

## PATIENT ADVOCACY PROTECTIONS WHISTLE-BLOWER LAWS

### Bottom line

Nurses who report (within the facility or to an outside agency) any situation they believe exposes a patient to harm, are protected from retaliation.

At the end of this article is a checklist of things every whistle blower should know.

TNA believes patients are best served when nurses can be patient advocates without fear of retaliation. Advocating for the profession includes supporting a regulatory environment that protects nurses when advocating for their patients. TNA has advocated legislatively for over 20 years to make this a reality for Texas nurses.

### Protections from Retaliation

TNA's first legislative initiative to protect the right of nurses to be patient advocates was in 1987 when it successfully advocated for protections for nurses, who reported a licensed health care practitioner or facility to their licensing agency. This was followed by initiatives in 1995 (protections for refusal to engage in reportable conduct), 1997 (safe harbor nursing peer review), 1999 (protections from retaliation with negative job reference), 2002 (protections included in hospital staffing rules for raising staffing concerns), 2003 (protection when reporting patient care concerns within a facility) and 2007 (clarifying and enhancing protections). The table below sets out the patient advocacy and whistle-blower protections available

to Texas nurses (RNs and LVNs) as a result of these TNA initiatives.

### Remedies if Retaliation Occurs

Sec. 301.413 of the Nursing Practice Act sets out the remedies available to nurses who are retaliated against. It authorizes a civil lawsuit for damages (minimum recovery of \$5000), attorney fees, and exemplary damages. It also creates a presumption that any disciplinary action taken against a nurse within 60 days of the nurse's reporting the conduct or raising the patient care concern was taken in retaliation against the nurse. The facility then has the burden of proving otherwise. A nurse also can report the facility or any individual health care practitioner involved in the retaliation to the appropriate licensing agency.

### Whistler Blower Laws and Texas

Conduct Covered	Texas Law	Protections from Action Against License	Protection from Retaliation
1. Nurse believes she/he is being requested to engage in conduct that would violate nurse's duty to patient as defined by BON standards of practice and unprofessional conduct rules; 2. Nurse advised another nurse about rights under safe harbor nursing peer review	<b>Safe Harbor Nursing Peer Review</b> Nursing Peer Review Law §303.005	Yes	Yes
Nurse refusing to engage in conduct that would violate NPA or BON rules or that would make nurse reportable to BON	<b>Refusal to Engage in Conduct that Violates NPA or BON Rules</b> Nursing Practice Act (NPA) §301.352	No	Yes
Nurse reporting concern within facility about patient(s) being exposed to substantial risk of harm due to failure of facility or practitioner to conform to minimum professional standards or regulatory/ accreditation standards	<b>Reporting a Patient Care Concern</b> Nursing Practice Act §301.4025	N/A	Yes
Nurse reporting of staffing concerns in hospital to nurse staffing advisory committee	<b>Reporting Staffing Concerns in Hospitals</b> Health&Safety Code §161.134 TxDSHS Rule §133.41(o)(2)(I) TxDSHS Rule4 §133.43	N/A	Yes
Nurse reporting a facility or practitioner for exposing a patient to substantial risk of harm due to failure to conform to minimum professional standards or regulatory/accreditation standards	<b>Reporting a Practitioner or Facility/Agency</b> NPA §301.4025	N/A	Yes
Nurse reporting a nurse who engages in conduct subject to mandatory reporting	<b>Mandatory Reporting of Nurse</b> NPA 301.402 (Note: In addition to permissive reporting under §301.4025)	N/A	Yes

## Check List for the Whistle Blower or Things Every Whistle Blower Should Know

In Texas, the Nursing Practice Act contains a whistle-blower clause. The whistle-blower clause protects registered nurses who report concerns about patient safety. If the registered nurse believes in good faith that the actions of a regulated entity (registered nurse, health care facility or other licensed provider) could harm or produce risk of harm to a patient or other person, and reports those concerns to the employer or regulatory authorities, the nurse cannot be retaliated against. If in fact, retaliation does occur, the registered nurse has a cause of action against the entity who engages in that retaliation. To get a complete copy of this law, order TNA's Annotated Guide to the Texas Nursing Practice Act at the online TNA marketplace. Or phone TNA at 512-452-0645.

If a registered nurse detects a problem with patient safety or patient rights, she/he should consider the following checklist before taking action. It is important to correct patient safety concerns while protecting yourself in advocacy situations.

- » If you identify an illegal or unethical practice, reserve judgment until you have adequate documentation to establish there is wrongdoing.
  - » Do not expect those who are engaged in unethical or illegal behaviors to welcome any questions or concerns you have about the practice.
  - » Seek the counsel of someone you trust outside of the situation to provide you with an objective perspective.
  - » Before acting, if at all possible, consult with your professional organization or a legal counsel. Getting consultation can help you understand the laws and regulations that apply to the whistle-blowing situation and will help you in taking appropriate steps to solve the problem you have identified.
- » Remember you are not protected in a whistle-blower situation from employer retaliation until you blow the whistle.
  - » Blowing the whistle means that you report your concern to your employer, national and/or state agency responsible for regulation of the institution for which you work, or in the case of criminal activity, to law enforcement agencies. You may also report concerns to national accrediting groups such as JCAHO or NCQA and receive protection as a result of changes to the hospital licensing regulations.
  - » TNA recommends that All whistle-blowing be done in writing to employers and as a formal complaint when notifying state or national agencies of concerns. Concerns expressed in writing provide a record of the date and circumstances under which you brought an issue to the attention of an employer or a regulatory agency. The written word provides credibility that a word-of-mouth complaint does not.
  - » Document all interactions related to the whistle-blowing situation and keep copies for your personal files of every piece of written documentation related to the situation. Such documentation could include memos that describe the interaction and or a personal log of the interactions for future reference.
  - » Keep all documentation and interactions objective.
  - » Remain calm and do not lose your temper. When those you are documenting become aware of your activities (and they will), they might attempt to provoke you.
  - » Remember, blowing the whistle is a very serious matter. The results can be negative for everyone involved so do not frivolously blow the whistle. Make sure you have correct facts before taking action.