RESOURCES AND FORMS FOR SAFE HARBOR NURSING PEER REVIEW

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1. Introduction

Nurses may be given an assignment that the nurse supervisor believes is safe but which the nurse believes is unsafe. In such situations, the nurse may be faced with the undesirable choice of:

- refusing the assignment and risking possible disciplinary action by the facility.
- accepting the assignment despite her or his concern that it is not safe and risking possible disciplinary action against her or his license by the Board of Nursing (BON) - particularly if there is a bad patient outcome.

Safe Harbor Nursing Peer Review gives nurses a third option:

- requesting a nursing peer review committee review the assignment to determine whether it violates a nurse's duty to the patient;
- protection from being disciplined by the facility for making the request; and
- protection from being disciplined by the BON for engaging in the assignment awaiting the peer review committee's deliberations.

Since nurses can honestly disagree about a nurse's duty to a patient in a particular situation, the ability to seek guidance as to what is a nurse's duty without negative consequences is an important protection. Safe harbor nursing peer review is an option for nurses that is in addition to the more traditional whistleblower protections in which the nurse is provided a right to seek a remedy (normally retain an attorney and file a lawsuit) after the nurse has been retaliated against. Safe harbor is designed to provide the nurse a “before-harm-occurs” remedy.

A practical guide to nurses’ right under safe harbor and forms for requesting safe harbor are set out below.

A nurse’s duty to the patient is defined by the Texas Board of Nursing Rules relating to Standards of Practice and Unprofessional Conduct. Standards of Practice that are likely to be relevant to carrying for Ebola patients include:

- Rule 217.11(1)(B) (Safe Practice Environment) Implement measures to promote a safe environment for clients and others
- Rule 217.11(1)(L) (Nondiscrimination in Care) Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served;
- Rule 217.11(1)(O) (Infection Control) Implement measures to prevent exposure to infectious pathogens and communicable conditions;
- Rule 217.11(1)(T) (Accepting Assignments) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse’s educational preparation, experience, knowledge, and physical and emotional ability.

2. Forms for Requesting Safe Harbor Nursing Peer Review

BON Rule 217.20(d)(3) and (4) require a request for safe harbor nursing peer review be in writing and include either:

- the information required for the Quick Request Form under 217.20(d)(3); or
- the information required for the Comprehensive Written Request Form under 217.20(d)(4)

If a nurse uses the Quick Request Form to make the initial request, the nurse must submit in writing the information required by the Comprehensive Written Request Form before she/he leaves the work setting at the end of the work period. If the Comprehensive Written Request Form is used to make the initial request, no additional information need be submitted.

The Quick Request Form can be in any written format as long as it contains the following information:

1. the nurse(s) name making the safe harbor request and her/his signature(s);
2. the date and time of the request;
3. the location of where the conduct or assignment is to be completed;
4. the name of the person requesting the conduct or making the
assignment; and
5. a brief explanation of why safe harbor is being requested.

As indicated above, the Texas Nurses Association believes the following request meets these requirements.

2/12/08 1800. I request safe harbor nursing peer review. Near the end of my 3-11 shift my supervisor, Sue Super RN, told me I would have to work the 11-7 shift because two nurses called in sick. My 3-11 shift was very hectic and I feel exhausted and too fatigued to do a double shift. Also double shifts seem to be becoming routine on this unit.

Mary Smith RN
Mary Smith RN

The Comprehensive Request Form in any written format as long as it contains the following information:

1. the conduct assigned or requested, including the name and title of the person making the assignment or request;
2. a description of the practice setting, e.g., the nurse's responsibilities, resources available, extenuating or contributing circumstances impacting the situation;
3. a detailed description of how the requested conduct or assignment would have violated the nurse's duty to a patient or any other provision of the NPA and Board Rules. If possible, reference the specific standard (217.11 of this title) or other section of the NPA and/or Board rules the nurse believes would have been violated. If a nurse refuses to engage in the requested conduct or assignment, the nurse must document the existence of a rationale listed under subsection (g) of this section.
4. if applicable, the rationale for the nurse's not engaging in the requested conduct or assignment awaiting the nursing peer review committee's determination as to the nurse's duty. The rationale should refer to one of the justifications described in subsection (g)(2) of this section for not engaging in the conduct or assignment awaiting a peer review determination.
5. any other copies of pertinent documentation available at the time. Additional documents may be submitted to the committee when available at a later time; and
6. the nurse's name, title, and relationship to the supervisor making the assignment or request.

3. BON Official Forms and Other Resources

The BON promulgates three official Safe Harbor Nursing Peer Review Request Forms. They are:
1. Quick Request Form
2. Comprehensive Request Form
3. Request Form When the Medical Reasonableness of a Physician’s Order is Involved

These can be found on the BON website (http://www.bon.texas.gov/practice_peer_review.asp) along with other information about nursing peer review including a FAQ section.

Even if a nurse does not use the BON official forms, the nurse should follow the process outlined in the forms. Doing so will ensure compliance with the steps in the safe harbor nursing peer review process.

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4. Practical Guide To Nurses’ Rights Under Safe Harbor Nursing Peer Review

**IMPORTANT PRACTICAL TIP**
**READ BEFORE YOU NEED:**

Nurses should not wait until a situation arises to familiarize themselves with their right to request Safe Harbor Nursing Peer Review. That is best done without the pressures of having to make an immediate decision on whether and how to make the request.

A. Who Is Protected by Safe Harbor Nursing Peer Review

B. When Do Safe Harbor Protections Apply

C. Who Can Request Safe Harbor Nursing Peer Review

D. Requesting Safe Harbor Nursing Peer Review
   - Condition 1: Facility is required to provide
   - Condition 2: Request made in good faith
   - Condition 3: Request contains required information
   - Condition 4: Request is timely

E. Process Once Request Made

F. Nurse's Engaging in Requested Conduct Awaiting Nursing Peer Review Determination

G. Remedies if Nurse Retaliated Against

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J. What If Patient Harm Occurs

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Near the end of 3-11 shift on a post-op unit, Mary Smith, RN, is told by her supervisor that two of the nurses on the 11-7 shift have called in sick and that no replacements have been located. The supervisor says she regrets the situation, but that Mary and one other RN will have to stay and work the 11-7 shift. Mary expresses concern that her 3-11 shift was busy, she felt exhausted and that her fatigue will increase the chance of her making patient care errors. Mary also expresses concern that double shifts are becoming a pattern on the unit and points out that recent research shows increased patient care errors when nurses work extended shifts. The supervisor acknowledges Mary's concern, but indicates no one else is available to staff the unit. Mary is faced with the undesirable choice of:

- refusing the assignment and risking possible disciplinary action by the facility;¹
- accepting the assignment despite her concern that it is not safe and risking possible disciplinary action against her license by the Board of Nursing (BON) - particularly if there if there is a bad patient outcome.²

Safe Harbor Nursing Peer Review gives nurses a more desirable third option:

- requesting a nursing peer review committee review the assignment to determine whether it violates a nurse's duty to the patient;
- protection from being disciplined by the facility for making the request; and
- protection from being disciplined by the BON for engaging in the assignment awaiting the peer review committee's deliberations.

Since nurses can honestly disagree about a nurse's duty to a patient in a particular situation, the ability to seek guidance as to what is a nurse's duty without negative consequences is an important protection. Laws designed to provide individuals with protections against having to put themselves at risk in situations where the correct action is unclear are commonly referred to as "safe harbor" laws - therefore the name "safe harbor nursing peer review."

**A. WHO IS ENTITLED TO THE PROTECTIONS OF SAFE HARBOR NURSING PEER REVIEW**

The protections provided by safe harbor nursing peer review are available to both:

- nurses and nurse supervisors who request safe harbor nursing peer review in good faith; and
- nurses and other individuals who advise a nurse on the nurse's right to safe harbor nursing peer review and how to request.

**B. WHEN DO THE SAFE HARBOR PROTECTIONS APPLY**

It is the "making of the request" that triggers the protections of safe harbor nursing peer review, and its protections apply only after the request is made. An option for a nurse requesting safe harbor is to indicate when making the request that she/he will withdraw the request if a mutually satisfactory solution is reached. Any mutually satisfactory solution must be consistent with the nurse's duty to the

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¹ “Facility” is being used broadly to refer to a hospital, clinic, long-term care facility, home health agency, and any other entity that utilizes RNs or LVNs

² If the facility disciplines a nurse for refusing the assignment, the nurse may have a right to sue the facility under Nursing Practice Act which prohibits retaliation against a nurse for refusing to engage in conduct that violates the NPA or a BON rule.
C. WHO CAN REQUEST SAFE HARBOR NURSING PEER REVIEW

Nurses who can request safe harbor nursing peer review are:

- nurses providing patient care.
- nurse supervisors making or carrying out administrative decisions directly affecting patient care.

Nurse supervisors can request because the Safe Harbor Nursing Peer Review Law defines "duty to patient" as including administrative decisions that directly affect a nurse's ability to comply with a nurse's duty to a patient. An example of when a nurse supervisor might invoke safe harbor nursing peer review is a facility's adopting a policy that would require nurses to work such long hours that fatigue is very likely to put patients at risk of unsafe care. The supervisor could request safe harbor nursing peer review to determine if the policy would require her/him to make administrative decisions that would cause nurses to violate their duty to their patients by providing care when overly fatigued.

D. REQUESTING SAFE HARBOR NURSING PEER REVIEW

The protections of safe harbor nursing peer review are available only when the following conditions are met.

Condition 1: Facility is required to provide safe harbor
Condition 2: Nurse in good faith believes requested conduct violates the nurse's duty to the patient
Condition 3: Request is in writing and includes certain BON-required information
Condition 4: Request is timely

Nurse supervisors must believe in good faith the administrative decision will require them to request a nurse violate a nurse's duty to the patient.

The request for safe harbor nursing peer review must be based on the nurse's good faith belief that she/he is being requested to engage in conduct that violates the nurse's duty to the patient. The Safe Harbor Nursing Peer Review Law and BON Rule 217.20 define:

- "duty to patient" as advocating for patient safety including any nursing action necessary to comply with the standards of practice (BON Rule 217.11) and to avoid engaging in unprofessional conduct rules (BON Rule 217.12); and
- "good faith" as taking action supported by a reasonable factual or legal basis.

Since safe harbor provides the nurse protection from both retaliation by the facility and action against her/his license by the BON, the request must be made in good faith both with respect to the facility and with respect to the BON (i.e., the public).

The nurse acts in good faith with respect to the facility when the nurse believes that the requested conduct or assignment violates a nurse's duty to a patient and there is a reasonable factual or legal basis for the belief -- that is, a belief a reasonable nurse could hold. For example, a belief that any request to float is a request to engage in conduct that violates a nurse's duty to a patient is not a good faith belief, because standards of practice rules do not prohibit all floating -- only floating to units or assignments for which the nurse is not qualified. Another example of lack of good faith would be subsequent requests for review of the same conduct after the nursing peer review committee had found the conduct did not violate a nurse's duty to a patient.

The nurse acts in good faith with respect to the BON (i.e., the public) by acting in the best interest of the patient. Normally, this means engaging in the conduct while nursing peer review determines what is the nurse's duty. BON Rule 217.20(g)(2) explicitly states that a nurse may engage in the conduct or assignment unless the requested conduct/assignment:

1. would constitute unprofessional conduct and/or criminal conduct such as fraud, theft, patient abuse, exploitation, or falsification; or
2. would be beyond the nurse's scope of competency because the nurse lacks the basic knowledge, skills, and abilities that would be necessary to render the care or engage in the conduct requested or assigned at a minimally competent level such that engaging in the requested conduct or assignment would expose one or more patients to an unjustifiable risk of harm.
A request to falsify a patient record is an example of conduct that should not be engaged in. It is unreasonable to expect a nursing peer review committee would ever find the requested conduct does not violate a nurse's duty to the patient or be in the patient's best interest. Consequently, providing the nurse protection from disciplinary action by the BON is not in the public interest.

The nurse's decision whether to engage in the requested conduct or assignment is perhaps the most difficult aspect of requesting safe harbor and is discussed in more detail below in Section F. A nurse who is considering not engaging in the conduct or assignment awaiting the nursing peer review committee's determination should be sure she or he has read Section F below.

**Condition 3. Request must be in writing and include certain information.**

Safe harbor nursing peer review gives nurses protection against the BON's taking action against a nurse's license pending the nursing peer review committee's deliberations. To protect the public, it is important that it be clear when safe harbor nursing peer review has been requested. BON Rule 217.20 permits the request for safe harbor nursing peer review to be made using either a:

- Quick Request Form; or
- Comprehensive Request Form.

The Quick Request Form can be made in any format (the back of a progress note would work) as long as it is in writing and contains the following information:

1. the nurse(s) name(s) making the safe harbor request and her/his signature(s);
2. the date and time of the request;
3. the location of where the conduct or assignment is to be completed;
4. the name of the person requesting the conduct or making the assignment; and
5. a brief explanation of why safe harbor is being requested.

Below is an example of a request for safe harbor nursing peer review that should meet the requirements for a Quick Request Form.

2/12/08 1800. I request safe harbor nursing peer review. Near the end of my 3-11 shift my supervisor, Sue Super RN, told me I would have to work the 11-7 shift because two nurses called in sick. My 3-11 shift was very hectic and I feel exhausted and too fatigued to do a double shift. Also double shifts seem to be becoming routine on unit.

Mary Smith RN
Mary Smith RN

If the Quick Request Form is used, the nurse must submit a Comprehensive Request Form before she/he leaves the work setting at the end of the work period.

The Comprehensive Request Form can also be in any format as long as it is in writing and contains the following information:

1. the conduct assigned or requested, including the name and title of the person making the assignment or request;
2. a description of the practice setting, e.g., the nurse's responsibilities, resources available, extenuating or contributing circumstances impacting the situation;
3. a detailed description of how the requested conduct or assignment would have violated the nurse's duty to a patient or any other provision of the NPA and Board Rules. If possible, reference the specific standard (BON Rule '217.11) or other section of the NPA and/or Board rules the nurse believes would have been violated;
4. if applicable, the rationale for the nurse's not engaging in the requested conduct or assignment awaiting the nursing peer review committee's determination as to the nurse's duty. The rationale should refer to one of the justifications described in Rule 217.20(g)(2) [See Section F below] for not engaging in the conduct or assignment awaiting a peer review determination;
5. any other copies of pertinent documentation available at the time. Additional documents may be submitted to the committee when available at a later time; and
6. the nurse's name, title, and relationship to the supervisor making the assignment or request.

Nurses should familiarize themselves with the information required when requesting safe harbor and have readily available copies of the Quick Request Form and Comprehensive Request Form -- either by keeping copies themselves or knowing they have ready access through the facility. If the Quick Request Form is used, the nurse must submit a Comprehensive Request Form before she/he leaves the work setting at the end of the work period. If the Comprehensive Request Form is used to make the initial request, no additional form is required.

The BON's website includes samples of both the Quick Request Form and Comprehensive Request forms as well as other information about requesting safe harbor nursing peer review. The site has a special form that can be used when the reasonableness of a physician's order is involved. The BON website is www.bon.texas.gov. From Main Menu, select "Nursing Practice" and then "Nursing Peer Review."

**Condition 4. Request Must be Timely.**
BON Rule 217.20(d) requires the request be made before the nurse engages in the conduct and at one of the following three times:
1. when the conduct is requested or assignment made;
2. when changes occur in the request/assignment that so modify the level of nursing care or supervision required compared to what was originally requested or assigned that a nurse believes in good faith that patient harm may result; or
3. when the nurse refuses to engage in the requested conduct or assignment.

It is important to note that Rule 217.20 recognizes an assignment can so change during the course of the work period that in fact a new assignment occurs and a request for safe harbor can be made when this occurs.

E. PROCESS ONCE REQUEST MADE

1. Process to be followed. BON Rule 217.20 outlines the process to be followed once a request for safe harbor nursing peer review has been made. Both the nurse and supervisor must follow this process. The process is designed to produce a mutually satisfactory resolution. Possible resolutions include:
   - the nurse's learning additional facts about the situation that cause the nurse to change her/his belief that the requested conduct or assignment violates a nurse's duty to the patient;
   - the nurse's being provided additional resources or support that permit the nurse to engage in the requested conduct or assignment without violating her/his duty to the patient; and
   - changing the conduct or assignment requested.

In the example set out at the beginning of this document, a mutually satisfactory resolution may be the supervisor agreeing to stay and help cover the shift, and Mary feeling this would provide adequate coverage for the unit.

If the nurse and her/his supervisor are unable to reach a mutually satisfactory resolution, the issue goes to a nursing peer review committee. The nursing peer review committee must make its determination within no more than 14 days of the nurse's request for safe harbor nursing peer review. Even if there is a mutually satisfactory resolution, the nurse still has the right to have the committee review the request.

2. Nurse's right to participate. BON Rule 217.20(h) gives the nurse the right:
   (1) to appear before the committee;
   (2) to ask questions and respond to questions of the committee; and
   (3) to make a verbal and/or written statement to explain why she or he believes the requested conduct would have violated a nurse's duty to a patient.

3. Determination by committee. Once the nursing peer review committee makes its determination, it submits its report to the CNO or nurse administrator. The CNO or nurse administrator has 48 hours to review the nursing peer review committee's determination and deliver it to the nurse with the administrator's decision about whether the nurse will continue to be requested to engage in the conduct.

   a. Committee finds requested conduct or assignment does not violate the nurse's duty. Since the nursing peer review committee has found the conduct or assignment does not violate the nurse's duty to the patient, the nurse can engage in the conduct.

   b. Committee finds requested conduct or assignment violates the nurse's duty. The protection that the facility is prohibited from retaliating against the nurse for making the request continues indefinitely. The protection that the BON cannot discipline the nurse for engaging in the conduct ends 48 hours after the nurse administrator notifies the nurse of the nursing peer review committee's determination.

F. DECIDING TO ENGAGE IN THE REQUESTED CONDUCT OR ASSIGNMENT AWAITING NURSING PEER REVIEW'S DETERMINATION

1. Making the Decision. A nurse requesting safe harbor will have to decide if it is in the patient's best interest to engage in the conduct while awaiting nursing peer review's determination. This is perhaps the most difficult decision for the nurse who is requesting safe harbor. However, assuming the facility and nurse are both acting in good faith, it will normally be in the patients' best interest for the nurse to engage in the conduct or assignment. BON Rule 217.20(g)(2) states that a nurse may engage in the conduct or assignment unless the requested conduct/assignment:
   1. would constitute unprofessional conduct and/or criminal conduct such as fraud, theft, patient abuse, exploitation, or falsification; or
   2. would be beyond the nurse's scope of competency because the nurse lacks the basic knowledge, skills, and abilities that would be necessary to render the care or engage in the conduct requested or assigned at a minimally competent level such that engaging in the requested conduct or assignment would expose one or more patients to an unjustifiable risk of harm.

Conversely, the nurse's reason for not engaging in the conduct or assignment should be that the conduct or assignment either:
1. constitutes unprofessional conduct and/or criminal conduct; or
2. is so beyond the nurse's scope of competency (because the nurse lacks the basic knowledge, skills, and abilities necessary to render the care at a minimally competent level) that patients would be exposed to an unjustifiable risk of harm.

A nurse should be very cautious about not engaging in the conduct/assignment awaiting the nursing peer review committee's determination. First, the nurse's not engaging in the conduct/assignment may result in even less staffing which is normally not in the patients' best interest. Second, the facility may believe patients were put at risk and decide to take personnel action against the nurse for not engaging in the conduct/assignment while awaiting nursing peer review. While the Nursing Peer Review Law specifically prohibits retaliation against the nurse for requesting safe harbor, it does not prohibit personnel action against the nurse for not engaging in the conduct/assignment while awaiting the nursing peer review determination.

If the reason the nurse decides not to engage in the conduct/assignment is because she/he believes it is so beyond her/his scope of competency that patients would be put at an unjustifiable risk, BON Rule 217.20(g) requires that:

1. the nurse and supervisor collaborate in an attempt to identify an acceptable assignment that is within the nurse's scope and enhances the delivery of safe patient care; and
2. the results of this collaborative effort be documented in writing and maintained in peer review records.

However, if 1) a nurse is convinced the requested conduct/assignment is conduct that is either unprofessional and/or criminal conduct or beyond the nurse's scope of competency and 2) the collaborative attempt with the supervisor to identify an acceptable assignment was unsuccessful, the nurse should not engage in the conduct or assignment while awaiting nursing peer review and complete the documentation required by BON Rule 217.20(g)(2).

In summary, it is normally to the patient's and nurse's benefit for the nurse to engage in the conduct during the 14-day period while nursing peer review makes its determination - unless she/he is confident the conduct/assignment 1) involves unprofessional and/or criminal conduct or 2) is conduct any reasonable nurse would consider to be so beyond the nurse's scope of competency that patients are put at unjustifiable risk. Safe harbor nursing peer review is designed to provide a mechanism for resolving situations in which reasonable nurses can differ about what is the nurse's duty to a patient in that particular case. In such situations, it is normally in the patients' interest for the nurse to engage in the conduct while awaiting nursing peer review's determination. Before deciding not to engage in the conduct/assignment while awaiting nursing peer review, the nurse should discuss that decision with another nurse whose judgment the nurse respects.

2. Personnel Action by Facility against Nurse for Not Engaging in Conduct or Assignment Awaiting Nursing Peer Review. While the Nursing Peer Review Law specifically prohibits retaliation against the nurse for requesting safe harbor, it does not prohibit personnel action against the nurse for not engaging in the conduct/assignment while awaiting the nursing peer review determination. The Nursing Peer Review Law and BON Rule 217.20 require that:

a. the nursing peer review's determination be considered in making that personnel decision; and
b. if nursing peer review determines the requested conduct violates the nurse's duty, the CNO or nurse administrator must both:
   1. believe in good faith that nursing peer review is wrong; and
   2. document the reasons for that belief in the nursing peer review record.

Only the CNO or nurse administrator can make the decision to take personnel action against the nurse for not engaging in the conduct awaiting nursing peer review's determination.

If personnel action is taken against the nurse, then the nurse still would have protection of NPA §301.352 if the nurse is correct in her/his belief that conduct violates NPA or BON rule. Section 303.352 prohibits a facility from retaliating against a nurse for refusing to engage in conduct that violates the NPA or BON rules - that is, violates the nurse's duty to a patient. However, if the nursing peer review committee finds the requested conduct or assignment did not violate the nurse's duty to her/his patient, then the personnel action cannot be described as "retaliation for refusing to violate the nurse's duty to a patient."

G. REMEDIES IF A NURSE IS RETALIATED AGAINST BECAUSE REQUESTED SAFE HARBOR OR BECAUSE ADVISED ANOTHER NURSE ABOUT SAFE HARBOR

The Safe Harbor Nursing Peer Review Law prohibits a facility from discriminating against a nurse because she/he requested safe harbor nursing peer review and also against any individual advising a nurse on her/his rights under safe harbor nursing peer review. This protection from retaliation by the facility does not expire. If a nurse is retaliated against, she/he has several remedies. The nurse can:

1. report the facility to the state agency that licenses it (Department of State Health Services for hospitals and long-term care facilities; Department of Aging and Disability Services for home health agencies).
2. report any nurse involved in the retaliation to BON.
3. file a lawsuit seeking damages.
Nurses may also fear being labeled "trouble-makers" and receiving unfavorable job references should they seek new employment. If so, this would be a type of retaliation that the Safe Harbor Nursing Peer Review Law prohibits. In addition, Section 103.003(b) of the Texas Labor Code explicitly prohibits an employer from giving a nurse an unfavorable job reference for refusing to engage in conduct reportable to the BON or for requesting Safe Harbor Nursing Peer Review.

H. RECORD KEEPING

BON Rule 217.20 (d)(3) makes the nurse requesting safe harbor nursing peer review responsible for keeping a copy of the request. The rule also requires the facility provide the nurse a copy of the committee's determination and the nurse administrator's review. The nurse should keep these documents as her/his permanent records. In the event the BON would ever investigate the conduct, the nurse will need to be able to show that she/he engaged in the conduct only after requesting safe harbor nursing peer review.

I. NURSE’S ENGAGING IN CONDUCT SUBJECT TO REPORTING DURING 14-DAY PERIOD AWAITING PEER REVIEW’S DETERMINATION

Though not likely, it is possible that a nurse may engage in conduct subject to being reported during the 14-day period nursing peer review is making its determination. That conduct will either be related to or unrelated to the reason the nurse requested safe harbor. If that conduct relates to the reason for which safe harbor was requested, then the nurse is not reportable to the BON. If this were not the case, the protections of safe harbor nursing peer review would be practically meaningless. An example of such a situation might be that the nurse requested safe harbor because she or he was requested to work on a pediatric unit and did not feel she/he was qualified, and the subsequent conduct was giving an adult dose to a child. The nurse should not be held accountable for that error, because it relates directly to the reason for the request for safe harbor. On the other hand, safe harbor is not a license for the nurse to engage in bad practice. If the subsequent conduct does not relate to the safe harbor request, then the nurse should be held accountable for that conduct. In the above example, such conduct might be giving the medication by a route that would not be correct for adult patients either. BON Rule 217.20(e)(2) addresses the process that should occur when a nurse engages in conduct subject to reporting pending the nursing peer review committee's evaluation of a request for safe harbor. That process includes the nursing peer review committee's determination whether the conduct relates to the nurse's request for safe harbor nursing peer review.

J. WHAT IF THE NURSE MAKES A PATIENT CARE ERROR THAT RESULTS IN PATIENT INJURY

The patient is an innocent third-party with respect to safe harbor nursing peer review. The Nursing Peer Review Law does not prohibit the patient from suing the facility and nurse for any injury caused by a nursing error committed by the nurse during the period awaiting nursing peer review's determination. The patient would have to prove negligence by the nurse. As a practical matter, the facility is probably more at risk of a lawsuit than is the nurse but there can be no guarantee the nurse would not be sued. On the other hand, if the nurse does not engage in the conduct or assignment and a patient is injured, the nurse may be subject to disciplinary action by the BON if it determines the nurse did not act in the best interests of patients. She/he may also be subject to possible personnel action by the facility. Because of the possibility of an injury to the patient, it is in the facility's and nurse's interest that nursing peer review makes its determination as quickly as possible.

K. PRACTICAL TIPS

Practical Tip 1: Nurses should not wait until a situation arises to familiarize themselves with their right to request safe harbor nursing peer review. That is best done without the pressures of having to make an immediate decision on whether and how to make the request. The nurse should also check to see if the facility keeps forms readily available for nurses. If not, nurses should know how they will obtain the form if needed, have a form that meets the requirements of the BON, or at the very least have a list of the information that must be in the Quick Request Form.

Practical Tip 2: Not only is the nurse requesting safe harbor nursing peer review protected from retaliation, but also nurses (and other individuals) advising a nurse of her/his rights to request safe harbor nursing peer review.

Practical Tip 3: Because safe harbor protections do not apply until a proper request is made, a nurse should request safe harbor nursing peer review when she/he first believes her/his engaging in the requested conduct or assignment would violate her/his duty to a patient.

Practical Tip 4: A nurse can request safe harbor nursing peer review if during the course of the work period, the original assignment so changes that a new assignment in fact occurs.

Practical Tip 5: A nurse supervisor may request safe harbor nursing peer review on an administrative decision the supervisor believes will directly affect the ability of nurses to comply with their duty to patients.

Practical Tip 6: Nurses requesting safe harbor nursing peer review must remember
that "a nurse's duty to a patient" is defined by the BON standards of practice and unprofessional conduct rules. Nurses should be familiar with those rules and able to identify the specific standards of practice or unprofessional conduct rules that the requested conduct or assignment violates. Nurses should not wait until a situation occurs to review the BON standards of practice and unprofessional conduct rules. That is best done without the pressures of having to make an immediate decision on how they apply to the situation at hand.

**Practical Tip 7**: A nurse refusing to engage in requested conduct/assignment (because violates duty) should be prepared to collaborate with her/his nurse supervisor regarding how the requested conduct/assignment could be modified so as not to violate duty to a patient. If a nurse is convinced that any reasonable nurse would believe the requested conduct involves unprofessional/criminal conduct or is so beyond the nurse's scope of competency that patients are put at unjustifiable risk, she/he should both request safe harbor nursing peer review and not engage in the requested conduct during the 14-day period awaiting nursing peer review's determination. The nurse should be sure she/he complies with the requirements of BON Rule 217.20(g). If disciplined for not engaging in the conduct, the nurse may have legal recourse under NPA Sec. 301.352. A nurse, who is considering refusing to engage in the conduct or assignment while awaiting peer review's determination, should be familiar with Section F.

**Practical Tip 8**: Protections that a nurse cannot be disciplined by the BON for engaging in the requested conduct end 48 hours after the nurse receives the nursing peer review committee's decision from the nurse administrator. The protection that the facility is prohibited from retaliating against the nurse for making the request continues indefinitely.

**Practical Tip 9**: Nurses who are retaliated against for requesting safe harbor nursing peer review or for advising a nurse on the nurse's right to request safe harbor have several remedies available to them and should use these as appropriate.

**L. WHAT OTHER PROTECTIONS DO TEXAS NURSES HAVE WHEN ADVOCATING FOR THEIR PATIENTS**

Texas nurses have a number of patient advocacy protections in addition to safe harbor nursing peer review. These protections are described in Section 7 of the Reference Materials. These protections should be available even if the nurse does not request Safe Harbor.

**M. BON AND TNA WEBSITES**

The BON's website has useful information about safe harbor nursing peer review including sample forms. The BON website is [www.bon.texas.gov](http://www.bon.texas.gov). From Main Menu, select "Nursing Practice" and then "Nursing Peer Review."

Nurses may wish to periodically check the TNA website at [www.texasnurses.org](http://www.texasnurses.org) for any changes and updates to Safe Harbor Nursing Peer Review or other patient advocacy protections for nurses.