

Nursing Peer Review

Pamela Sanford, MSN, RN-BC, CNS
Clinical Educator III, Ambulatory Care
Baylor Scott and White Health Central TX

Objective

Upon completion of this program, the participant will be able to describe the Nursing Peer Review process and relate that to School Nursing.

Texas Board of Nursing's Mission Statement

"Our mission is to **protect** and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely."



Professional Licensing Boards Protect the Public!

How does the Board's work protect the public?

- ❖ **All licensed nurses must meet minimal acceptable standards for licensure**
 - Graduation from an approved school of nursing
 - N-CLEX® Exam
- ❖ **Approval of all schools of nursing:** vocational, professional and advanced practice programs
- ❖ **Re-licensure**
 - Every other year
 - 20 Type I Contact Hours for re-licensure
- ❖ **Investigations and disciplinary actions**

Licensure Requirements

Good professional character §213.27

- Accountability
- Sobriety and fitness to practice
- Integrity
- Honesty
- Reliability
- Trustworthiness

Every Nurse is Responsible for ...

Nurse's Duty To A Patient

<http://www.bon.state.tx.us/practice/position.html#15.8>

“All nurses, regardless of practice setting or position title/role, are required to adhere to the NPA and Board Rules. The "core" rules relating to nursing practice, however, are

Rules 217.11, Standards of Nursing Practice, and 217.12, Unprofessional Conduct.

The standard upon which other standards are based is 217.11(1)(B)

"...maintain a safe environment for clients and others."

This standard supersedes any physician's order or facility's policy, and has previously been upheld in a landmark case, *Lunsford v. Board of Nurse Examiners*, 648 S.W. 2d 391 (Tex. App. -- Austin 1983). The concept of the nurse's duty to maintain client safety also serves as the basis for behavior that could be considered unprofessional conduct by a nurse.”

... Maintaining safe environment for patients by accepting appropriate assignments

- * Neither facility policy nor MD order can discharge the nurse's responsibility for assuring patient safety, or for complying with all of the other rules and requirements in the Nursing Practice Act.
- * A nurse may refuse to engage in any activity that the nurse, in good faith, believes may cause him/her to violate one or more provisions of the NPA and board rules (NPA, Section 301.352).

<http://www.bon.state.tx.us/practice/faq-nursetasks.html>



... Understanding Laws, Rules & Guidelines

Texas Occupations Code

301 –Nursing Practice Act

Contains the statute (law) regulating nursing practice and creates the Board of Nursing (BON) while defining BON's responsibilities for regulating nursing education, licensure, and practice

303 – Nursing Peer Review – Rules 217.19 and 217.20

NPA & Rules and Regulations

Nursing Practice Act (NPA)

- Law regulating professional and vocational nursing
- Defines professional and vocational nursing
- Gives the Board of Nursing (BON) authority to make rules

Rules and Regulations

- Established by BON to implement the NPA
- Rules explain and interpret the NPA
- May be accessed online via Web site or as printed manual

NPA and Rules & Regulations

- * Equally enforceable
- * Amended periodically
- * RNs and LVNs are required to know and comply with both laws
- * Nurses are responsible for knowing the changes in the law

Guidelines: Position Statements

- Represent BON's position on issues
- Provide guidance for decisions, policies, and practice
- Do not have the force of law
- Reviewed by BON annually

Examples

- **15.6 Board Rules Associated With Alleged Patient "Abandonment"**
- **15.10 Continuing Education: Limitations for Expanding Scope of Practice**
- **15.14 Duty of a Nurse in any Practice Setting**
- **15.27 LVN Scope of Practice**
- **15. 28 RN Scope of Practice**

Scope of Practice

Where can I find a list of tasks that LVNs and/or RNs can or cannot do in the State of Texas?

Resources:

- www.bon.state.tx.us
- Rule 217.11 Standards of Nursing Practice
- Nursing Practice Act 301.002 defines nursing practice
- 6 Step Decision Making Model
- Position Statements

Standards of Nursing Practice

Minimal acceptable level of nursing practice in any setting for each level of nursing licensure

- * Failure to meet the standard can result in action against the license even if there is no actual patient injury/harm
- * Applicable to all nurses
- * NPA also describes Standards for specifically for RNs or LVNs

Standards of Practice

Rule 217.11

- * Know the NPA & BON rules/regulations
- * Promote safe environment
- * Know medications
- * Document accurately and completely
- * Maintain Privacy/Confidentiality
- * Promote patient education
- * Obtain supervision/instruction for procedures
- * Obtain orientation/training for competencies

Standards of Practice

Rule 217.11

And it goes on...

- * Notify supervisor when leaving an assignment
- * Know the professional boundaries

Reporting—comply with mandatory reporting requirements

- * Implement nursing interventions
- * Clarify orders
- * Infection control
- * Professional growth
- * Making/accepting assignments

Unprofessional Conduct

Rule 217.12

Unsafe practice . . .

- Failing to meet minimum standards . . .
 - Failing to conform to nursing standards . . .
 - Improper management of client records . . .
 - Delegation resulting in unsafe or ineffective care ...
 - Accepting assignment that could result in unsafe care . . .
 - Failing to supervise . . .
- **Failure to practice within scope**
 - **Careless conduct**

Unprofessional Conduct (cont.)

- Inability to practice safely due to chemical dependency, mental illness or physical condition
- Misconduct
- Failure to repay student loan
- Drug diversion
- Dismissal from TPAPN
- Other drug-related actions or conduct
- Unlawful practice
- Leaving a nursing assignment
- Criminal conduct



What are professional boundaries?

Each of these have specific Disciplinary Sanctions:

- * Financial exploitation
- * Physical, emotional or verbal abuse
- * Sexual misconduct

Newest Professional Boundary:

- * Social Media

Reporting mandatory reporting requirements

Who is required to report to BON?

- * Individual nurses
- * Employers
- * Peer Review Committees
- * Others –
 - * schools
 - * courts
 - * insurance companies

A report to the BON is required when...

- * Violation of the NPA or BON rule that contributed to the death or serious injury of a patient
- * Suspect the nurse's practice is impaired by chemical dependency or drug or alcohol abuse
- * Constitutes abuse, exploitation, fraud, or a violation of professional boundaries
- * Indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice or 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

What's Peer Review?

The evaluation of

- Nursing practice
- Qualifications of a nurse
- Value of complaint

Role of NPR Committee:

- Make determination or recommendation regarding the complaint
- Report to CNO
- Possible report to BON
- Assure minimum due process

Evaluation of Nursing Practice

- Good Professional Character (213.27)
- Standards of Nursing Practice (217.11)
- Unprofessional Conduct (217.12)
- Minor Incidents (217.16)
- Delegation in an Acute Care Setting (224)
- BON Six-Step Decision-Making Model for Determining Nursing Scope of Practice

Did the nurse engage in conduct subject to reporting?

Was it a minor incident?

Texas Board of Nursing, Texas Administrative Code Rule Title 22, Part 11 §217.19

Does the nurse lack a conscientious approach to or accountability for his/her practice?

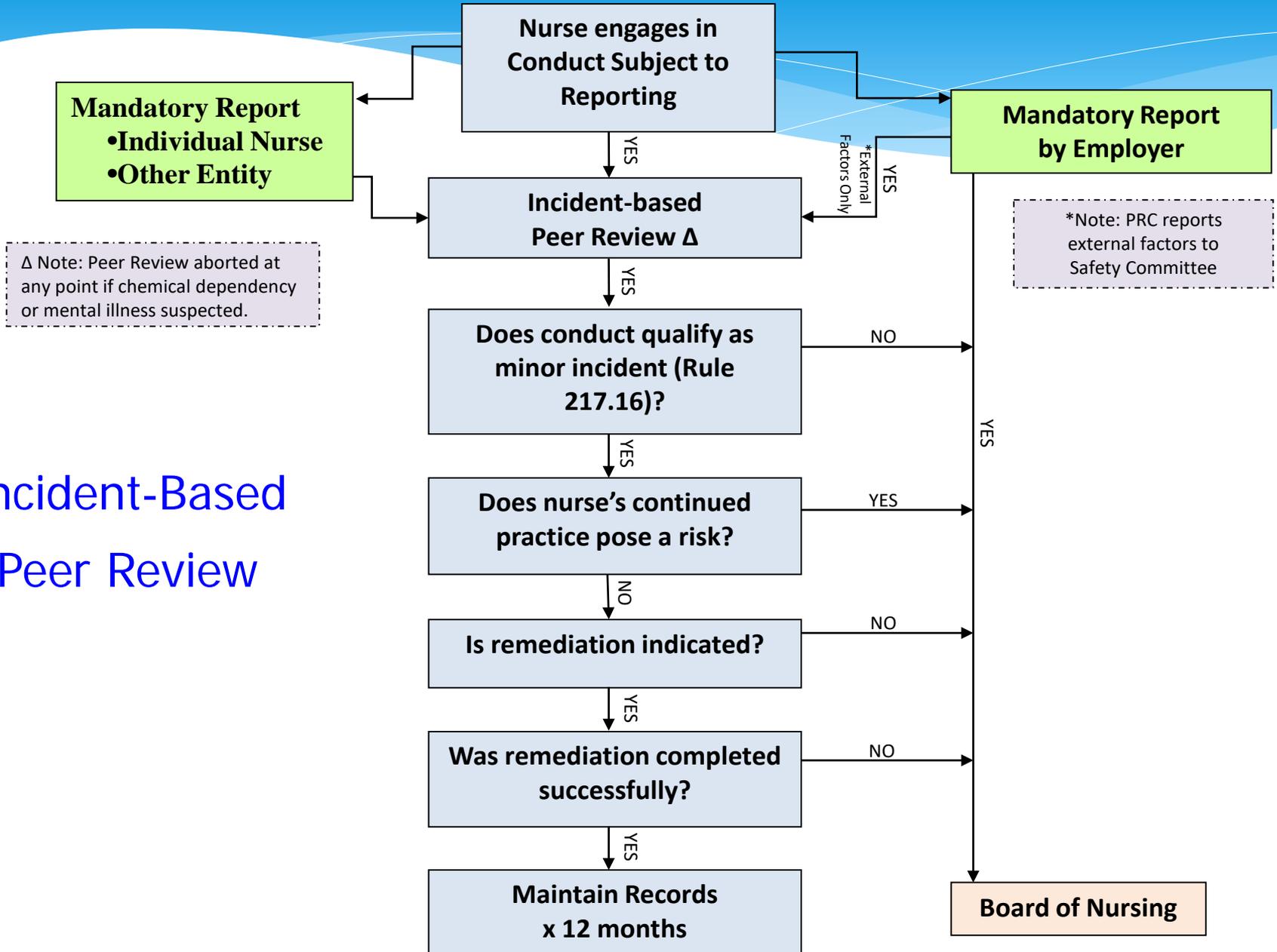
Does the conduct indicate the nurse lacks knowledge & competencies to make appropriate clinical judgments and cannot be easily remediated?

Does the continued practice of this nurse pose a risk of harm to patients?

Was the deficiency in care a result of deficiencies in the nurse judgement, knowledge, training or skill within the nurse's control?"

Answering “yes” to any of these questions means it is not a minor incident!

Incident-Based Peer Review



Good or Bad Faith Reporting

Good Faith:

The events under review are supported by:

- ✦ Reason
- ✦ Fact
- ✦ Legal basis

Bad Faith:

Knowingly/recklessly taking action not supported by a reason, fact or legal basis

- Misrepresenting facts
- Acting out of malice
- Acting from a conflict of interest
- Denying a nurse due process

Nursing Peer Review & School Nurses

- * How many of you work in School districts with 10 or more nurses
- * If you have 10+ nurses are at least 5 of them RNs?

Nursing Peer Review Committee

- Any organization with 10 or more licensed nurses must have a NPR Committee (NPRC)
- $\frac{3}{4}$ of members must be nurses
- Excludes those with administrative authority over the nurse under review
- Should include a nurse with working familiarity of the area of nursing practice
- **Failure to maintain confidentiality is conduct that is reportable to the Board of Nursing.**

When there are Impairment Issues

- IBPR (and minimum due process) is suspended
- If there is a practice violation involved, the nurse is reported to BON
- If no practice violation, nurse is reported to TPAPN
- NPRC conducts proceeding to evaluate external factors with findings reported to the Patient Safety Committee
- Patient Safety Committee reports its findings back to NPRC

Employer's Responsibilities

An employer that **terminates, suspends for more than 7 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 is required to directly report nurse to Board of Nursing without case going to Nursing Peer Review Committee** first.

Sec 301.405 TOC



What is a Minor Incident?

A "minor incident" is defined by Texas Occupations Code (Nursing Practice Act)§301.419(a) as

"conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client or other person."

Minor Incident Documentation

- * Complete description of the incident, patient record number, witnesses, nurse involved, and action taken to correct or remedy the problem
- * If a med error is attributed to a nurse, the record of that incident should indicate why the error is attributed to that nurse

Evaluation of Multiple Minor Incidents

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

NOTE: The reporting number of “5” does not have to be reached in a 12 month period if there is a pattern emerging that suggests the nurse is not safe to practice.

Minor Incident Not Reported Unless

- Creates a significant risk
- Indicates lack of conscientiousness or accountability
- Indicates nurse lacks knowledge & competencies to make appropriate clinical judgments & cannot be easily remediated
- Pattern exists indicating continued practice unsafe

Safe Harbor

- Protects patients
- Protects your license from disciplinary action by BON
- Provides “Whistle Blower” protection
 - Mechanism for reporting unsafe conditions
- Protects nurse from retaliatory action by employer

Safe Harbor Nursing Peer Review

Provides a formal mechanism for resolving situations in which reasonable nurses can differ about what is the nurse's duty to the patient, e.g., what is safe.

A nurse requesting safe harbor may:

- Not accept an assignment because the nurse believes that it may violate her/his duty to the patient
- Accept the assignment even though it may violate his/her duty to the patient

When to Invoke Safe Harbor

- * At the time of the requested activity and before accepting the assignment
- * When changes occur that render assignment unsafe
- * When the nurse refuses to engage in the assignment

BON Rule 217.20 (d)(1)(A)-(C)

Refusing an Assignment

Refusal is based on either:

- * The requested conduct would constitute unprofessional or criminal conduct (such as fraud or falsification)
- * The nurse lacks the basic knowledge... engaging in the conduct would expose patients or others to unjustifiable risk of harm.

NPA 301.352 and Rule 217.20(g)

Safe Harbor Peer Review

Nurse believes requested conduct violates the nurse's duty to the patient.

Nurse requests Safe Harbor Peer Review "in good faith"

Nurse and Person making assignment negotiate mutually acceptable solution

Is requested conduct a violation of NPA and unsafe

Nurse does not engage in conduct

Retaliation? Legal Action by Nurse

Nurse can engage in conduct until Peer Review determination.

Peer Review Committee determines the requested conduct did violate the nurse's duty to the patient.

Peer Review Committee determines the requested conduct did not violate the nurse's duty to the patient.

Nurse supervisor accepts Peer Review Committee determination?

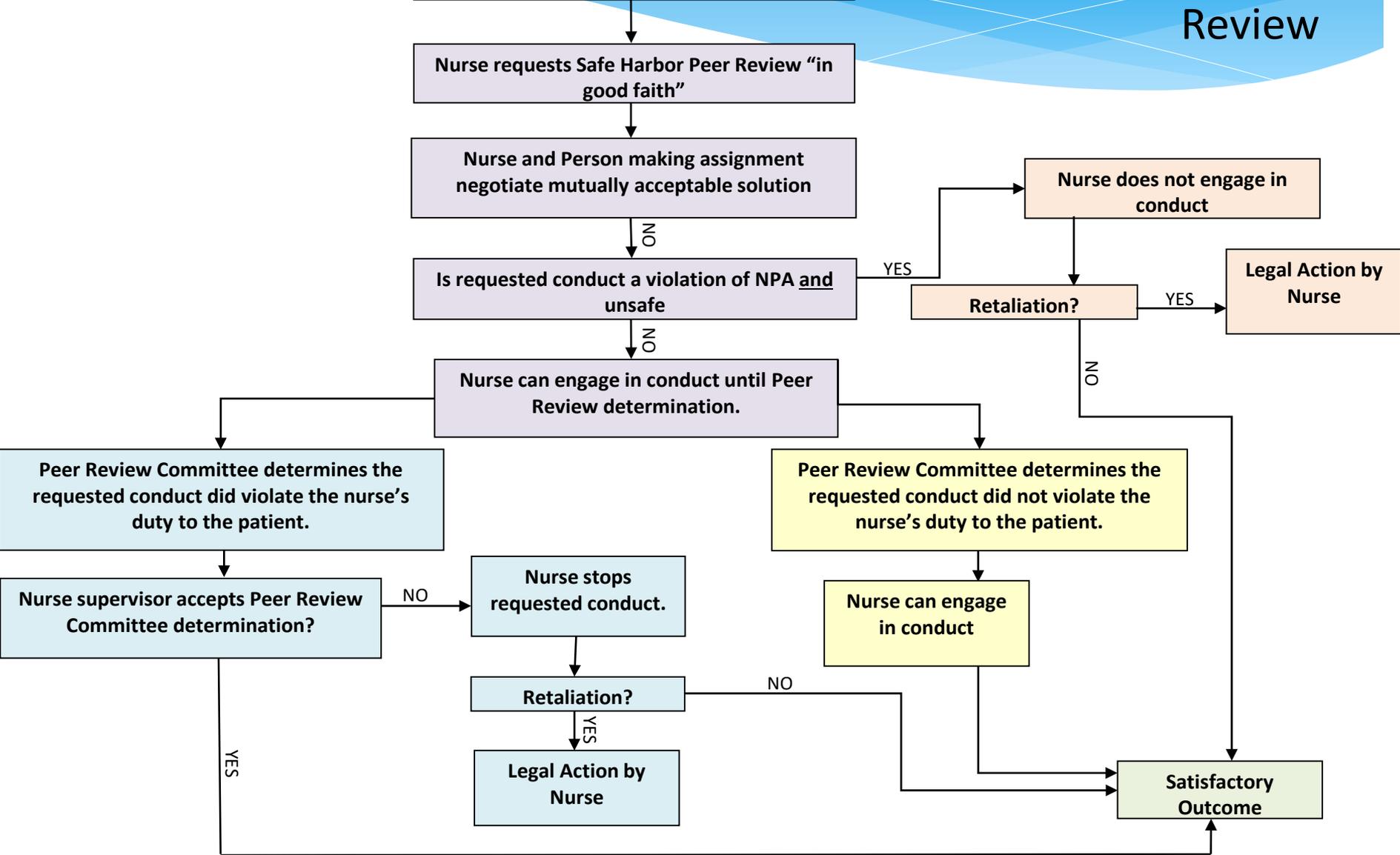
Nurse stops requested conduct.

Nurse can engage in conduct

Retaliation?

Legal Action by Nurse

Satisfactory Outcome



Safe Harbor Written Request

- Description of requested conduct (or nursing assignment)
- Description of practice setting
- Detailed explanation of how the request would have violated the nurse's duty
- Rationale for not engaging in requested duty (if applicable)
- Documentation (policies, professional organizations' standards of practice, professional articles on evidenced based practice)
- Nurse's name, title, and relationship to the supervisor making the request

Safe Harbor

- Due process under the review of the Nursing Peer Review Committee

And it must:

- Be declared at the time the assignment is made
- Be submitted in writing to the supervisor as soon as it is invoked

The “Comprehensive Written Request” must be completed before leaving the work setting at the end of the shift if a short form has been used.

Collaboration

The nurse and the supervisor collaborate in the best interest of the patient & patient safety!

BON Rule 217.20(g)

Safe Harbor Peer Review

- Solving the immediate problem does NOT invalidate the nurse's request for Safe Harbor.
- The nurse does NOT have to withdraw the request for Safe Harbor.
- It is the nurse's choice (not administration's) whether or not the peer review process will be conducted.

Safe Harbor Due Process

Hearing and determination within 14 days

BON Rule 217.20 (i)(1)

CNO must review NPR committee findings within
48 hours

BON Rule 217.20 (i)(2)

Due Process

Persons with administrative authority over the nurse are excluded as a NPR member and from the peer review proceedings, including attendance at the hearing (Incident Based or Safe Harbor Peer Review).

They may appear during the hearing as a fact witness only!

BON Rule 217.20 (h)(2)(B)-(C)

Safe Harbor Findings

- Reported to Patient Safety Committee if applicable
- Must be signed by CNO and returned to nurse within 48 hours of hearing
- The CNO may check agree or disagree with NPRC's findings

The safe harbor document **belongs to the nurse who filed it.**

The organization keeps a copy.

The nurse who files retains the original in case he/she is reported to BON.

Questioning a Physician's Order

A nurse may question the medical reasonableness of a physician order based on these concerns:

- Accuracy
- Safety
- Effectiveness
- Violation of Duty

BON Rule 217.20 (d)(6)



Texas Board of Nursing

**Safe Harbor
Request to Determine Medical Reasonableness
of a Physician's Order**

Published May 2008

Complete this form when you question the medical reasonableness of a physician's order with regard to accuracy, safety, and/or effectiveness of an order(s) for a given patient or set of patients [ie: nurse believes carrying out the physician's order may violate the nurse's duty to the patient to provide a safe environment for the patient(s)]. It is the nurse's responsibility to keep a copy of the request he/she submits for review.

Minimum Required Information to Make Initial Request Invoking Safe Harbor

The following information must be in writing, but may be on any form and in any format provided it is in writing (includes electronic transmittals such as e-mail):

1. Nurse(s) Name(s) invoking Safe Harbor;
2. Date/Time of Request;
3. Location of requested conduct/assignment;
4. Name of physician issuing order;
5. Brief explanation of why invoking Safe Harbor (It may be helpful to review rules 217.11 and 217.12).

1. Nurse(s) Name(s) invoking Safe Harbor (print name(s)): _____

Date/Time of Request: _____

Location of requested conduct/assignment: _____

Name of physician (and specialty) writing order: Patient Specific Standing Order

Brief explanation of why invoking Safe Harbor (It may be helpful to review rules 217.11 and 217.12):

- I (we): Believe it is safe to carry out this order pending determination of medical reasonableness, or
 Believe it would place a patient or patients at unjustifiable risk of harm, and therefore, have notified the ordering physician, charge nurse, and any other necessary staff that I (we) refuse to carry out this order as given.

Signature(s) of Nurse(s) Invoking Safe Harbor: _____

Peer Review and Safe Harbor

Both are intended to be collegial and not adversarial! They provide due process for evaluating nursing practice and situations as well as addressing patient safety issues!

Nursing Peer Review and School Nursing

- * Lack of published information on Peer Review in the School Nursing arena
- * NPA focus is often Acute Care/Long Term Care
- * How will you use this?

References

- * Texas Nursing Practice Act 12 ed. 2015
- * https://www.bon.texas.gov/practice_peer_review.asp
- * http://www.nasn.org/portals/0/2016_23_09_Scope_and_Standards_NASN_Public_Comment.pdf