction and Severability*

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or the United States, or if the applicability thereof to any government, agency, person, or

circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held to be contrary to the constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

[Added by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 304.002. Administration of Compact.

The Executive Director of the Texas Board of Nursing is the Nurse Licensure Compact administrator for this state.

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Sec. 304.0025. Rules Adopted Under Compact.

The Interstate Commission of Nurse Licensure Compact Administrators established under the Nurse Licensure Compact under Section 304.0015 may not adopt rules that alter the requirements or scope of practice of a license issued under Chapter 301. Any rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators that purports to alter the requirements or scope of practice of a license issued under Chapter 301 is not enforceable.

[Added by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 304.003. Rules.

The Texas Board of Nursing may adopt rules necessary to implement this chapter.

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Sec. 304.004. General Provisions.

- (a) The terms nurse, registered nurse, and vocational nurse include nurses licensed as registered nurses or vocational nurses by a state that is a party to the Nurse Licensure Compact.
- (b) Unless the context indicates otherwise or doing so would be inconsistent with the Nurse Licensure Compact, nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Texas Board of Nursing.
- (c) The Texas Board of Nursing has the authority to determine whether a right or obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact unless that determination is inconsistent with the Nurse Licensure Compact.

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Sec. 304.005. *Enforcement.*

The Texas Board of Nursing is the state agency responsible for taking action against registered and vocational nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact as authorized by the Nurse Licensure Compact. The action shall be taken in accordance with the same procedures for taking action against registered and vocational nurses licensed by this state.

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Sec. 304.006. *Information Maintained Under Compact.*

- (a) On request and payment of a reasonable fee, the Texas Board of Nursing shall provide a registered or vocational nurse licensed by this state with a copy of information regarding the nurse maintained by the coordinated licensure information system under Article VI of the Nurse Licensure Compact.
- (b) A board is not obligated to provide information not available to the board or information that is not available to the nurse under the laws of the state contributing the information to the coordinated licensure information system.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 304.007. *Access to Practice-Related Information.*

Practice-related information provided by the Texas Board of Nursing to registered or vocational nurses licensed by this state shall be made available by the board on request and at a reasonable cost to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact.

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Sec. 304.008. *Disclosure of Personal Information.*

- (a) In reporting information to the coordinated licensure information system under Article VI of the Nurse Licensure Compact, the Texas Board of Nursing may disclose personally identifiable information about the nurse, including the nurse's social security number.
- (b) The coordinated licensure information system may not share personally identifiable information with a state not a party to the compact unless the state agrees not to disclose that information to other persons.

[Amended by Acts 2017 (H.B. 2950), 85th Leg., eff. Sept. 1, 2017.]

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Sec. 304.009. *Withdrawal from Compact.*

- (a) The governor may withdraw this state from the Nurse Licensure Compact if the Texas Board of Nursing notifies the governor that a state that is party to the compact changed, after January 1, 1999, the state's requirements for licensing a nurse and that the state's requirements, as changed, are substantially lower than the requirements for licensing a nurse in this state.
- (b) The governor may completely withdraw this state from the Nurse Licensure Compact or may limit withdrawal to the application of the compact to registered nurses or vocational nurses.

[Repealed by Acts 2017 (H.B. 2950), 85th Leg., eff. Dec. 31, 2018.]

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