

Jurisprudence & Ethics for Nurses: Theories, Principles, & the Law

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Purposes

- Promote understanding of the Nursing Practice Act and ethical professional practice in Texas
- Foster appreciation for the nursing peer review and safe harbor processes in the Nursing Practice Act.

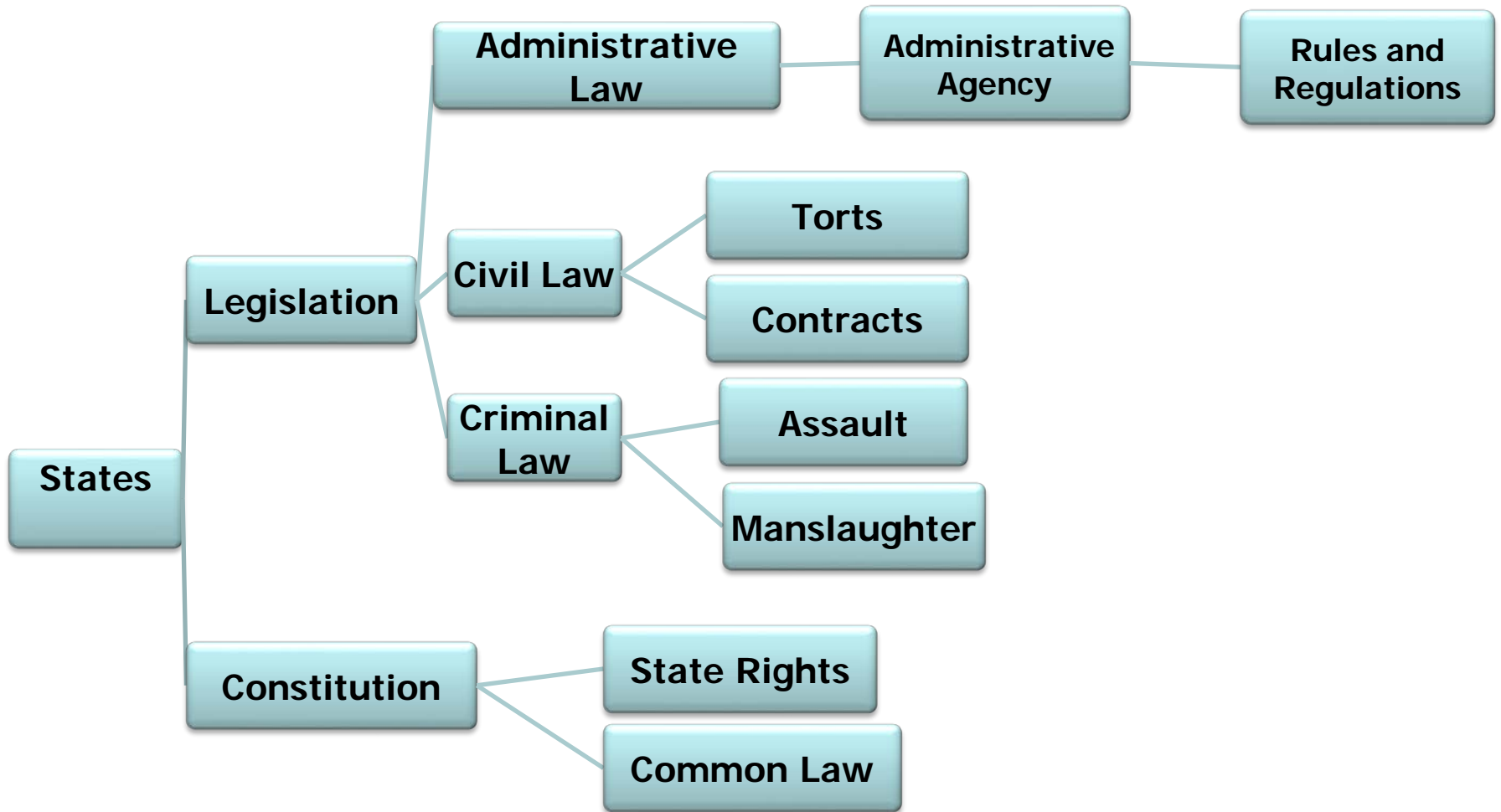
Objectives

1. Examine the legal regulations of nursing practice.
2. Compare and contrast the role of the Texas Board of Nursing from professional organizations.
3. Identify ethical theories & principles & nursing codes of ethics.
4. Examine the behaviors in the Nursing Practice Act that reflect “good professional character.”

Objectives

5. Discuss the process and standards for Nursing Peer Review.
6. Identify the protection provided by the Safe Harbor process & Whistleblower Protections in the Texas law.
7. Note the exclusions to safe harbor protections.
8. Discuss factors that impact a nurse's decision to accept an assignment.

System of Law



Legal Processes & Outcomes: **Administrative Law**

- Addresses unprofessional behavior that is likely to endanger a patient is reported to the Administrative Agency such as the Board of Nursing
- Peer review is conducted
- Hearing before an Administrative Law Judge
- If there is violation of the Practice Act, the license is encumbered.

Legal Processes & Outcomes: **Administrative Law**

- Person may not be allowed to take the licensure exam and be licensed
- License may have stipulations placed on it
- License may be surrendered, suspended, or revoked.

Legal Processes & Outcomes:

Civil Law

- Health Care is provided but patient or family is dissatisfied with the care.
- Law suit for negligence is filed in a civil court
- Plaintiff has to prove there was:
 - Liability --A duty owed (Practice Act, Standards of Care, Evidence based practice, research, expert testimony)
 - The Duty was breached
 - There was injury
 - Foreseeability – Injury is predictable when such a breach of duty occurs
 - The injury was caused by the breach of duty.

- Damages are paid
 - Costs for the health care for original condition and care after something went wrong
 - Punitive damages so other professionals will not make same mistake
- Malpractice Insurance
- National Practitioner Data Bank
- Contract law

Legal Processes & Outcomes: Criminal Law

- Law is violated against society
- Person is arrested and tried
- If proven guilty:
 - Go to jail or are confined
 - Pay a fine
 - Do community service

Summary & Review

- What can happen if a RN deliberately injects medication such a morphine to end lives of patients?
- Criminal Court
- Civil Court
- Administrative Law Court

- *Note: Professional liability insurance does not apply for a willful and intentional act*

Nurses are Responsible for upholding all laws

- Federal Legislation
 - Emergency Medical Treatment and Active Labor Act (EMTALA)
 - Patient Self-Determination Act (PSDA)
 - Uniform Anatomical Gift Act (UAGA)
 - Health Insurance Portability and Accountability Act (HIPAA)

- ED must screen every person who comes to ED
- Cannot Discharge if emergency condition exists without stabilizing person
- Transfers
 - Receiving center agrees, has space, has qualified personnel
 - MR go with person
 - Transporters qualified to transport

HIPAA

- Require health professionals to protect the privacy of patients' medical information.
- Required to control the ways in which they use and disclose patients' "protected health information."
- Must offer patients certain rights with respect to their information, such as
 - the right to access and copying,
 - the right to request amendments,
 - right to request an accounting.
- Must have certain administrative protections in place such as
 - Privacy Officer,
 - Staff training, and
 - Implementation of appropriate Policies and Procedures to further protect the privacy of patients' information.

- Defines Disability
- Grants rights to disabled
 - Prohibits discrimination in providing care based upon disability
- A condition of eligibility for participation in Medicare is to address communication barriers
 - How do we provide for communication for people who have blindness or deafness
 - How do we know we affect that communication?

Public Health Laws

- Centers for Disease Control -- Reporting of communicable diseases
- Occupational Health & Safety Act
 - Handling body products to prevent blood borne diseases
 - Back safety
 - Fire safety
- Reporting of abuse, neglect or domestic violence

State Statutory Issues

- Licensure
- State Congress Legislatively created State Board of Nursing
- State Board of Nursing
 - Creates Rules and Regulations

Texas Occupations Code (TOC)



- **Chapter 301 --Texas Nursing Practice Act**
 - **Creates the Board of Nursing (BON) and defines its responsibilities for regulating**
 - **Nursing education**
 - **Licensure**
 - **Practice**
 - **Originally passed in 1909**
- **Chapter 303—Relates to Nursing Peer Review**
- **Chapter 304—Relates to Nurse Licensure Compact**

- **Mission** of the T-BON is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in Texas is competent to practice safely
- **Role** of T-BON through Rules & Regulations:
 - Regulate nursing practice
 - Approve nursing education programs
 - License qualified applicants
 - Investigate complaints
 - Provide corrective action and discipline

TBON Role compared to Professional Organization Role e.g. TNA



Texas BON

- Responsible to the public
- No authority in employment issues
- Prohibited by law from lobbying legislature

Texas Nurses' Association

- Responsible for the nurses
- Serve the individual interests of nurse professionals
- May lobby legislature & Governor

- In the Texas Administrative Code, the Board of Nursing Rules & Regulations establish standards and criteria for carrying out the T-BON Mission
- Nursing Practice Act (Texas Occupations Code 301) and T-BON Rules and Regulations (Texas Administrative Code 217.11):
 - Equally enforceable
 - Amended periodically, typically every 2 years during a state legislative session
 - Apply to LVNs, RNs, and APRNs who are required to know and comply by the laws

Texas BON Rules & Regulations



- Nurses are required to wear identification that gives their names and licensure e.g. RN, LVN
 - APRNs should use “RN” first after their name and then APRN with the board certification following the RN
 - Effective 2014, Healthcare Providers in hospitals required to wear a photo ID badge clearly stating name, Department, title, & type of license held
- Nurse is a protected title
- Must notify T-BON of change in name or address

Licensure Renewal

- Every 2 years and must have 20 CE credits from approved providers
- 2013 amendments
 - Every renewal cycle (2 yrs): 2 hours of CE in **adult/geriatrics** for those whose practice includes adult & geriatric populations
 - Every 3rd renewal cycle (6 yrs): 2 hours of CE in **Nursing Jurisprudence & Ethics**
 - 2 hours of CE in **forensic evidence collection** for any nurse who performs a forensic examination on a sexual assault survivor (not just Emergency Department Nurses)

How to Find NPA & BON Rules & Regulations

Go to <http://www.bne.state.tx.us>



The screenshot displays the Texas Board of Nursing website. The header features the text "TEXAS BOARD of NURSING" and the official seal of the Board of Nursing, Texas. Below the header is a navigation menu with the following items: About, Forms, News, Licensure, Practice, Education, Discipline & Complaints, Laws & Rules, and FAQs. A red arrow points to the "Laws & Rules" menu item. The dropdown menu for "Laws & Rules" is open, showing the following options: Laws & Rules (with a sub-menu), Nursing Practice Act, Rules & Regulations, and Rule Changes. Below the navigation menu, there is a section titled "Continuing Nursing Education & Competency" with a list of options: Webinars, Workshops, and Online Courses (CNE). The background of the website features a photograph of healthcare professionals interacting with a patient.

TEXAS BOARD of NURSING

Public Protection
BOARD OF NURSING
Through Safe Nursing Practice
TEXAS

About ▾ Forms ▾ News ▾ Licensure ▾ Practice ▾ Education ▾ Discipline & Complaints ▾ Laws & Rules ▾ FAQs ▾

Laws & Rules

- Nursing Practice Act
- Rules & Regulations
- Rule Changes

Applications & Forms

Online Services

Continuing Nursing Education & Competency

- [Webinars](#)
- [Workshops](#)
- [Online Courses \(CNE\)](#)

Law Includes Scopes of Practice

- **LVN**
- **RN**
- **APRN**

www.dads.state.tx.us/qualitymatters/qcp/nurse_delegation/scopeofpractice.pdf

Six-Step Decision Making Model for Determining Nursing Scope of Practice

Six-Step Decision-Making Model for Determining Nursing Scope of Practice

1. Is the activity consistent with the Nursing Practice Act (NPA), Board Rules, and Board Position Statements and/or Guidelines?

Yes → Continue

No → STOP

2. Is the activity appropriately authorized by valid order/protocol and in accordance with established policies and procedures?

Yes → Continue

No → STOP

3. Is the act supported by either research reported in nursing and health-related literature or in scope of practice statements by national nursing organizations?

Yes → Continue

No → STOP

4. Do you possess the required knowledge and have you demonstrated the competency required to carry out this activity safely?

Yes → Continue

No → STOP

Six-Step Decision Making Model for Determining Nursing Scope of Practice

5. Would a reasonable and prudent nurse perform this activity in this setting?

Yes → Continue

No → STOP

6. Are you prepared to assume accountability for the provision of safe care and the outcome of the care rendered?

Yes → Perform the
Activity

No → STOP

Basic Requirements: Rule 217.11– Nurses MUST:

- Follow all laws
- Promote patient safety
- Correctly administer medications & treatments
- Completely & accurately report & document
- Protect confidential information
- Participate in education & counseling
- Notify supervisor when we leave

Basic Requirements: Rule 217.11– Nurses MUST:

- Comply with mandatory reporting requirements
- Provide nursing without discrimination
- Stabilize or prevent complications
- Clarify physician orders
- Prevent exposure to infections
- Communicate in best interest of patient
- Make referrals to provide continuity of care

Basic Requirements: Rule 217.11– Nurses ARE:

- Responsible & accountable for own continuing competency
- Accountable for the assignments that are accepted
- Responsible for making assignments and supervising others
- Nurse administrators (e.g. directors & managers) are responsible for verifying current licensure

Rules 224 & 225: Delegation

- Texas BON Rule 224 Delegation of Nursing Tasks by RN to Unlicensed Personnel for Patients with Acute Conditions or in Acute Care Environments
- Rule 225 Delegation of to UAPs in independent living environments
- See guidelines at www.dads.state.tx.us/qualitymatters/qcp/nursedelelegation/rule224diagram.pdf OR www.dads.state.tx.us/qualitymatters/qcp/nursedelelegation/rule225diagram.pdf

Acute Care Setting Delegation



1. Has RN assessed patient's needs
 - a. No – Perform assessment
 - b. Yes—next step
2. Is task one that a reasonable prudent nurse would delegate:
 - a. No – Do not delegate
 - b. Yes—next step
3. Can task be safely & properly performed by UAP?
 - a. No – Do not delegate
 - b. Yes—next step
4. Does task require UAP to use nursing judgment?
 - a. **YES – Do not delegate**
 - b. No—next step
5. Can the UAP be adequately identified
 - a. No – Do not delegate
 - b. Yes—next step

Acute Care Setting Delegation

6. Has RN instructed the UAP or verified the UAP's competency?
 - a. No – Do not delegate
 - b. Yes—next step
7. If the delegation continues over time, is the RN able to periodically evaluate the delegation?
 - a. No – Do not delegate
 - b. Yes—next step
8. Is there adequate RN supervision of the UAP based on:
 - Stability of patient
 - UAP's competency
 - Nature of the task
 - Proximity & availability of RN to UAP?
 - a. No – Do not delegate
 - b. Yes—next step

Five Rights of Delegation

- Right Task
- Right Circumstances
- Right Person
- Right Direction/Communication
- Right Supervision/Evaluation

See:

www.dads.state.tx.us/qualitymatters/qcp/nurse_delegation/fiverights.pdf.

Tasks that Can Never Be Delegated

- Assessment
- Formulation of Nursing Care Plan
- Implementation of parts of the NCP
- Responsibility & accountability of health education
- Dose calculations
- Injectable medications (except Insulin)
- Medications via a non-permanent tube
- Verbal & telephone orders
- Initial dose

www.dads.state.tx.us/qualitymatters/qcp/nursedelegationsonts.pdf

TBON Position Statements



https://www.bon.texas.gov/practice_bon_position_statements.asp

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Practice - Texas Board of Nursing Position Statements

Board Position Statements do not have the force of law, but are a means of providing direction for nurses on issues of concern to the Board relevant to protection of the public. Board position statements are reviewed annually for relevance and accuracy to current practice, the Nursing Practice Act, and Board rules. The Board's last review was performed January 2014.

A printer friendly version of the Complete Position Statements is available, in Adobe Acrobat  PDF format, at this link: [Texas Board of Nursing Position Statements](#).

A brief summary of Position Statement content is available, but does not capture the details contained within each Position Statement. This brief summary is provided to give a glimpse of the content to assist you in deciding which Position Statement is applicable to the topic or topics you may be seeking and is available in Adobe Acrobat  PDF format, at this link: [Texas Board of Nursing Position Statement Summary Document](#).

Ethics: Principles & Theories applied to Nursing

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- Study of philosophical ideals of right and wrong
 - Conduct
 - Character
 - Motives
- Process of determining what is good or valuable for others
- Understanding and applying ethical theories and principles

Bioethics Theories & Principles

Theories

- Utilitarianism
 - *What is the greatest good for the greatest number of people?*
- Deontology
 - *What duties do we owe?*

Principles

- Autonomy vs Paternalism
- Utility
 - Social Responsibility
- Justice
 - Fairness
 - Equality
- Beneficence
- Non-maleficence

Theories

- **Virtue-based Ethics**
 - *What kind of nurses/professionals do we want to be?*
 - *Mean between two extremes of behaviors*

Virtues/Principles

- **Veracity/Openness/Honesty**
- **Fidelity/Trustworthy**
- **Altruism**
- **Compassion**
- **Respect**
- **Courage**

Ethical Competencies

- Demonstrate good professional character traits (Virtue, integrity)
- Maintain professional boundaries (Duty, trustworthy)
- Identify a nursing professional code of ethics (Duty, Social responsibility)
- Maintain respect for clients and their families (Duty, Virtue, autonomy)
- Include the patient and family as partners in health care planning (Utility, Duty, autonomy, altruism)
- Establish covenantal nurse patient relationships – seeking the client’s best interest as defined by the client and promoting satisfaction with care. (Duty, Virtue, justice-fairness, altruism)

- Four fundamental responsibilities:
Beneficence & Nonmaleficence
 - Promote health
 - Prevent illness
 - Restore health
 - Alleviate suffering
- Respect patient rights **Autonomy, Altruism**
 - Right to life
 - Right to be treated with dignity

- Maintain standard of personal health
Social Responsibility
- Use judgment regarding individual competence when accepting and delegating responsibility **Utility & Duty**

ANA Code of Ethics

- Compassion and Respect for Dignity (Virtue)
- Commitment to the patient (Virtue, altruism)
- Promote health, safety and rights of the patients (Utility)
- Responsible and accountable for nursing care (Duty)
- Preserve integrity and safety (Utility)
- Maintain competence and continue professional growth (Utility, Duty)

ANA Code of Ethics

- Establish, maintain, and improve health care environments (Utility, Duty)
- Advance the profession (Utility, Duty)
- Collaborate with interdisciplinary health care team (Utility, Duty)
- Maintain integrity of nursing profession (Utility, Duty)

Professional Nursing

- Texas Nursing Practice Act requires nurses to demonstrate “good professional character” (**Virtue**)
 - an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board’s Rules and Regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating: **honesty, accountability, trustworthiness, reliability and integrity.**

Professional Nursing

- Evidence of good professional character -- the individual consistently acts in the best interest of patients and the public in any practice setting, including demonstration that the person is:
 - (A) able to distinguish right from wrong;
 - (B) able to think and act rationally;
 - (C) able to keep promises and honor obligations;
 - (D) accountable for his or her own behavior;
 - (E) able to practice nursing in an autonomous role with patients, their families and significant others and members of the public who are or who may become physically, emotionally or financially vulnerable

- Evidence of good professional character -- the individual consistently acts in the best interest of patients and the public in any practice setting, including demonstration that the person is:
 - (F) able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
 - (G) able to promptly and fully self-disclose facts, circumstances, events, errors and omissions when such disclosure could enhance the health status of patients or the public or could protect patients or the public from unnecessary risk of harm.

Professional Relationships

- Professional relationships are based on trust, respect & intimacy.
- The relationship is a planned goal directed interaction between a nurse & a client for the purpose of providing care to the client & their significant others.

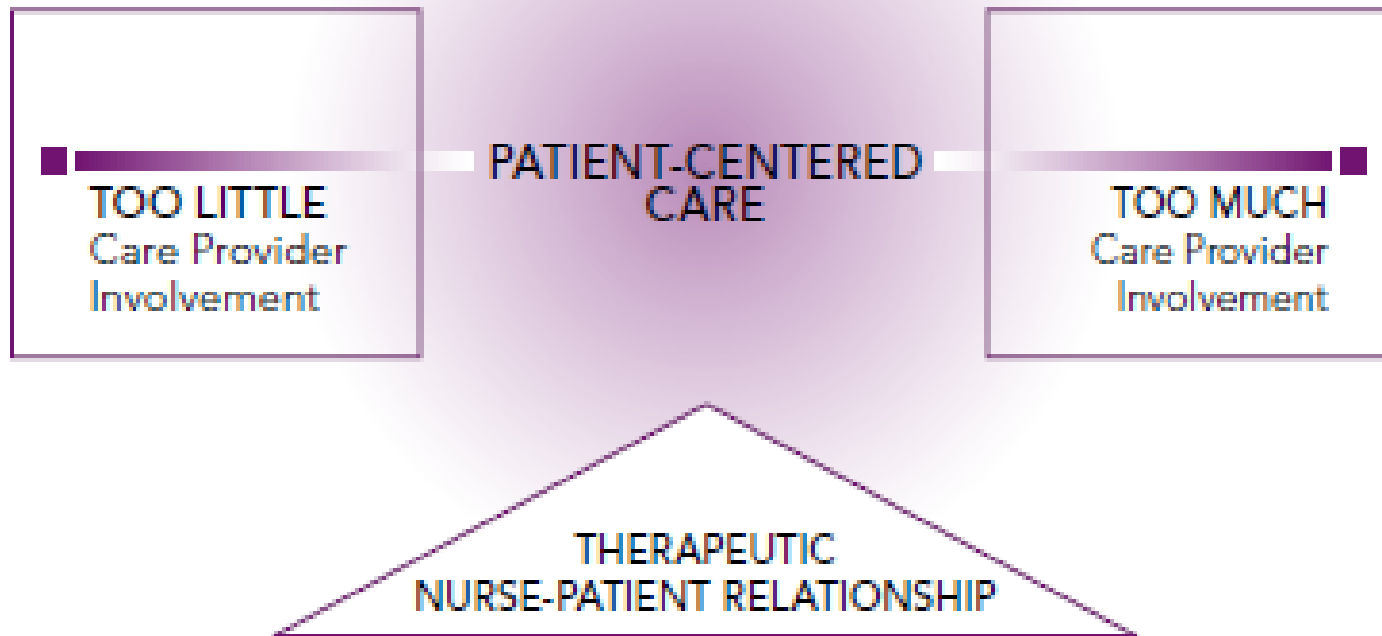
Professional Boundaries

TBON Rules 217.1(29); 217.11(1)(J);
217.12(6)(D)



- Professional boundaries are limits that protect the space between the professional's power & the client's vulnerability in a therapeutic relationship.
- A boundary violation occurs when a client's therapeutic needs or basic rights are infringed.

Continuum of Professional Behavior



National Council of State Boards of Nursing. (2011). *A nurse's guide to professional boundaries*. Chicago, IL: author, p. 4.

Nurse-Patient Relationship

Nurse's Power

- Specialized knowledge
- Access to privileged information
- Control of environment
- Control of access to other caregivers
- Familiarity with environment & progression of treatment plans

Patient's Vulnerability

- Physically & emotionally exposed
- Illness, injury, disability and/or sedation
- Lack of familiarity with environment, vocabulary, health condition & treatments
- Age
- Fear of unknown & of retribution

Continuum of Professional Behavior Issues

- Professional Boundaries
- Boundary Crossings
- Boundary Violations
- Professional Sexual Misconduct

Boundary Crossings

- Inadvertent, thoughtless, or decisive actions that deviate from established boundaries
- Are brief
- There is a return to the established standard
- May be trivial
 - ex: Nurse gives a personal present for a rehabilitating client to celebrate achievement of a goal

Boundary Violations

- Confusion of the professional's need with the client's need
- Have a reversal of roles, secrecy, & self-disclosure to meet the needs of the professional
- Examples:
 - Nurse discusses feelings of attraction with pt.
 - Super Nurse
 - Flirtations

Professional Sexual Misconduct

- Use of professional power to obtain sexual gratification, romantic partners, and/or sexually deviant outlets
- Abuses the nurse-patient relationship by putting the nurse's needs first.

Professional Sexual Misconduct

Behavior by nurse that is

- seductive,
 - sexually demeaning, or
 - harassing,
 - even if client initiates the sexual contact.
- Rape and assault

Other Misconduct

- Falsification
- Patient abuse
- Violent behavior
- Misappropriation
- Third-party referral compensation

**Let's look at some cases
to apply what we have
discussed**

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Case Study Analysis #1

- A 98 y/o female was recently admitted from home with pneumonia. She has a history of cardiac disease and takes a number of medications. She has been fairly active until the past few days, when her cough worsened & she developed fever. Her pulse is weak and thready; respirations increasingly labored.
- The patient is too weak to respond to questions.
- When the nurse mentions needing to call the physician or possibly a code, the son and daughter become distraught; they do not want their mother “kept alive on machines.”

Case Study #1

- The son & daughter report their mother has indicated this same wish, however there is no documentation, advanced directives, living will, or medical power of attorney
- The family members have not discussed their wishes with the physician and the patient was admitted in “full code” status.

Analysis & Synthesis #1

- What actions should the nurse take at the moment of discussing the situation with the family?
 - a. What are the legal issues that have to be considered in relation to each branch of law: Administrative, Civil, Criminal?
 - b. What would you do and justify your decision based on the ethical principles and your own personal values
 - c. Review the criteria for Good Professional Character and discuss how these character traits would apply in this case.

Case Study Analysis #2

- Nurse Smith and Nurse Jones are getting on an elevator to go down to the cafeteria.
- There are several visitors present in the elevator, as well as hospital personnel.
- Nurse Smith and Nurse Jones are talking about a patient who is in the intensive care unit who has just tested positive for HIV.
- They identify the patient as the man in Room 14B.
- One of the visitors on the elevator who overhears this information is a woman who is engaged to the patient in room 14B.

Analysis & Synthesis #2

1. What are the ethical issues in this scenario?
2. Will the patient in Room 14B have any legal cause of action against the nurses? Why or why not?
3. Determine the legal action that is possible according to the types of law, including the outcomes of each type of action.
4. What actions can nurses take to recover ethical practice & manage the legal risks?

Analysis & Synthesis #2

5. Even though the patient's fiancée may have a right to know the HIV status of her future husband, is there any duty on the part of the nurses to disclose confidential information to the fiancée?
6. Does the nurse manager have any liability or culpability in this situation?
7. To demonstrate ethical practice, what should the nurse manager do in relation to managing the personnel involved in this situation and to meet the patient's needs?

Case Study Analysis #3

What if a nurse wants to date or even marry a patient with whom the nurse has established a nurse:patient relationship and provided care?

- Identify the ethical issues that should be considered in relation to the Continuum of Professional Behavior
- What would make this situation ok versus being a violation of professional boundaries?

Case Study Analysis #3: Consider the following

Altruism, Nonmaleficence, & Beneficence:

1. What is the length of time between the nurse:patient relationship and dating?
2. What kind of therapy did the client receive?
 - a. Short-term e.g. broken limb vs
 - b. Long-term for a chronic condition
3. What was the nature of the knowledge the nurse has had access to and how will that affect the future professional relationship?
4. Will the “patient” need therapy in the future?
5. Is there a risk to the patient?

Case Study Analysis #3: Consider the following

6. Do boundary violations always precede sexual misconduct?
7. Does patient consent or initiation of a sexual relationship make that relationship acceptable?
8. How can a nurse identify a potential boundary violation?

- **Do boundary violations always precede sexual misconduct?**
 - Boundary violations are extremely complex. Most are ambiguous and difficult to evaluate.
 - Boundary violations may lead to sexual misconduct, or they may not.
 - In some cases, extreme sexual misconduct, such as assault or rape, may be habitual behavior, while at other times, it is a crime of opportunity.
 - Regardless of the motive, extreme sexual misconduct is not only a boundary violation, it is criminal behavior.

National Council of State Boards of Nursing. (nd). *Professional boundaries: A nurse's guide to the importance of appropriate professional boundaries*. Chicago, IL: author. Retrieved on 6/19/2014 at <https://www.ncsbn.org/ProfessionalBoundariesbrochure.pdf>.

- **Does patient consent or initiation of a sexual relationship make that relationship acceptable?**
 - If the client consents, and even if the client initiates the sexual conduct, a sexual relationship is still considered sexual misconduct for the health care professional.
 - It is an abuse of the nurse-client relationship that puts the nurse's needs first (**Breach of fidelity & altruism**).
 - It is always the responsibility of the health care professional to establish appropriate boundaries with present and former clients.

- **How can a nurse identify a potential boundary violation?**
 - ***EXCESSIVE SELF-DISCLOSURE*** – The nurse discusses personal problems, feelings of sexual attraction or aspects of his or her intimate life with the client.
 - ***SECRETIVE BEHAVIOR*** – The nurse keeps secrets with the client and/or becomes guarded or defensive when someone questions their interaction.
 - ***“SUPER NURSE” BEHAVIOR*** – The nurse believes that he or she is immune from fostering a nontherapeutic relationship and that only he or she understands and can meet the client’s needs.

- **How can a nurse identify a potential boundary violation? *SINGLED-OUT CLIENT TREATMENT OR CLIENT***
 - ***ATTENTION TO THE NURSE*** – The nurse spends inappropriate amounts of time with a particular client, visits the client when off-duty or trades assignments to be with the client. This form of
 - treatment may also be reversed, with the client paying special attention to the nurse, e.g., giving gifts to the nurse.
 - ***SELECTIVE COMMUNICATION*** – The nurse fails to explain actions and aspects of care, reports only some aspects of the client’s behavior or gives “double messages.” In the reverse, the client returns repeatedly to the nurse because other staff members are “too busy.”
 - ***FLIRTATIONS*** – The nurse communicates in a flirtatious manner, perhaps employing sexual innuendo, off-color jokes or offensive language.

- **How can a nurse identify a potential boundary violation? *SINGLED-OUT CLIENT TREATMENT OR CLIENT***
 - ***“YOU AND ME AGAINST THE WORLD” BEHAVIOR*** – The nurse views the client in a protective manner, tends not to accept the client as merely a client or sides with the client’s position regardless of the situation.
 - ***FAILURE TO PROTECT CLIENT*** – The nurse fails to recognize feelings of sexual attraction to the client, consult with supervisor or colleague, or transfer care of the client when needed to support boundaries.

The Nurse's Challenge

- Pay attention – awareness & knowledgeable
- Recognize own feelings & behaviors
- Be mindful of the behaviors of self & other professionals
- Reflect on own motives, duties, and character
- Question whose needs are being met
- Always put the patient's needs first

Nursing Peer Review Basics

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According to the Standards Nurses shall:

- Know the rationale for and effects of medications;
- Accurately report and document the patient's signs, symptoms, and responses;
- Respect the patient's right to privacy.
- Accept only nursing assignments commensurate with one's own educational and/or training preparation;
- Notify appropriate supervisor when leaving a nursing assignment.

Two Types of Peer Review

Incident Based Peer Review
(Rule §217.19)

Safe Harbor Peer Review
(Rule §217.20)

Peer Review Process

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Peer Review

Peer review means the evaluation of professional nursing services, the qualification of professional nurses, the quality of patient care rendered by professional nurses, the merits of complaints concerning professional nurses and professional nursing care, and determinations or recommendations regarding complaints.

Peer Review Process

- Fact Finding
- Analysis and study of the events
- Makes recommendations, but cannot take any action against a nurse being reviewed;
- Reports findings and recommendations to the Director of Nursing and Board of Nurse Examiners if necessary

Peer Review Confidentiality

All proceedings of a nursing peer review committee are confidential (unless information sent to BNE) and all communications made to a nursing peer review committee are privileged.



Duty to Report

Every Licensed Nurse is obligated to report Unsafe Nursing Practice which the nurse reasonably suspects has exposed, or is likely to expose, a patient unnecessarily to risk of harm resulting from failure to provide patient care conforming to minimum standards of acceptable and prevailing professional practice.

Under BON Rule §217.19(b), reporting a nurse to a nursing peer review committee satisfies the duty of the nurse to report to the BON.

Conduct Subject to Reporting

- Violates NPA or rule contributing to death or serious injury
- Concern for impairment due to chemical dependency/drug/alcohol abuse
- Abuse, exploitation, fraud, or violation of professional boundaries
- Nurse lacks knowledge, skills, judgment, or conscientiousness which could lead to risk of harm to patient or another person

Minor Incident

- Conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client or other person.
 - Incident did not create a significant risk of physical, emotional, or financial harm
 - Nurse was conscientious in approach to or accountable for his/her practice
 - Nurse had adequate knowledge & competencies to make appropriate clinical judgments & any lapse can be easily remediated
 - The incident did not indicate a pattern of multiple minor incidents

Reporting Minor Incidents

- It is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk
- Nurse should be reported to peer review if a nurse commits five (5) minor incidents within a 12 month period.

Keep a separate file for each nurse with the documentation of minor incidents.

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, the nurse should be reported to the Peer Review Committee.

Mandatory Reporting Requirements

Duty of the Nursing Peer Review Committee

when submitting a written, signed report is to:

- Identify the nurse
- Describe the facility's corrective action taken
- Recommend (include basis or recommendation) if formal disciplinary action should be taken
- Describe the conduct subject to reporting
- If appropriate, describe factors beyond the nurse's control

Recommendations

Remedial Education

- Knowledge gaps
- Skill deficiency

Process change/improvement

- Policy change
- EBP
- Culture of Safety

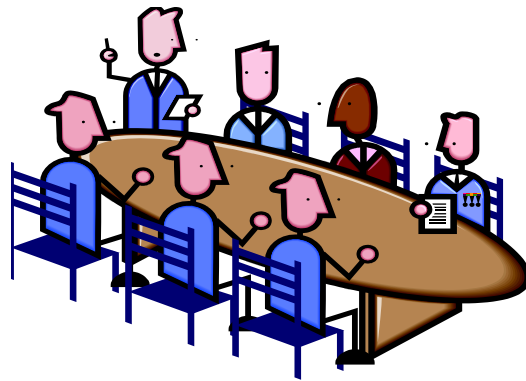
What about agency and contract nurses?

The nurse who works through a temporary agency or contractor may be subject to Peer Review by either the facility where services are provided, the compensating agency, or both.

When is NPRC not required to make a report?

Determination that the
incident was a minor incident.

NPA Rule §303.403(b)



Nursing Peer Review Due Process

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Minimum Due Process

A licensed nurse subject to Incident Based Peer Review is entitled to minimum due process under Chapter 303 of the Nursing Practice Act.

Facilities must have P&P's in place to address level of participation:

- nurse and/or representative
- confidentiality and safeguards to prevent impermissible disclosures;
- handling of cases of nurses who are impaired or suspected of being impaired
- reporting of nurses to the board, and effective dates of changes to the policies

Nurse must be notified in writing in a timely manner

NPR Process

Before the hearing:

- Investigation
- Nurse given written notice of the findings and opportunity to submit a rebuttal statement
- Time allowed for nurse to review documents and the incident

During hearing:

- Nurse is allowed to share his/her review of the incident and offer a rebuttal

After the hearing:

- Nursing is given written notice of the decision of the NPRC & offered opportunity to submit a rebuttal

Informal Work Group

- A facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee provided that the final determination of the nurse's duty complies with the time lines set out in this rule and there are written policies for the informal workgroup that require: (list of six items including written consent by the nurse).

Human Resources Due Process

- Memorial Hermann has a defined process for Human Resource Due Process that may be used as a resource for the nurse

SAFE HARBOR NURSING PEER REVIEW & Whistleblower Protections

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What is SHPR?

- It is a good faith request from a nurse to communicate immediately with a supervisor regarding an assignment.
- It is an intention to resolve an issue.

Safe Harbor

- A process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination and licensure action when a nurse makes 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 NPA or Board rules.

Safe Harbor (cont'd)

- Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked anytime during the work period when the initial assignment changes.

Timeline & Minimum Due Process

- WRITTEN Request (see forms for convenience: Quick Form and Complete Form)
 - Nurse's name, date and time of request, location of conduct or request, name of person requesting conduct and brief description of the conduct—referenced to 217.11 or 217.12
- Before the act or omission
- Same day---may be at the end of the shift but before leaving

Timeline & Minimum Due Process (cont'd)

- Give written request to supervisor; initially may be a “quick request” form” but a detailed form must be submitted by the end of the shift.
- Supervisor gives written request to CNO.
- CNO forwards request to NPR Committee.
- NPR Committee meets and completes its review within 14 days and communicates its determination to CNO.
- CNO communicates findings in writing to the nurse within 2 days of completion of the Safe Harbor Peer Review.

Timeline & Minimum Due Process (cont'd)



- The NPR Committee membership is the same as it normally is—with extra care to EXCLUDE any persons with line authority over personnel decisions directly affecting the nurse.
- Attendance at the hearing by the CNO, nurse administrator or other individual with administrative authority over the nurse, including the individual who requested the conduct or made the assignment, must be limited to speaking as a fact witness.
- The nurse must be permitted to appear, to ask questions and to respond to questions from the Committee and to make a verbal or written statement to explain his/her reasoning.

Whistleblower Protections

- Protections available to a nurse that prohibit retaliatory action by an employer or other entity because the nurse:
 - Made a good faith request for Safe Harbor Nursing Peer Review under TOC § 303.005(c) and this section, or
 - Refused to engage in an act or omission relating to patient care that would constitute a violation of the NPA or Board rules as permitted (TOC § 301.352 Protection for Refusal to Engage in Certain Conduct). A nurse invoking Safe Harbor under this section (TOC 301.352) must comply with 217.20 (g) Safe Harbor Peer Review if the nurse refuses to engage in the conduct or assignment; or

Whistleblower Protections (cont'd)

- Made a lawful report of unsafe practitioners, or unsafe patient care practices or conditions, in accordance with TOC § 301.4025 (report of unsafe practices of non-nurse entities) and § 217.19(j)(2) of this title.

Exclusions to Safe Harbor Protections

- Was invoked in bad faith.
- Is conduct engaged in before the request for Safe Harbor.
- Is conduct unrelated to the reason for which the nurse requested Safe Harbor.
- If the peer review committee determines that a nurse engaged in conduct subject to reporting that is not related to the request for Safe Harbor, then the committee must comply with 217.19 (Incident-Based Peer Review and Whistleblower Protections)

TOC § 301.352

- A person (i.e., employer) may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission as provided...
 - A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board, is a minor incident, or is a violation of this rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that act or omission is that the requested act constitutes grounds for reporting the nurse to the Board or is a violation of the rules.

- If the nurse is in error in making the good faith Safe Harbor Peer Review Request, then engages in the conduct ... (it is “OK”—a lesson learned).
- BUT, the nurse is always accountable for his/her practice. If the conduct is a violation of the NPA and there is harm, there is no protection or “safe harbor.” Safe Harbor is a temporary state.
- If the nurse believes there was retaliation AND a NPR Committee determines that the nurse was correct in refusing, in a situation that resulted in discipline or termination, the nurse may file suit against the employer. If the employer rescinds discipline and restores pay and benefits, there is not a violation of this code section.

- If the nurse was in error, requested a Safe Harbor Peer Review AND committed a practice breakdown, there is no continuing protection from the employer or from the Board if the conduct must be reported.
- TOC §303.005 SHPR
 - Safe Harbor while peer review is pending
 - NPR Committee determination shall be considered by employer in any decision to discipline; however, the CNO may find that the NPR Committee incorrectly determined a nurse's duty (NPRC does not make employment decisions).
 - Medical reasonableness of a physician's order must be taken to the Medical Staff for determination

Enforcement of Whistleblower Protections

- Texas Board of Nursing authority over CNO
- Texas Board of Nursing may refer noncompliance to TDSHS Hospital Licensing
- Nurse may file suit for reinstatement and damages (TOC § 301.413)

What SHPR is NOT

- It is not a report from a nurse to the Texas Board of Nursing.
- It is not a “get out of jail free” card.
- It is not a punitive assertion against a supervisor or employer.

Case Study Analysis

- Nurse Nell is an experienced ICU nurse. She works 12-hour shifts in a medical ICU. The nurse-patient ratio is 1:2 with “normal” acuity. The unit capacity is 14.
- Nell reports to duty and accepts her assignment to care for 2 patients.
- There are 7 nurses on duty and one charge nurse who floats between MICU and SICU.
 - One of Nell’s patients is waiting for a floor bed and has transfer orders.
 - One patient is stable but is still an ICU level patient.
 - Two hours into the shift, a patient assigned to another nurse becomes unstable and requires 1:1 nursing care.

Case Study Analysis

- Two hours into the shift, a patient assigned to another nurse becomes unstable and requires 1:1 nursing care.
- The charge nurse re-assigns one of that nurse's patients to Nell. The patient assigned is a floor level patient.
- Nell's assignment is now 1 ICU level patient and two floor level patients.
- There are PCAs available to assist with personal care.
- Nell invokes Safe Harbor based on 217.11(1)(T). (The duty to) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge and physician and emotional ability.

Analysis & Synthesis

- If Nell was a new graduate, would that change her options? Can she refuse the assignment? See Page 2 of the Quick Request Form.
- If Nell engages in the assignment and makes a serious medication error, is she protected from Incident-Based Nursing Peer Review?
- Describe the process beginning as soon as Nell states to her charge nurse that she is invoking Safe Harbor

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