



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 70.40 Nursing Peer Review: Paul L. Foster School of Medicine, Gayle Greve Hunt School of Nursing

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso Operating Policy and Procedure (HSCEP OP) is to:

1. Govern peer review of licensed vocational nurses, registered nurses, and advanced practice nurses providing nursing care within the Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso).
2. Nurse peer review shall be conducted in accordance with Texas Occupations Code, Chapter 301, Regulation of Nursing, and Chapter 303, Nursing Peer Review and Title 22 of the Texas Administrative Code, Part 11 Board of Nursing Rules, Chapter 217 Licensure, Peer Assistance and Practice (hereinafter TAC/BON").
3. All references to Texas statutes and administrative rules incorporate "as may be amended." All references to "Occupations Code" means the Texas Occupations Code.
4. Establish a Nursing Peer Review Committee with specific authority to conduct nursing peer review and to review reports made by TTUHSC El Paso to the Texas Board of Nursing (hereinafter "Board").
5. This HSCEP OP applies to the Paul L. Foster School of Medicine (PLFSOM) and the Gayle Greve Hunt School of Nursing (GGHSON).

REVIEW: This HSCEP OP will be reviewed on September 1 of each odd-numbered year (ONY) by the Dean of the GGHSON; the Office of the General Counsel or designee; the Assistant Vice President of Human Resources or designee; and the Dean of the PLFSOM. Recommendations for revision will be forwarded to the President of TTUHSC El Paso or designee by October 1.

POLICY/PROCEDURE:

I. General.

- A. Duty to Report Conduct to Board.** Pursuant to the Occupations Code, Chapter 301, the Nursing Practice Act ("Act"), TTUHSC El Paso and individual nurses have a duty to report unprofessional or unethical conduct by a nurse to the Board of Nursing as described herein. "Conduct Subject to Reporting" is defined in Section 2 of this Operating Policy (OP).
- B. Report to Nursing Peer Review Committee.** Alternatively, a report may be made to the Nursing Peer Review Committee. [Occupations Code §301.402.] TTUHSC El Paso has established the Nursing Peer Review Committee in accordance with Occupations Code, Chapter 303 and as set forth in Section 6 of this Operating Policy to provide peer review of a nurse whose conduct is subject to reporting. If a Nursing Peer Review Committee determines that a nurse engaged in "Conduct Subject to Reporting", it shall report to the Board as set forth in Section 19 of this Operating Policy.

Review by the Nursing Peer Review Committee shall not affect any disciplinary or employment decision of TTUHSC El Paso.

- C. Report to Peer Assistance Program.** If a nurse is impaired or suspected of being impaired by chemical dependency or mental illness, the nurse may be reported to a peer assistance program approved by the Board (i.e., Texas Peer Assistance Program for Nurses – “TPAPN”) instead of being reported to the Board of Nursing or to the Nursing Peer Review Committee. The nurse may be referred to the TTUHSC El Paso Employee Assistance Program. However, if a practice violation has occurred the nurse must be reported to the Board. [Occupations Code, §301.410.]
- D. Request for Peer Review Committee Determination.** If a nurse is requested to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may, in good faith, request a peer review determination of whether the conduct violates a nurse's duty to a patient. [Occupations Code §303,005.] See Section 5 of this Operating Policy.

II. Definitions.

"Act" means the Nursing Practice Act. [Occupations Code, Chapter 301.]

"Board" means the Texas Board of Nursing. [Occupations Code, Chapter 301.]

"Days" means calendar days, including weekends and holidays.

"Conduct Subject to Reporting" means conduct by another nurse, a Nursing Peer Review Committee, employer, or state agency as set forth in Occupations Code, §301.401 (1) that:

- a) violates Texas Occupations Code Chapter 301 or a board rule and contributed to the death or serious injury of a patient;
- b) causes a person to suspect that the nurse's practice is impaired by chemical dependency, drug or alcohol abuse;
- c) constitutes abuse, exploitation, fraud, or a violation of professional boundaries;
- d) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of 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.

"Informal Workgroup" means a smaller work group (comprised of members of the Nursing Peer Review Committee) to conduct incident-based peer review. See Section 6 of this Operating Policy.

"Minor Incident" means conduct that does not indicate that a nurse's continued practice poses a risk of harm to a patient or other person. (This term is synonymous with "minor error" or "minor violation.") [Occupations Code, §301.401 (2).]

"Nurse" means a registered nurse or a vocational nurse licensed under Chapter 301. [Occupations Code, §303.001(2).]

"Nursing Peer Review" means Occupations Code, Chapter 303.

"Nursing Peer Review Committee" ("Peer Review Committee" or "PR Committee" or "NPRC") means a committee established under the authority of TTUHSC El Paso in accordance with

Occupations Code, Chapter 303 for the purpose of conducting peer review. The committee includes an employee or agent of the Nursing Peer Review Committee, including an assistant, an investigator, an intervener, an attorney, and any other person who serves the committee in any capacity. [Occupations Code, §303.001 (4).]

"Peer Review" means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term includes:

- a) the evaluation of the accuracy of a nursing assessment, observation, the appropriateness and quality of the care rendered by a nurse;
- b) a report made to a Nursing Peer Review Committee concerning an activity under the committee's review authority;
- c) a report made by a Nursing Peer Review Committee to another committee or to the Board as permitted or required by law;
- d) implementation of a duty of a Nursing Peer Review Committee by a member, an agent, or an employee of the committee;
- e) the provision of information, advice, and assistance to nurses and other persons relating to:
 - 1) the rights and obligations of and protections for nurses who raise care concerns or report under Chapter 301 of the Occupations Code or other state or federal law;
 - 2) the rights and obligations of and protections for nurses who request nursing peer review under Chapter 303 of the Occupations Code;
 - 3) nursing practice and patient care concerns; and
 - 4) the resolution of workplace and practice questions relating to nursing and patient care. [Occupations Code §303.001 (5).]

The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. (TAC/BON 217.19 (a) (14).)

"Safe Harbor" means a good faith request for peer review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the Act or Board rules. Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at any time during the work period when the initial assignment changes. [TAC/BON Rule 217.19 (a) (19) and Rule 217.20 (a) (15).]

III. Reporting Requirements and Procedures.

- A. **TTUHSC El Paso Report Action Taken to the Board.** TTUHSC El Paso shall report to the Board when it terminates, suspends for more than seven (7) calendar days, or takes any substantive disciplinary action against a nurse employed by TTUHSC El Paso or a substantially equivalent action against a nurse providing services to TTUHSC El Paso under a contract based on a determination that the nurse engaged in "Conduct Subject to Reporting". The report shall identify the nurse, the conduct that resulted in action, and any additional information required by the Board. [Occupations Code, §301.405 (b).] (See Attachment Q: Employer Report to BON Form)

1. The report shall also be submitted to the Nursing Peer Review Committee to review the conduct to determine if any deficiency in care resulted from a factor beyond the nurse's control, and if so the conduct shall be reported to Professional Liability Risk Management Committee. (The Administrative [Occupations Code §301.405 (c).]

B. Individual Nurse Reports. Each nurse with reasonable cause to suspect that another nurse has engaged in "Conduct Subject to Reporting" has a duty to report to the Board or to the Nursing Peer Review Committee. [Occupations Code, §301.402 (b) and (e)]. Reports to the Nursing Peer Review Committee about conduct of another nurse, or a request for review of conduct are submitted to the Chair of the TTUHSC El Paso Nursing Peer Review Committee. (See Attachment D: Alternate Reporting Form)

1. A request for peer review to the Nursing Peer Review Committee fulfills the obligation to report [Occupations Code, §301.402] to the Board provided the following are met [TAC/BON Rule 217.19 (j)]:
 - (a) the Nursing Peer Review Committee shall report the nurse to the Board if it finds the nurse engaged in "Conduct Subject to Reporting" (Attachment P: Peer Review Committee Report to BON Form). If the Nursing Peer Review Committee finds that the conduct constitutes a minor incident as defined by TAC/BON Rule 217.16 (relating to reporting minor incidents), it shall report in accordance with the requirements of that rule;
 - (b). the reporting nurse shall be notified of the Nursing Peer Review Committee's findings and shall be subject to Texas Occupations Code §303.006, confidentiality of Peer Review proceedings, and
 - (c) the reporting nurse accepts in good faith the findings of the Nursing Peer Review Committee.
2. The reporting nurse retains the option of communicating directly with the Board if the Nursing Peer Review Committee finding is not accepted.
3. The report shall be in writing, signed by the reporting nurse, and include the name of the nurse who is suspected to have engaged in "Conduct Subject to Reporting", and any additional information required and within the reporting nurse's knowledge. [Occupations Code, §301.402 (d).]

IV. Minor Incidents

The Board has adopted rules to minimize unnecessary duplicative reporting and reporting of a "minor incident" (defined in Section 2 above). [Occupations Code, §301.419.]

- A.** The Board's rules state, the Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act. This is particularly true when there are mechanisms in place in the practice setting to take corrective action, remediate deficits and detect patterns of behavior. [TAC/BON Rule 217.16 (a).]
- B.** A nurse involved in an incident determined to be a minor incident need **not** be reported to the Board or the Nursing Peer Review Committee unless the conduct indicates the nurse:
 1. ignored a substantial risk that exposed a patient or other person to significant physical, emotional or financial harm or the potential for such harm;

2. lacked a conscientious approach to or accountability for his/her practice;
 3. lacked the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or
 4. indicates the nurse has engaged in a pattern of multiple minor incidents that demonstrate the nurse's continued practice would pose a risk of harm to patient or others. [TAC/BON Rule 217.16 (c) (1)]:
- C.** Other factors which may be considered in determining whether a minor incident should be reported are [TAC/BON Rule 217.16 (c) (3)]:
1. the significance of the nurse's conduct in the particular practice setting; and
 2. the presence of contributing or mitigating circumstances, including systems issues, in relation to the nurse's conduct.
- D.** A **single** minor incident need not be reported to the Board or the Nursing Peer Review Committee. When a decision is made that the incident is minor, it is required to be documented as follows [TAC/BON Rule 217.16 (f)]:
1. an occurrence report shall be completed according to the following:
 - (a) TTUHSC El Paso PLFSOM Ambulatory Clinic Policy and Procedure No. 8.02, "Occurrence Reporting".
 2. a record of each minor incident shall be maintained by the nurse's supervisor for a minimum of 12 months.
 3. the occurrence report shall contain a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remedy the problem.
- E. Multiple minor incidents.** A nurse manager or supervisor **shall report** a nurse to the Nursing Peer Review Committee if **five (5)** minor incidents involving the nurse are documented within a one-year (any 12 consecutive month) time period [TAC/BON Rule 217.16 (c)(2)(B)]; and
1. the Nursing Peer Review Committee shall review the five (5) minor incidents and make a determination as to whether there is "Conduct Subject to Reporting" required to be reported to the Board. [Occupations Code §301.403.]
 2. the Nursing Peer Review Committee need **not** report to the Board when it determines that either:
 - (a) the nurse's continuing to practice does not pose a risk of harm to patients or other persons; or
 - (b) remediation and monitoring of the nurse's knowledge and/or skills can be accomplished to mitigate risk and the nurse successfully completes the remediation. [TAC/BON Rule 217.16 (g) (3).]
 3. regardless of the time frame or number of minor incidents, if a nurse manager or supervisor believes the minor incidents indicate a pattern of practice that poses a risk of harm that cannot be remediated, the nurse should be reported to the Board or Nursing Peer Review Committee.

- F. Nothing in this section is intended to prevent reporting of a potential violation directly to the Board or a Nursing Peer Review Committee. [TAC/BON Rule 217.16 (h).]
 - G. Failure to classify an event appropriately in order to avoid reporting may result in violation of the mandatory reporting statute. [TAC/BON Rule 217.16 (i).]
- V. **Safe Harbor Peer Review for Nurses.** [Occupations Code, §303.005.] [TAC/BON Rule 217.20]
- A. If a nurse is requested to engage in conduct the nurse believes violates a nurse's duty to a patient, the nurse may, in good faith, request a determination about the conduct by a Nursing Peer Review Committee. [Occupations Code, §303.005 (b).] This is referred to as a "**Safe Harbor**" in TAC/BON Rule 217.20.
 - B. The TTUHSC El Paso offices are responsible to inform nurses of their right to request safe harbor nursing peer review and of the procedures for making the request are identified below. Information on the rights of the nurse under Safe Harbor may be given. [TAC/BON Rule 217.20 (h).]
 - 1. El Paso campus: Quality Improvement Director
 - C. "Duty to a patient" means conduct necessary to comply with standards of nursing practice and to avoid engaging in unprofessional conduct. [See TAC/BON Rule 217.12.] This includes administrative decisions which directly affect a nurse's ability to comply with that duty. [Occupations Code, §303.005 (a).] [TAC/BON Rule 217.20 (a) (5).]
 - D. To invoke safe harbor protections, a nurse must take the following steps **prior** to engaging in the conduct. [TAC/BON Rule 217.20 (d) (1).]
 - 1. A nurse must request a peer review determination in "good faith," meaning the nurse takes action supported by a reasonable factual or legal basis regarding requested conduct which may violate the nurse's duty to a patient. Good faith precludes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process. [TAC/BON Rule 217.20 (a) (6).
 - 2. At the time the nurse is requested to engage in the activity and refuses, notify the supervisor making the request or assignment that the nurse is invoking safe harbor.[TAC/BON Rule 217.20 (d)(2).]
 - 3. Submit a written request to either the supervisor, or directly to the Nursing Peer Review Committee Chair, using either the Quick Request for Safe Harbor form available at the Board's website at www.bon.state.tx.us or (Attachment A: Safe Harbor – Quick Request Form), or any format which provides the following minimum information:
 - (a) nurse's name and signature;
 - (b) date and time of request;
 - (c) location of assignment;
 - (d) name of the person requesting the conduct or making the assignment; and
 - (e) brief explanation of why safe harbor is being requested.

4. If a Quick Request is submitted, it must be supplemented by a comprehensive request form using the form available on the BON website or (Attachment B: Safe Harbor - Comprehensive Request for Safe Harbor Peer Review), or any format which includes the minimum information shown on the form. The comprehensive request must be completed before leaving the work setting at the end of the work period.

D. Process

1. For Nursing Peer Review:

- (a) If not submitted directly to the Nursing Peer Review Committee, the supervisor shall forward a copy of the Request for Safe Harbor immediately to the Chair of the Nursing Peer Review Committee.
- (b) If the nurse has made a good faith request and engages in the conduct while awaiting Nursing Peer Review, he/she is protected from discipline by the employer and is protected from action by the Board. [Occupations Code §303.005 (c).] [TAC/BON Rule 217.20 (e) (2) (C).]
- (c) The Nursing Peer Review Committee shall complete a review of the request for Safe Harbor within 14 calendar days of the request, and notify the supervisor. [TAC/BON Rule 217.20 (h).]
- (d) Within 48 hours of receipt of the Nursing Peer Review Committee determination, the supervisor shall review and notify the requesting nurse of the Nursing Peer Review Committee's determination, and whether the supervisor believes in good faith that the findings are correct or incorrect. [TAC/BON Rule 217.20 (i).]
- (e) The Nursing Peer Review Committee determination shall be considered in any decision is not binding if the supervisor believes in good faith that the Nursing Peer Review Committee incorrectly determined a nurse's duty. [Occupations Code §303.005 (d).] [TAC/BON Rule 217.20 (U).]

2. For Physician Order:

- (a) If safe harbor was invoked to question the medical reasonableness of a physician's order, a request for review (Attachment S: Safe harbor – Request to Determine Medical Reasonableness of a Physician's Order form) does not go to the Nursing Peer Review Committee, but to a medical director or designee on the medical staff of the department or unit for a determination whether the order was reasonable. This determination shall not exceed 14 calendar days from date of request, and it considered a final decision. [Occupations Code §303.005 (e).]
- (b) The determination shall be conveyed to the nurse's supervisor and to the nurse within two (2) business days.

3. The nurse invoking safer harbor is responsible to keep a copy of the request for safe harbor [TAC/BON Rule 217.20 (d) (5), and shall receive a copy of the Nursing Peer Review Committee's or medical director's determination.

E. The requesting nurse retains the option of communicating directly with the Board if the Nursing Peer Review Committee finding or the medical staff finding is not accepted.

F. Exclusions to Safe Harbor [TAC/BON 217.20 (f)]

- (1) Safe Harbor provisions do not apply to a nurse who invokes safe harbor in bad faith or who engages in activity unrelated to the reason for request, or “Conduct Subject to Reporting” even if the conduct occurs during the review process.

VI. Membership of Nursing Peer Review Committee and Voting.

A. Each Nursing Peer Review Committee created by a TTUHSC El Paso shall meet the following criteria. [Occupations Code §303.003.]

1. Have licensed nurses as three-fourths of its members. [Occupations Code §303.003. (a).]
2. For nursing peer review that involves the practice of licensed vocational nurses, to the extent feasible, a Nursing Peer Review Committee must include licensed vocational nurses as members. Only registered nurses and licensed vocational nurses may be voting members. [Occupations Code §303.003 (b).]
3. For nursing peer review that involves the practice of professional nurses, (including a RN with advance practice authorization, or “APN”), a Nursing Peer Review Committee must have registered nurses as two thirds of its members. Only registered nurses may be voting members. [Occupations Code §303.003 (c).]
4. Each Nursing Peer Review Committee shall have a majority of members whose primary duties are direct patient care. To the extent feasible, at least one member shall have a working familiarity with the area of practice of the nurse being reviewed. [Occupations Code §303.003 (d).]
5. A quorum shall consist of 75% of the appointed members. A majority of those present for the quorum must be involved in direct patient care.
6. To make a Nursing Peer Review Committee determination, a majority vote of the members present shall be required. The Chair shall abstain from voting unless there is a tie.
7. Excluded from Nursing Peer Review Committee membership are any person(s) with administrative authority for personnel decision directly affecting the nurse. Such person(s) may attend the peer review hearing and may only appear as a fact witness. [TAC/BON Rule 217.20 (h)(2)(2)(C).]

B. Paul L. Foster School of Medicine Nursing Peer Review Committee

1. The PLFSOM Dean shall appoint a registered nurse as the Nursing Peer Review Committee Chair.
2. The Chair shall appoint committee members in accordance with Section 6. a. above. Each Chair shall also name a designee to act in the Chair’s stead, and the designee must be a member of the Nursing Peer Review Committee.

C. See also Section 21 regarding Nursing Peer Review Committee membership if a nurse from another entity is subject to peer review through TTUHSC El Paso.

D. Use of Nursing Peer Review Informal Workgroups. [See TAC/BON Rule 217.16 (g), Rule

217.19 (e), and Rule 217.20 (k).] (See Attachment N: Informal Workgroup – Case Activity Sheet)

1. Use of Informal Workgroups is permitted under any Incident Based Nursing Peer Review (IBPR) proceeding so long as it meets the timelines set forth in Section 5. e. above. [TAC/BON Rule 217.20 (k).]
2. Informal Workgroup Considerations.
 - (a) relaxes Incident Based Peer Review (IBPR) minimum due process
 - (b) workgroup is more appropriate if likely to find Minor Incident [TAC/BON Rules 217.16 (g) and 217.19 (e).]
3. Procedural requirements for the use of Informal Workgroups include the following [TAC/BON Rule 217.19 (e) and Rule 217.20 (k).]:
 - (a) nurse must be informed in writing of how the informal group will function and consent in writing to this process; (Attachment M: Informal Workgroup-Individual Nurse’s Consent to Use)
 - (b) workgroup must be Nursing Peer Review Committee members who meet Nursing Peer Review Committee membership and voting requirements; (Attachment L: Informal Workgroup-Detailed Summary of Findings)
 - (c) nurse must be provided with the opportunity to meet with the informal workgroup;
 - (d) nurse has right to reject workgroup’s decision and request full Nursing Peer Review Committee review (workgroup members who participated in initial proceedings shall be excluded from participating in the Nursing Peer Review Committee review);
 - (e) Nursing Peer Review Committee must ratify the informal workgroup’s decision or seek a Nursing Peer Review Committee determination;
 - (f) the workgroup decision is not final unless accepted by the nurse and the Nursing Peer Review Committee Chair.

VII. Timelines (All source cites are found in the designated section.)

Upon receipt of a report or request for peer review, the Nursing Peer Review Committee will comply with the following time lines unless waived in writing by both parties after peer review is initiated under Section 11. These time frames may NOT be waived in advance. (These timelines are not applicable to Safe Harbor Peer Review under Section 5.)

Receipt of Report and Preliminary Investigation [Section 10]	Receipt of the report or request for peer review, a preliminary investigation conducted by the Nursing Peer Review Committee Chair or designee to determine if peer review is appropriate.
Initiation of Peer Review and Notice of Nurse [Section 11]	Within five calendar days of the decision to go forward with peer review.

Pre-Proceeding Informal Conference [Section 14]	Optional upon agreement of the nurse and the Nursing Peer Review Committee. To be held at least 14 calendar days prior to scheduled date of peer review proceeding.
Schedule Peer Review Proceeding [Section 11]	Not sooner than 21 calendar days or more than 45 calendar days from the date of notice, unless (1) the Nursing Peer Review Committee determines an extended time period (extending the 45 days by no more than an additional 45 days) is necessary in order to consult with a patient safety committee or (2) otherwise agreed by the nurse and the Nursing Peer Review Committee
Investigation [Section 12]	The Nursing Peer Review Committee Chair's designee reviews any documents, interview witnesses including the nurse being reviewed. The nurse may submit a written statement.
Participation and Review of Documents by Nurse [Section 13]	At least 15 calendar days before the Nursing Peer Review Committee schedules the peer review proceeding, the nurse and/or attorney may review documents concerning the event under review.
Notice of Attorney of Representative at Proceeding [TAC/BON Rule 217.19(d)(5)(C)]	At least seven calendar days prior to date of proceeding.
Provide documents and List of witnesses [Section 11]	At least 48 hours prior to the date of the proceeding, each party shall provide, to the other party and to the Chair of the PR Committee, a copy of written documents and a list of witnesses to be presented at the proceeding.
Peer Review Committee Proceeding [Section 15]	See Agenda in Section 15 a.
Peer Review Committee Decision [Section 17]	Not more than 14 calendar days from the date of the Nursing Peer Review Committee proceeding.
Notice to Nurse of Decision [Section 17]	Within 10 calendar days of the date of the decision.
Nurse File Rebuttal Statement [Section 18]	Not more than 10 calendar days after receipt of the Notice of Decision.
Report to Board [Section 19]	Nursing Peer Review Committee is required to report to the Board if it finds "Conduct Subject to Reporting".

VIII. Notice

All notices to the nurse shall be sent either by certified mail, return receipt requested, or personal delivery with acknowledgement in writing signed by the nurse, or a signed statement by the person delivering if recipient refuses to sign. [TAC/BON Rule 217.19 (d) (3) (C).]

IX. Confidentiality [Occupations Code §303.006. TAC/BON Rule 217.19 (h).]

- A.** Nursing Peer Review Committee proceedings are confidential, and any communication made to the Nursing Peer Review Committee is privileged. {Occupations Code §303.006 (a). This includes, to the extent possible, patient information and identities. (Attachment E: Patient Cross Index)}
- B.** All participants will be required to sign a statement (Attachment C: Confidentiality Guidelines) affirming the confidentiality of the process and agreeing that each will abide by procedures to maintain confidentiality. At each proceeding the Nursing Peer Review Committee Chair will remind participants of the need to maintain confidentiality. The following guidelines will apply:
1. Only the Chair shall disclose Nursing Peer Review Committee Information in accordance with Occupations Code §303.007.
 2. A member, agent, or employee of the Nursing Peer Review Committee, the nurse being reviewed, witnesses or any other participant in any peer review proceedings may not voluntarily disclose, or be required to disclose, information about communications to the committee, or any record or proceeding of the committee. [Occupations Code §303.006(b).] Nor may they be required to disclose such information except as may be required by law. [Occupations Code §303.007]
 3. Any person who attends any proceeding of the Nursing Peer Review Committee may not voluntarily disclose or be required to disclose any information acquired in connection with the proceeding, or disclose any opinion, recommendation, or evaluation of the Nursing Peer Review Committee or any member of the Nursing Peer Review Committee. [Occupations Code §303.006(c).]
 4. Nursing Peer Review Committee members and participants may not be questioned about their testimony or about opinions formed as a result of the committee proceedings. [Occupations Code §303.006(d).]
 5. A nurse consulting with her/his attorney does not constitute a breach of confidentiality. [TAC/BON Rule 217.19 (h) (1).]

C. Procedures to Maintain Confidentiality.

1. The face of each Nursing Peer Review Committee document shall be marked "Confidential Record of Nursing Peer Review Committee."
2. Communications between the Nursing Peer Review Committee members, agents, or employees, or by the Nursing Peer Review Committee members, agents, or employees to third parties shall include identification of the Nursing Peer Review Committee, a statement that the person involved in the communication is a member, agent, or employee of the Nursing Peer Review Committee, and the Nursing Peer Review Committee purpose to which the communication relates. For example:

To: Jane Doe, R.N.
Chair, Nursing Peer Review Committee

From: John Smith, R.N.
Member, Nursing Peer Review Committee:

Re: The Nursing Peer Review Committee Review of Mary Nurse, R.N.

3. Documents shall be maintained in a confidential manner by a member of designated agent or employee of the Nursing Peer Review Committee. (Nursing Peer Review Chairman shall maintain all Nursing Peer Review documents.)
4. Access to documents shall be limited to members of the Nursing Peer Review Committee and those persons whose access to the documents is necessary to carry out Nursing Peer review Committee purposes, and for whom access has been authorized by the Nursing Peer Review Committee.
5. Documents received by the Nursing Peer Review Committee shall be stamped as "Received by the Nursing Peer Review Committee."
6. Each compilation of data, study, audit, investigative summary, record review, or other document prepared by or for the Nursing Peer Review Committee shall clearly state on its face that it was "Created by or at the direction of the Nursing Peer Review Committee" and is to be regarded as a privileged and confidential committee documents. The document shall also state that its use is restricted to Nursing Peer Review Committee purposes, unless otherwise authorized or required.
7. When requesting third-party information, which the Nursing Peer Review Committee wishes to maintain as confidential or protect as records and proceedings of the Nursing Peer Review Committee. The Nursing Peer Review Committee shall issue a written request to the third party for such information.
8. The Nursing Peer Review Committee members, individuals interviewed by the Nursing Peer Review Committee or a member and individuals appearing before the committee, shall be advised of the confidentiality provisions under Section 9.a.

X. Receipt of Report and Preliminary Investigation

Upon receipt of a report or request (Attachment D: Report to Nursing Peer Review Committee (NPRC) Form) from a nurse, supervisor, or anyone required to report under Occupations Code Chapter 301, the Nursing Peer Review Committee Chair or the Chair's designee shall conduct a preliminary investigation to determine if peer review of a nurse is appropriate.

XI. Initiation of Peer Review and Notice to Nurse

- A. Following the preliminary investigation, if the Chair or designee makes a decision to go forward with peer review of a nurse, the nurse shall be notified within five (5) calendar days that she/he will be subject to peer review, in accordance with section 8 of this OP. The notice shall include the following as required by TAC/BON Rule 217.19 (d) (3) (D): (Attachment F: Notification to Nurse – Sample Letter)
 1. A description of the event(s) to be evaluated in sufficient detail to inform the nurse of the incident, circumstances and conduct (error or omission), including dates(s), time(s), location(s), and individual(s) involved. The patient/client shall be identified by initials or number to the extent possible, but the nurse shall be provided the name of the patient/client.

2. The name, address, and telephone number of a contact person to receive the nurse's response.
 3. A copy of current TAC/BON Board of Nursing Rule 217.19.
 4. A copy of this HSCEP OP 70.40, Nursing Peer Review.
- B.** The notice shall also include time deadlines for the following including but not limited to, [TAC/BON Rule 217.19 (d)(3)(C) and (F)]:
1. Scheduled date of the Nursing Peer Review Committee proceeding to conduct the peer review between 21 and 45 calendar days of date of notice. [TAC/BON Rule 217.19 (19) (3) (C).]
 2. Written statement from the nurse regarding the event under review, at the nurse's option. [TAC/BON Rule 217.19 (d) (3) (F).]
 3. Notice whether an attorney will be present (at least 7 calendar days in advance of the proceeding). [TAG/BON Rule 217.19 (d) (5) (G).]
 4. Copies of written testimony or other documents to be presented (at least 48 hours in advance of proceeding). [TAC/BON Rule 217.19 (d) (3) (F).]
 5. List of witnesses (at least 48 hours in advance of the proceeding). [TAG/BON Rule 217.19 (d) (3) (F).]
 6. Method to present testimony and questions as determined by the Chair of the Nursing Peer Review Committee.
 7. Nursing Peer Review Committee is to conclude its review not later than fourteen (14) calendar days from the date of the proceeding. [TAC/BON Rule 217.19 (d) (3) (G).]
 8. Date Nursing Peer Review Committee findings will be provided to the nurse – within 10 calendar days of completion of the review. [TAC/BON Rule 217.19 (d) (3) (H).]
- C.** A nurse whose practice is being evaluated may choose not to participate in the peer review proceeding after having received notice. [TAC/BON Rule 217.19 (d) (6).] The right to participate cannot be nullified by contract. [Occupations Code §303.005(f).]

XII. Investigation

The Nursing Peer Review Committee Chair or designee shall conduct an investigation, including reviewing relevant documents and interviewing witnesses. The nurse being reviewed shall be interviewed and given an opportunity to submit a written statement. [TAG/BON Rule 217.19 (d) (3) (F).] The results of the investigation, if conducted by the Chair's designee, shall be reported to the Nursing Peer Review Committee Chair.

XIII. Participation and Review of Documents by Nurse

- A.** At least 15 calendar days prior to the schedule date of the Nursing Peer Review Committee proceeding the nurse and/or his/her attorney shall have an opportunity to review documents concerning the event(s) under review. [TAC/BON Rule 217.19(d) (3) (E).] The documents will be made available in the Committee Chair's office or other location designated by the Chair. The nurse or the nurse's attorney shall not be permitted

to remove any records from the office or to make copies of any records without the written authorization of the Chair.

- B.** The nurse may submit a written statement regarding the event under review, call witnesses, question witnesses, be present when testimony or evidence is being presented, make an opening statement, ask questions of a respond to questions of the Nursing Peer Review Committee, and make a closing statement. [TACBON Rule 217.19 (d) (3) (F).]

XIV. Pre-Proceeding Informal Conference

[Note: This step is entirely optional upon agreement of both the nurse and the Nursing Peer Review Committee, but is subject to confidentiality provisions.] The Nursing Peer Review Committee Chair (or Chair plus designated Nursing Peer Review Committee members) may informally meet with the nurse at least 14 calendar days prior to scheduled date of the Nursing Peer Review Committee proceeding. The purpose of an informal meeting is to identify fact issues not in dispute, provide the nurse with a verbal summary of the results of the investigation, and if possible, reach an agreed resolution of the matter. The nurse may have her/his attorney or another representative present. If an agreed resolution is reached, the Nursing Peer Review Committee Chair shall reduce the agreement to writing and forward a copy to the nurse under the notice provisions of Section 8. The nurse shall have 5 calendar days from the date of receiving the agreement to sign and return the agreed resolution. If not returned within 5 calendar days, the nurse will be presumed to have rejected the agreed resolution and the Nursing Peer Review Committee will meet as scheduled.

XV. Nursing Peer Review Committee Proceeding

- A.** The nurse being reviewed shall have an opportunity to be present through the proceeding and to participate as set forth in the following AGENDA:

Opening statement by Chair on purpose, process, confidentiality, and any other relevant matter. (Attachment G: Chair Opening Statement sample)

Opening statement by supervisor/investigator.

1. Summarize the alleged incident.
2. Summarize findings of the investigation.

Opening statement by nurse.

Presentation of evidence by both parties:

1. Documentary evidence
2. Witnesses
 - (a) Live or written statements/summaries only (specify).
 - (b) Parties may question witnesses in manner as determined by the Chair of the Nursing Peer Review Committee
 - (c) Witnesses are also subject to questioning by members of the Nursing Peer Review Committee in a manner determined by the Nursing Peer Review Committee Chair.

3. Response by the nurse.

Committee and both parties may ask questions and have an opportunity to respond to questions.

Closing statements:

1. By the supervisor/investigator
2. By the nurse

Statement by Chair on Nursing Peer Review Committee's anticipated actions, including scope of decision, time frame for decision, confidentiality, and any other relevant matter.

B. Evidence [TAC/BON Rule 217.19 (d) (5) (A).]

Peer review is not a legal proceeding and the rules of evidence used in court proceedings will not apply. Evidence and facts normally relied on by reasonable persons including hearsay evidence will be accepted with consideration being given to its source, its credibility and the nature of the evidence. Under any method of questioning witnesses, the Chair retains a prerogative to rephrase questions to make the questions appropriate to the peer review process including eliminating any offensive or accusatorial language.

XVI. Nurse's Representative at Proceeding [TAC/BON Rule 217.19 (d) (5) (B).]

The nurse's attorney or a nurse peer may accompany the nurse to the proceeding and are present only to consult with the nurse during the proceeding. Representatives attending the proceeding must comply with this policy, and shall not directly participate in the proceeding.

- A. Notice.** If either the nurse or TTUHSC El Paso intends to have an attorney or representative at the proceeding, each must notify the other in writing at least seven (7) calendar days in advance that they will have a representative and in what capacity. The other party need not give notice to have their representative present. **Failure to give notice will waive the right to have a representative present.** Any modification of this paragraph must be in writing and signed by the nurse and the Committee Chair or Chair's designee.
- B. Attorney Involvement.** Both the nurse and TTUHSC El Paso Nursing Peer Review Committee have the right to consult with an attorney. The nurse's attorney shall have the right to review documents relating to the incident under review (prior to the committee proceeding) as provided above. If an attorney is present in any capacity on behalf of TTUHSC El Paso or the Nursing Peer Review Committee, the nurse's attorney shall be accorded participation to the same extent and level. [TAC/BON Rule 217.19 (d) (5) (D).]

XVII. Nursing Peer Review Committee Decision and Notice to Nurse

- A.** The Nursing Peer Review Committee shall make its decision and prepare a written Summary of Findings and Recommendations (Attachment I: Committee Findings Form) no later than 14 calendar days after the peer review proceeding. [TAC/BON 217.19 (d) (3)(G).] The decision shall include whether the nurse engaged in "Conduct Subject to Reporting", and if so, a description of corrective action taken, and recommendation to the Board regarding formal disciplinary action against the nurse. [TAC/BON 217.19 (8).]
- B.** The nurse will be notified of the Nursing Peer Review Committee's findings in writing (Attachment J: Transmittal Notifying Nurse of Committee's Findings) within ten (10)

calendar days, in accordance with Section 8 [TAC/BON 217.19 (d) (3) (H).]

- C. The notice shall include a Summary of Peer Review Committee Findings (Attachment I) and explain the nurse's right to submit a rebuttal statement (Attachment K: Rebuttal Statement form).

XVIII. Rebuttal Statement [Occupations Code §303.008.] [TAC/BON Rule 217.19 (d) (3) (I).]

The nurse shall have the right to submit a Rebuttal Statement (Attachment K) in response to the Summary of Peer Review Committee Findings (Attachment I) within 10 calendar days after notification under Section 8. The nurse's statement shall be of reasonable length and shall not include any patient identifying information. The Nursing Peer Review Committee Chair or designee shall review the statement and redact any patient identifying information. The nurse's Rebuttal Statement will be made a permanent part of the Nursing Peer Review Committee's Summary of Findings and Recommendations and included whenever the Summary of Peer Review Committee Findings form (Attachment I) is disclosed. [TAC/BON 217.19 (d) (3) (I).]

XIX. Reporting a Nurse to the Board of Nursing

If the Nursing Peer Review Committee finds "Conduct Subject to Reporting", the Nursing Peer Review Committee shall report to the Board [TAC/BON Rule 217.19 (d)(i)(4).] within twenty-one (21) calendar days of the decision unless the conduct is found to constitute a minor incident (see Section 2, Definitions). The report will include the Summary of Peer Review Committee Findings (Attachment I) and the nurse's Rebuttal Statement (Attachment K). The Nursing Peer Review Committee will report any "Conduct Subject to Reporting" to the Nursing Peer Review Committee Chair who will forward the report to the Board.

XX. Disclosure of Information

- A. **Reporting Findings to TTUHSC El Paso.** The Nursing Peer Review Committee is responsible to provide a copy of the decision, together with the nurse's rebuttal statement, to the appropriate TTUHSC El Paso medical or administrative oversight authority for the nurse. The decision shall **not** be included in the nurse's personal record maintained in the Human Resources Department to avoid inadvertent disclosure and waiver of confidentiality. Nursing Peer Review Committee documentation, including the decision shall be filed in the Nursing Peer Review Committee Chairman's office. (Attachment O: Report to Administrator Form)

B. Miscellaneous Reporting. [Occupations Code §303.007.]

1. Upon written request, the Nursing Peer Review Committee, shall disclose written or oral communications made to the Nursing Peer Review Committee and the records and proceedings of the Nursing Peer Review Committee to:
 - (a) The state board of registration or licensure of any state; or
 - (b) A law enforcement authority investigating a criminal matter.
2. Upon written request, the Nursing Peer Review Committee **may** disclose written or oral communications made to the Nursing Peer Review Committee and the records and proceedings of the Nursing Peer Review Committee to:
 - (a) the TTUHSC El Paso administration as appropriate, i.e., the Dean of the PLFSOM, Dean of the GGHSO.
 - (b) another Nursing Peer Review Committee;

- (c) peer assistance program approved by the Board (i.e., Texas Peer Assistance Program for Nurses);
 - (d) appropriate state or federal agencies or accrediting organizations; or
 - (e) persons engaged in bona fide research, if all individual-identifying information is deleted.
3. Disclosure of information under this section, or to the reported nurse, shall not waive the privilege of nondisclosure of Nursing Peer Review Committee information and proceedings. Patient identities shall be protected.

C. Procedures for Disclosure.

- (1) Requests for Nursing Peer Review Committee disclosure shall be in writing and directed to the Nursing Peer Review Committee Chair.
- (2) The Nursing Peer Review Committee Chair in consultation with the TTUHSC El Paso Office of General Counsel shall determine if disclosure is required or authorized by law.

XXI. Non-Employed Nurses, Temporary Agency Nurses

- A.** Any nurse providing care at or on behalf of TTUHSC El Paso, the PLFSOM and the GGHSOM shall be subject to peer review under this plan. If the nurse is employed by another legal entity, that entity may name a nurse to serve on the TTUHSC El Paso Nursing Peer Review Committee. The nurse who serves on the Nursing Peer Review Committee shall not have administrative responsibility for making personnel decisions about the nurse being reviewed. The Nursing Peer Review Committee's finding together with the nurse's rebuttal statement shall be provided to the nurse's employer.

Note: Occupations Code, Chapter 303, Nursing Peer Review Law, Section 303.004, permits disclosure of information between organizations when a nurse subject to peer review is employed or compensated by another entity and the entities may contract as to how peer review will be handled.

- B.** Normally, peer review will be done by the facility in which the incident occurred. TTUHSC El Paso contracts will require that if peer review is done by an outside entity:
- 1. Prior arrangement will need to be made for access to records;
 - 2. Upon written request, the other entity may receive a copy of the Nursing Peer Review Committee findings.

XXII. Waiver of Rights

A nurse may waive any right or timetable provided under this policy. Any waiver shall be made only after peer review is initiated, be in writing, and be signed by the nurse and the Nursing Peer Review Committee Chair or designee [Occupations Code 303.002, prohibits nullification of rights of nurse to peer review by contract.] [See also TAC/BON Rule 217.19 (d)(6).]

XXIII. Nurses Experiencing Problems with Chemical Dependency

If at any time there is reason to suspect the nurse's conduct results from mental illness or chemical dependency, the Nursing Peer Review Committee Chair or designee will refer the nurse

to the Texas Peer Assistance program for Nurses and the peer review process will be suspended or terminated. [TAC/BON Rule 217.19 (g).]

XXIV. Record Keeping

- A.** Minutes will be maintained from peer review proceedings using method of documentation selected by the Nursing Peer Review Committee Chair, and include at least the following:
 - 1. date and time of proceeding,
 - 2. persons in attendance,
 - 3. proceeding agenda,
 - 4. copies of evidence reviewed,
 - 5. summary of comments, questions, and actions.
- B.** The Nursing Peer Review Committee Chair is responsible to maintain minutes, the Nursing Peer Review Committee's decision, and nurse's rebuttal statement, separately from Human Resources personnel records to avoid waiver of confidentiality.
- C.** The reported nurse shall have no right of access to the PR Committee minutes of records.

XXV. Immunity and Nondiscrimination Provisions.

A. Reporting Immunity.

- 1. An individual who, in good faith, makes a report required or authorized under subchapter I of Chapter 301 of the Occupations Code, or a person who advises a nurse of the nurse's right or obligation to report under subchapter I of Chapter 301 of the Occupations Code is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report or giving the advice, and may not be subjected to retaliatory action as a result of making the report or giving the advice. [Occupations Code §301.412.]
- 2. TTUHSC El Paso may not suspend, terminate or otherwise discipline or discriminate against, or retaliate against a person for:
 - (a) Reporting in good faith under subchapter I of Chapter 301 of the Occupations Code;
 - (b) Requesting in good faith, a Nursing Peer Review Committee determination under section 303.005 of the Occupations Code;
 - (c) Refusing to engage in conduct as authorized by section 301.352 of the Occupations code;
 - (d) Advising a nurse of the nurse's right to report under subchapter I of Chapter 301 of the Occupations code, requesting a Nursing Peer Review Committee determination under section 303.005 of the Occupations Code; or refusing to engage in conduct as authorized by section 301.352 of the Occupations code. [Occupations Code §301.413(b).] However taking the actions described in (a) through (d) above shall not affect the ability of TTUHSC El Paso to pursue disciplinary action or separation action for reasons other than the employee's actions described in (a)

through (d) above.

B. Nursing Peer Review Committee Immunity. [Occupations Code §303.010.]

1. A cause of action does not accrue against the members, agents or employees of the Nursing Peer Review Committee or TTUHSC El Paso for any act, statement, determination or recommendation made, or act reported, without malice, in the course of peer review.
2. A person who, without malice, provides records, information or assistance to the Nursing Peer Review Committee is not liable in a civil action based on the person's participation or assistance in peer review and shall not be subject to retaliatory action as a result of such act.

XXVI. Other Documents.

The following attachments not already referenced in this operating policy may also be used in the Nurse Peer Review proceedings.

Attachments:

HSCEP OP 70.40a, Safe Harbor Nursing Peer Review – Quick Request for Safe Harbor
HSCEP OP 70.40b, Safe Harbor Nursing Peer Review – Comprehensive Request for Safe Harbor
HSCEP OP 70.40c, Confidentiality Guidelines
HSCEP OP 70.40d, Report to Nursing Peer review Committee (NPRC) – Alternate Reporting Form
HSCEP OP 70.40e, Patient Cross Index Form
HSCEP OP 70.40f, Notification to Nurse – Sample Letter
HSCEP OP 70.40g, Chair Opening Statement Sample
HSCEP OP 70.40h, Case Activity Report Form
HSCEP OP 70.40i, Peer Review Committee Findings Form
HSCEP OP 70.40j, Transmittal Notifying Nurse of Committee's Findings
HSCEP OP 70.40k, Rebuttal Statement Form
HSCEP OP 70.40l, Informal Workgroup – Detailed Summary of Findings
HSCEP OP 70.40m, Informal Workgroup – Individual Nurse's Consent to Use of Informal Workgroup
HSCEP OP 70.40n, Informal Workgroup – Case Activity Sheet
HSCEP OP 70.40o, Report to Administrator Form
HSCEP OP 70.40p, Peer Review Committee Report to BON Form
HSCEP OP 70.40q, Employer Report to BON Form
HSCEP OP 70.40r, Safe Harbor Nurse Peer Review Activity Sheet
HSCEP OP 70.40s, Safe Harbor – Form to Request Medical Reasonableness of a Physician's Order

For further clarification explanation, refer to the most recent versions of the following including, but not limited to:

- Texas Occupations Code:
 - Chapter 301, Regulation of Nursing, and
 - Chapter 303, Nursing Peer Review.
- Texas Administrative Code, Title 22, Part 11, Board of Nursing Rules, Chapter 217 Licensure, Peer Assistance and Practice.