

## HISTORY OF TEXAS NURSING PRACTICE ACT 1909-2007

The following are the more significant amendments to the Texas Nursing Practice Act (NPA) since its enactment in 1909. Also included is other significant legislation that affected nurses' scope of practice even if the NPA was not amended. From 1907 to 2007, the name of the nursing board was Texas State Board of Nurse Examiners (BNE). In 2007, the name was changed to the Texas Board of Nursing (BON). For simplicity, the board is referred to as BON in this history except for its creation in 1907.

**1909.** Original act passed. Its passage was the result of work of the Texas Nurses Association (then called Graduate Nurses Association) which was formed in 1907 for the purpose of passing a licensing act. The act created the Board of Nurse Examiners and provided for the examining and licensing of registered nurses. The act had some notable deficiencies including 1) being a "title-control" act that applied only to individuals using the title registered nurse, 2) not containing a definition of professional nursing, 3) imposing no educational requirements for licensure, and 4) giving the nursing board no authority over nursing education.

**1923.** BON given authority over nursing education and requirement added that applicants for licensure must be graduates of an accredited school approved by the BON. The appointment of a paid educational secretary was provided for and board members were required to have at least three years educational experience.

**1925.** All Texas statutes were re-codified. Laws relating to professional nursing were codified as Articles 4513 through 4528. This was the first and last systemic rewrite of the NPA until 1999 when the NPA was codified as Chapter 301 of the Texas Occupations Code..

**1929.** BON increased from 5 to 6 members and 6-year staggered terms established.

**1935.** Because of concern that the BON was discriminating against small general hospitals, a provision was added declaring all general hospitals of 25 beds with average daily occupancy of 15 patients that taught the BON-prescribed course of study to be "accredited schools." The minimum educational requirements were changed from "two years of continuous study" to "three full years of work and study." Nursing opposed these amendments as lowering the educational standards and permitting hospitals to add a third year of service at little or no wages. Twenty-two states refused Texas reciprocity because of the lower standards.

**1941.** Provision added authorizing the organizing of non-profit Nursing Registration Bureaus. The apparent purpose was to remove nursing bureaus from regulation by the Department of Labor and relieve them from having to pay occupational taxes and licensing fees.

**1959.** BON given explicit authority to prescribe the course of study for nursing schools but mandated that include both theory and clinical. It

was also given greater accrediting authority over education but was prohibited from setting length of programs at less than 2 or more than four years. These changes undid the 1935 amendment.

**1961.** Licensure by endorsement extended to nurses licensed by foreign countries and U.S. territories and possessions.

**1967.** Added a definition of professional nursing. This was first time since originally enacted in 1909, that NPA contained a definition of professional nursing. The definition was based on the model definition then being recommended by the American Nurses Association. Adding a definition of professional nursing and getting the NPA amended to be a practice-control act in 1969 were the result of a 10 year legislative effort by the Texas Nurses Association.

**1969.** NPA changed from a "title-control" to a "practice-control" act regulating not only persons using the title "RN" but anyone engaged in the practice of professional nursing. Unlicensed persons were prohibited from practicing professional nursing unless explicitly exempted from the NPA. Because of this change, the exemptions to the NPA were expanded to exempt other licensed practitioners, LVNs, etc. An exemption that proved to be particularly troublesome was one for "acts done under the control or supervision or at the instruction of one licensed by the Texas Medical Board." Some hospitals argued this exemption applied to all care in a hospital since care in a hospital was done "at the

instruction of a physician.” The exemption was relied on by hospitals to employ large numbers of foreign educated nurses who did not hold a Texas license. Ultimately, the Texas Attorney General ruled (but not until 1983) that the exemption applied only to persons to whom a physician delegated care in accordance with the Medical Practice Act. The NPA was also amended to require that only 3 BON members have teaching experience instead of all six and to provide for the board to employ an Executive Secretary (now Executive Director) rather than appoint one of its members to serve in that capacity.

**1973.** Established a system of variable expiration dates for licenses.

**1977.** Although the only amendment passed was one changing the minimum education program from two years to two academic years, this was a significant session for nursing because the Texas Nurses Association initiated legislation to enact a Model Practice Act. The legislation would have made substantial changes to the NPA that nursing wanted. Although the legislation failed, it marked the beginning of a commitment by the Texas Nurses Association to maintain a continuous nursing presence at the Texas Legislature.

**1979.** A number of significant amendments made including: 1) increasing BON’s rule-making authority to “regulate the practice of professional nursing,” 2) changing definition of professional nursing to include the “observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes,” 3) giving BON injunctive power and authority to probate disciplinary penalties, and 4) requiring all fees collected by BON be placed in the State Treasury

and expended only as appropriated by the Legislature. Legislation recognizing APN practice was defeated.

**1981.** BON underwent its first sunset review. Significant amendments to NPA that resulted included 1) adding three public members to the BON, 2) requiring BON to recognize the three types of educational programs (diploma, AND, BSN), 3) requiring the three educator members be representative of the three types of educational programs, and 4) expanding the BON’s rule-making authority to include defining which acts constitute the practice of professional nursing. An attempt to strip BON of its regulatory authority over nursing education was defeated. Legislation recognizing APN practice was again defeated as was legislation addressing 3rd party reimbursement for APNs. The BON successfully defended a suit by the Texas Hospital Association and Texas Medical Association challenging the BON’s authority to adopt rules regulating APNs.

**1983.** Legislation to prohibit insurers from discriminating against APNs by denying reimbursement simply because they were licensed as RNs was again defeated.

**1985.** RNs secured exemption from respiratory therapists licensing act. Recognition that medication aides in LTC facilities must function under the delegated authority of RN or physician.

**1987.** Legislation popularly known as “Professional Nursing Quality Assurance Act” passed adding mandatory reporting and nursing peer review provisions to the NPA. Texas was among the first, if not the first state, to pass peer review legislation for RNs. Peer assistance statute covering RNs and other health professionals experiencing problems with chemical dependency or mental illness was passed as a separate statute. RNs secured exemption from the radiologic technologists licensing act.

**1989.** APNs were given limited prescriptive authority at sites serving medically underserved populations. (Most of this legislation involved amendments to Medical Practice Act but some conforming amendments were made to the NPA.) BON given authority to require continuing nursing education for license renewal. A financial aid program for nurses was established and initially funded with a license surcharge, and a special study of an existing nursing shortage authorized. Definition of professional nursing amended to include carrying out orders of podiatrists. Third party reimbursement for RNs defeated for a third time as was legislation authorizing RNs to determine death.

**1991.** RNs given authority to determine death. Exemptions to NPA clarified and expanded to address nursing students, care provided in disaster situations, and RNs temporarily in state. BON given more authority to issue temporary permits and to do criminal background checks, and a process was established for students to obtain declaratory order of eligibility for licensure. Legislation to combine all health professionals licensing boards into a super agency was defeated.

**1993.** BON underwent sunset review for second time. There was some attempt to combine the former Board of Nurse Examiners (RNs) with the Board of Vocational Nurse Examiners, but that failed. A Health Professions Council was created to co-ordinate activities of the various health professions licensing boards but it isn’t the super agency attempted in 1991. Nursing peer review was amended to require that: 1) three-fourth of the committee’s members be RNs, 2) the nurse being reviewed be afforded minimum due process and 3) at least one member of the committee have a working familiarity with area of practice of the nurse being reviewed. Mandatory reporting

was amended: 1) to give BON authority to adopt rules to minimize reporting of minor incidents and duplicative reporting and 2) to require mandatory reporting by peer review committees to the BON. The sunset legislation also made substantial changes to the BON's disciplinary process. Legislation expanding prescriptive authority for APNs was defeated. 1993 also saw pharmacists obtain limited authority to administer medications.

**1995.** Peer review expanded to include LVNs. RNs given protection from retaliation for refusing to engage in reportable conduct. The qualification relating to practice experience of practice members of BON clarified. Proof of good professional character added as requirement for licensure and mandatory reporting expanded to include students experiencing problems with chemical dependency. Limited prescriptive authority for APNs expanded to include a physician's primary practice site and facility based practice.

**1997.** Enhanced protections for RNs who refuse to engage in reportable conduct by giving them a right to request a determination by peer review as to the RN's duty and providing the RN a safe harbor pending that determination. BON authorized, and appropriated funds, to conduct pilot test mechanisms to help assure: 1) RNs maintain their competency after initial licensure and 2) RNs are knowledgeable of the laws and regulations governing their practice. The Diploma educator slot on BON changed to an APN educator slot. BON given authority to collect information needed to identify students who may be disqualified for licensure upon graduation. In addition, the Medical Practice Act and Insurance Code were amended to: 1) expand slightly prescriptive authority for Advanced Practice Nurses (APNs) and 2) address reimbursement problems APNs had encountering with managed care.

**1999.** The Nursing Practice Act underwent a complete, nonsubstantive rewrite as part of being codified into the Occupations Code. The Nurse Licensure Compact was adopted making Texas one of the first states to begin the implementing of a system of multistate licensure for nurses. Nurses were given additional protections against getting a "bad job reference" for refusing to engage in conduct believed to violate a nurse's duty to the patient. School nurses were added to the teacher minimum salary scale. Legislation was enacted for advanced practice addressing nondiscrimination in reimbursement, due process in hospital clinical privileging, against calling in prescriptions, documentation of services provided, and performing physicals for cosmetologists licensure. RNs were added to those professionals whose services, when contracting with the State, are covered by the Professional Services Procurement Act. Legislation regulating CRNAs administering anesthesia in outpatient settings was also passed.

**2001.** There were relatively few amendments to the NPA in 2001. Sections 301.525 (relating to RN First Assistants) and 301.304 (relating to HEP C CNE) were added. Chapter 304 establishing a Nursing Workforce Data Center (not implemented because not funded by Legislature) was added as part of nursing shortage legislation. That shortage legislation also amended the Education Code by adding 61.921-.926 to create a professional nursing shortage reduction program. Legislation expanding limited prescriptive authority for APNs to a physician's alternate practice site and creating a process for practices to receive a waiver of certain requirements for prescriptive authority. Legislation mandating reimbursement for RN First Assistants was passed. Since the 1999 NPA codification did not include any legislation passed in 1999, that legislation was

incorporated into the codified NPA in 2001. The most significant change of this type was adding 301.601-.607 relating to outpatient anesthesia. The Nurse Licensure Compact passed in 1999 was codified as Chapter 304 (numbering duplicates that of Nursing Workforce Data Center and will have to be corrected by a future Legislature). Sec. 531.051 of the Government Code relating to a voucher program for persons with disabilities was amended to exempt from professional nursing certain activities of daily living and health maintenance acts performed by attendants for clients who could not perform those tasks for themselves because of a functional disability. Legislation was introduced, but not passed, that would have given the BON general authority to conduct pilot projects, conduct criminal background checks and develop alternates to CNE for how RNs demonstrate competency as part of the licensure renewal process.

**2003.** A single board of nursing and licensing act for RNs and LVNs was passed. RNs and LVNs will be licensed and regulated under the Nursing Practice Act that will be a practice act (Chapter 301, Occupations Code) for both RNs and LVNs. Safe Harbor Nursing Peer Review and all the other patient advocacy protections afforded RNs were extended to LVNs. Use of the generic title "nurse" was restricted to use by RNs and LVNs and titles such as "nurse aide" and "nurse assistant" limited to unlicensed personnel functioning under the delegated authority of an RN. Prescriptive authority for APNs was expanded to include controlled substances, Schedules III-V. APNs were added to the standardized credentialing statute passed for physicians in 2001. The Nursing Workforce Data Center enacted but not funded in 2001 was moved from the BON to the Statewide Health Coordinating Council and funded through a surcharge on nurses' license renewal fee (\$2 for RNs and \$1

for LVNs). The BON was given authority to conduct FBI criminal background checks as part of the licensing and licensing renewal process. To address certain RN-substitution issues, the 2001 legislation addressing RN first assisting was amended to permit certain RNs to “directly assist at surgery” which is a more limited function than first assisting. The BON was given extensive authority to conduct pilot programs and a mandate to conduct a pilot to evaluate systems designed to encourage identification of system errors. Legislation passed requiring RNs and LVNs to take two hours of CNE in bioterrorism.

**2005.** The nursing shortage was again addressed by the Texas Legislature. It appropriated \$6 million to fund the Nursing Shortage Reduction Program originally created in 2001. Senate Bill (SB) 132 directed the Higher Education Coordinating Board to conduct study of retention rates in the Texas nursing education programs and created financial incentives for nursing faculty including tuition reduction for faculty children and preceptors and a home loan program. The practice environment of nursing was addressed through several bills. A Safe Patient Handling Law (SB1525) was passed making Texas the first state in the nation to pass such legislation. House Bill (HB) 1718 addressed assisting at surgery, first assisting and the role of the circulating RN. The regulatory environment for nursing was addressed by HB 1000, HB 1366 and HB

2680. HB 1000 made several amendments to the NPA including adding a definition of “vocational nursing,” clarifying that conduct exposing a patient to risk of harm requires reporting only when conduct creates an unnecessary risk, clarifying facilities’ mandatory reporting requirements with respect to temporary agency nurses, and making the Nurse Licensure Compact permanent. HB 1366 expanded the BON’s disciplinary authority and added a list of offenses to NPA that requires the BON to deny/suspend/revoke a nursing license. HB 2680 reduced the licensure requirements for retired health professionals whose practice is limited to volunteer charity work.

**2007.** The BON underwent Sunset review for the third time. The legislation (“BON Sunset Bill”) implementing the Sunset Commission’s recommendations was HB 2426. The bill 1) continued the Board for 10 years, 2) changed its name from the Board of Nurse Examiners (BON) to the Texas Board of Nursing (BON), 3) reduced, but did not eliminate, the role that the BON has historically played in the regulation of nursing education, 4) changed the way impaired nurses involved in a practice violation are reported, 5) addressed BON’s use of arrest and convictions in disciplining nurses, 6) set a jurisprudence exam requirement for new licensees, 7) adopted the APRN Multi-state Licensure Compact for persons applying for a nursing licensing, and 8)

gave the BON more flexibility in implementing targeted CNE. Legislation (SB 993) initiated by the Texas Nurses Association made substantial changes to mandatory reporting and nursing peer review including 1) simplifying definition of conduct subject to reporting, 2) limiting peer review committees to identifying the extent to which external factors affected an incident when an employer reports a nurse, 3) authorizing greater sharing of information between nursing peer review and patient safety committees, 4) extending safe harbor nursing peer review to persons that advise nurses on their right to request safe harbor, and 5) clarifying the protections and remedies nurses have when advocating for patients. The nursing shortage was addressed for the fourth consecutive session with over \$20 million being appropriated to nursing education. The dedication to nursing of certain tobacco lawsuit settlement funds was extended until 2011. A number of other bills passed relating to nursing education (SB 138, 139, 141, 201, 289) that were recommended by an interim report of the Senate Committee on Health and Human Services. None made major changes. The BON was given authority to require that all 20 hours of CNE for licensure renewal be Type 1 (SB 993). The Legislature also passed and funded legislation (SB 156) implementation of the Nurse-Family Partnership Program in Texas on a pilot program basis.