



BOARD OF NURSING AND REGULATORY ISSUES

2018-2019 Policy Positions

The Texas Board of Nursing (BON) is the regulatory body that licenses and disciplines advanced practice registered nurses (APRNs), registered nurses (RNs), and licensed vocational nurses (LVNs). Currently, Texas has 16,800 APRNs, 285,945 RNs (an increase of 13,000 since 2014) and 101,314 LVNs (an increase of 2,000 since 2014). However, the Texas Center for Nursing Workforce Studies within DSHS reports that the nursing workforce shortage will triple by 2030 – leaving Texas 66,000 licensed nurses short of demand.

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LEGISLATIVE HISTORY

HB 2950 (SUNSET BILL, 2017)

- Prohibited BON from punishing nurses for minor criminal offenses and required BON to remove certain past disciplinary actions from website.
- Modified other disciplinary rules to ensure discipline is based on actions related to the practice of nursing.
- Individualized the Peer Assistance Program.
- Prohibited BON from changing findings of fact or conclusions of law of an Administrative Law Judge.
- Prohibited BON from collecting the cost of a hearing at the State Office of Administrative Hearings from the nurse.
- Established the Enhanced Nurse Licensure Compact.
- Allowed out-of-state online prelicensure nursing programs to operate in the state under certain conditions.

HB 3296 (2017)

- Lowered the number of nurses employed that requires a facility to provide peer review from ten to eight.

SB 20 (2015)

- Improved transparency in state agency contracting.

SB 1267 (2015)

- Amended Administrative Procedures Act regarding motions for rehearing and suits for judicial review:
Required agencies to give notice of sections of statutes and rules involved before contested case begins.
Amended APA to make deadlines align more closely with the Texas Rules of Civil Procedure.

SB 1902 (2015)

- Made many deferred adjudications subject to automatic orders of non-disclosure.

HB 2154 (2015)

- Authorized the BON to take informal action on default dismissal from State Office of Administrative Hearings.

SB1058 (2013)

- Granted confidential status to BON orders requiring nurses to participate in peer assistance program.
- Mandated criminal background check prior to entering school rather than prior to nursing examination.

SB 1415 (2009)

- Created pilot program for deferred adjudication in lieu of formal sanctions, during which nurse must complete conditions imposed by BON. Allows BON to dismiss complaint if nurse successfully meets conditions. Requires BON to appoint advisory committee to oversee pilot program. Authorizes BON to contract with third party for evaluation.
- Amends BON "corrective action," allowing a fine, remedial education or both, in lieu of formal sanction.

HB 2426 (PREVIOUS SUNSET BILL, 2007)

- Streamlined the BON process for approving nursing education programs by removing unnecessary complexity, eliminating duplication and changing the delivery of nursing education.
- Encouraged innovation to promote capacity in nursing programs and address nursing shortage.
- Required the BON to clarify use of criminal history and arrest information during licensure and discipline.

- Modified the BON advisory committees to ensure objective, independent advice on functions and policies.
- Recommended adoption of the Advanced Practice Registered Nurse Multistate Compact to make it easier for nurses to practice in Texas.
- Improved the BON's ability to consider impaired practice.
- Strengthened BON oversight of continuing education.
- Conformed key elements of licensing to common licensing practices.

HEALTH CARE TECHNOLOGY

ISSUE BACKGROUND

The transformation of health care is accelerating in the digital age, bringing new technologies that affect nursing practice. For example, a generation of nurses has seen intravenous (IV) infusion therapy advance from manually managing infusions with plastic roller clamps on the IV line to electronic pumps. Today, smart pumps interface with electronic health records (EHR), whereby a provider inputs the order, a pharmacist verifies it, and a nurse validates the information and starts the infusion. Data on the volume and rate infused are transmitted to the EHR. Infusion therapy, like other technologies, will continue to improve and become more accurate and efficient.

The challenges associated with technology innovation are not new. History tells us innovation is always accompanied by downsides that must be evaluated and overcome. Fire enabled people to stay warm and survive cold climates, but also led to burns and destruction of property. The automobile helped quickly transport people and goods but also led to motor vehicle accidents. In both cases, nurses witnessed the downsides of technology as they treated people affected. Now nurses must be ready for unplanned consequences of technological changes in nursing practice.

WHAT IT MEANS FOR TEXAS NURSES

Texas nurses, along with nurses across the country, practice in an increasingly technological environment. We see the positive and negative effects technology has on team communication. We understand alert fatigue from numerous false alarms. We know the challenges of ongoing updates and unplanned downtimes. We struggle with finding the data we need among all the electronic data that is still in silos.

We must be aware of the downsides of innovation to enable a safe health care environment for our patients and ourselves.

What we don't always know, and need to know, is where all the downsides are and how technology can negatively impact our practice. Knowing benefits us in three ways:

- We can prevent issues using strategies such as creating new workflows or requesting redesigns of technology.
- We can more readily fix issues by understanding underlying causes, recognizing that educating nurses on how to use a technology doesn't fix a faulty technology design.
- We can recognize the role technology may play when incidents do occur, allowing a more targeted and accurate fix at the human-computer interaction.

TNA POSITION

TNA acknowledges the delivery of health care is increasingly immersed in technology as the industry moves forward in the digital age. The organization further recognizes research and reports on the challenges and unintended consequences occurring with this technology, including electronic health records.

Robotics, artificial intelligence and other technological advances can greatly supplement medical and nursing practice, but appropriate evaluation and testing should be taken before implementation to ensure patient safety. Nurses should be at the forefront of any implementation of technological advancement impacting nursing practice, as nurses have the most interaction with patients and are most attuned to their needs.

In order to better prepare nurses for rapid technological transformation in the health care setting, educators should routinely update nursing education and competency requirements related to informatics and health care technologies to meet the evolving needs of the practice environment.

Technology should always augment nursing practice, and nurses should take the lead in preparing technology prior to implementation in patient care.

TNA takes the position that nurses and key stakeholders must be cognizant of the potential for unintended consequences related to health technologies, remain vigilant when using these technologies, and report issues and near misses as well as recommending solutions.

TNA further supports the position that all nursing practice issues examined by a peer review committee, the Texas Board of Nursing, employers, and others always include a critical analysis of all associated technologies, including electronic health records, and the impact they may have had.

TNA encourages technology vendors to ensure that technologies meet the needs of nurses in providing safe care, remedying known issues in a timely manner.

Lastly, TNA encourages employers and purchasers of health technology to stay abreast of technology issues and unintended consequences and to routinely evaluate the safety and accuracy of technologies being used in the care of patients, make necessary changes and create mechanisms for nurses to report issues and near misses, ensuring communication of these as well as solutions to nurses in a timely and effective manner.

APRN ISSUES

ISSUE BACKGROUND

As discussed in the [APRN position statement](#), TNA supports full practice authority for all APRNs in Texas. Allowing APRNs to practice to the full extent of their education will provide much-needed access to care across the state as well as tremendous economic benefits.

WHY IT MATTERS TO TEXAS NURSES

In Texas, diagnosing and prescribing are considered “delegated” functions from the physician to the APRN, so both the Texas Medical Board and Board of Nursing currently provide oversight for APRN practice. However, APRNs practice advanced nursing, not medicine.

There are several nonphysician health care professionals who competently diagnose conditions and determine treatment, including prescribing medications without TMB oversight (e.g., podiatrists and optometrists). This same model should be adopted for APRNs. Dual oversight is duplicitous and wasteful. Additionally, eliminating dual oversight will ensure that Texas adheres to Supreme Court precedent regarding anticompetitive behavior by competing market participants.

TNA POSITION

BON must have sole regulatory authority over APRNs in Texas.

PEER REVIEW COMMITTEES

ISSUE BACKGROUND

As defined by the BON, “peer review is the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by nurses, the merits of a complaint concerning a nurse or nursing care, and determination or recommendation regarding a complaint.” A Nursing Peer Review Committee (NPRC) can review the nursing practice of LVNs, RNs and APRNs. An NPRC is required to report to the BON if they believe, in good faith, a nurse’s conduct is subject to reporting according to the Nursing Practice Act. Additionally, the Chief Nursing Officer or Administrator for the facility is professionally responsible for seeing that the NPRC is setup and effectively utilized (BON Rule 217.12).

A “minor incident” means the nurse may be in violation of the NPA or board rule but that violation does not mean the nurse poses a continued practice risk to the public. The BON does not believe all minor incidents should be reported directly to the BON.

Several state boards of nursing have worked to reduce the number of complaints submitted and put the ownership and accountability back into health care organizations by working to create a Just Culture. A Just Culture establishes an environment that encourages the reporting of errors and near misses without fear of retribution. When organizations establish a Just Culture, they increase the transparency of error reporting and reduce fear. Ensuring a supportive work environment for nurses, including by providing incident-based nursing peer review, reduces the risk of practice breakdowns.

WHAT IT MATTERS TO TEXAS NURSES

Texas was the first state to pass nursing peer review legislation in 1987. While nursing peer review has been in place for almost 30 years, not all nurses fully understand or are aware of the process, nor are all entities fully compliant with the nursing peer review statute. Unfortunately, because there is no process to ensure organizations who employ eight or more nurses have established a nursing peer review committee, nursing peer review may not be used in situations where it would be appropriate and helpful. There is also a lack of understanding of how organizations operationalize nursing peer review committees, their functioning and effectiveness.

TNA POSITION

TNA supports stricter oversight for organizations that employ eight or more nurses to operationalize Nursing Peer Review Committees in their organization to ensure compliance. All organizations that meet the statutory requirements for NPRCs should be required to report to DSHS proof of a functioning NPRC and document how it is operationalized in the organization.

TNA should support further research and education regarding incident-based peer review, safe harbor peer review, minor incidents, and the effectiveness of NPRCs.

LEGISLATIVE HISTORY

HB 3296 (2017)

- Increased the number of nurses protected by safe harbor provisions by dropping the threshold for the requirement to set up an NPRC from 10 employed nurses down to 8 employed nurses.

SB 193 (2011)

- Allowed the Texas BON to adopt a pilot project related to creating a standardized error classification system to investigate practice breakdowns using peer review committees.

HB 1362 (2007)

- Required mandatory reporting and nursing peer review. Simplified the definition of conduct subject to reporting and required NPRCs to identify when external factors played a role in the nursing practice error. Also required greater transparency of information sharing between NPRCs and patient safety committees.

HB 756 (1993)

- Revised peer review and mandatory reporting laws to require that three-fourths of committee members are RNs, the nurse being reviewed was afforded minimum due process, and one committee member has working knowledge of the nurse’s practice area. Also, revised to minimize reporting of minor incidents and duplicative reporting and require mandatory reporting by the NPRCs to the BON.

Professional Nursing Quality Assurance Act (1987)

- Added mandatory reporting and nursing peer review provisions to the Nurse Practice Act.

BOARD OF NURSING JUST CULTURE

ISSUE BACKGROUND

The BON receives over 10,000 complaints per year for the almost 400,000 APRNs, RNs and LVNs in Texas, with only 19% resulting in discipline to the licensee. As a result of the Sunset review in 2007, the BON began to embrace an approach known as “Just Culture.” The approach is designed to balance the need for a non-punitive learning environment that encourages the reporting of errors with the need to hold licensees accountable for their actions. The Just Culture approach attempts to take the context of each situation into account rather than instituting across-the-board penalties regardless of circumstances.

WHY IT MATTERS TO TEXAS NURSES

All nurses have a right to a fair disciplinary process. However, disciplinary action should be weighed equitably with the duty of the BON to protect the public from bad actors. The system for investigating and enforcing disciplinary rules with the BON should equitably hold nurses accountable for their actions. However, the BON should also consider systemic factors that contribute to nurse errors.

TNA POSITION

TNA supports the BON Just Culture approach to disciplinary action and would like to see the approach expanded and implemented in all cases. BON investigations should be systematically tracked for consistency and application of the Reason Culpability Model including an analytical tool to compare interrater reliability and other valid measures of consistency and relevance.

TNA should partner with the Texas BON, the Texas Hospital Association, Texas Organization of Rural Community Hospitals, the Texas Department of State Health Services, and the Texas Health and Human Services Commission to begin implementing a comprehensive approach toward making Texas health care organizations High-Reliability Organizations that support a Just Culture.