



NEW MEXICO
BOARD OF NURSING

Governor Susana Martinez
Dr. L. Ann Green, Board Chair
Demetrius Chapman, Executive Director

Mission: Protect the public safety through effective regulation of nursing care and services.

August 28, 2018

Legislative Health & Human Services Committee

Debra Armstrong, Chair

State Capitol

Santa Fe, New Mexico 87501

SENT VIA EMAIL TO: Chris.Pommier@nmlegis.gov

RE: Report of Safe Harbor for Nurses Task Force, SJM 13

Dear Chairman Armstrong and Members of the LHHSC:

Pursuant to the request of the Legislature in SJM 13, the NM Board of Nursing convened a Safe Harbor for Nurses Task Force to address the matters set out in that Joint Memorial. Invitations to participate in the Task Force went to UNM College of Nursing, NMSU School of Nursing, Burrell College of Osteopathic Medicine, New Mexico Hospital Association, New Mexico Health Care Association, UNM School of Medicine, NM Nurses Association, NM Organization of Nurse Leaders and the National Union of Hospital and Healthcare Employees, District 1199.

Attached is the report of the task force with their findings and recommendations. The Task Force wished me to point out that while there are state and federal laws that may protect nurses currently, the Task Force did not have the time or resources to investigate them fully. This may require further investigation or review from the Legislature.

While New Mexico Board of Nursing staff facilitated and supported the work of the Task Force, the Board has not yet voted to take any position on the recommendations contained in this report.

Sincerely,

Sasha N. Poole, PhD, RN

Executive Director

NM Board of Nursing

SNP/mrs

Enclosure: as noted

**Report to the Legislative Health and Human Services Committee
of the Safe Harbor for Nurses Task Force
facilitated by the New Mexico Board of Nursing**

Date: August 8, 2018

Senate Joint Memorial 13 resolved by the legislature for the Board of Nursing to convene a Safe Harbor for Nurses Task Force to identify promising nursing peer review models to protect patients and nurses. The task force met 6 times, facilitated by Mr. Thomas Dow, Esq. Director of Compliance from the NM Board of Nursing.

The following represents the findings, including any recommendations for legislation:

CURRENT TEXAS LAW: Under Texas law, safe harbor peer review TX Administrative Code [Board Rule 217.20](#) is available to nurses. Texas already has in place a peer review process ([TX Occupation Code Chapter 303, Nursing Peer Review.](#))

The Safe Harbor provides protection to the nurse who believes s/he has been asked to engage in conduct that could violate a nurse's duty to a patient. The nurse may request Safe Harbor nursing peer review and is protected from disciplinary action if Safe Harbor is invoked. The Task Force agreed that the Texas law would be burdensome and not work well for New Mexico. The Texas law is an overlay on a legal scheme that already requires a patient safety infrastructure; paperwork requirements are specific and detailed which could lead to bureaucratic complexity. The Texas model limits this to employment settings where 8 or more nurses are employed or contracted.

Although there is no quantifiable information on prevalence of retaliation against nurses in the current workforce, the Task Force has agreed that there is a need for Safe Harbor based upon concern by nurses in the state. A review of past Board of Nursing statistical data was non-contributory in indicating an increase in complaints or licensure revocation.

There are current state and federal laws that protect nurses from retaliation by employers (e.g. NM Department of Labor Laws). It would be a positive move in the state for nurses to have a mechanism to address these concerns. The Task Force agreed that the following tenets should be considered in developing legislation:

1. We agree that a mechanism whereby a nurse can voice concern when the nurse has been requested to engage in conduct that the nurse believes is in violation of that nurse's duty is needed. If the concern cannot get resolved, there should be a "good faith" Safe Harbor peer review process to elevate that concern to evaluate and resolve at the employer level.
 - 1.1 All efforts should be made prior to the invocation of Safe Harbor to resolve the situation, e.g. assignment changes, additional assistive personnel, to assure the safety of the consumer.
2. The nurse will have protection during this process as defined in the "Safe Harbor" definition.
3. This recommendation must consider applicability for the various employment settings and organizational size (hospitals, nursing homes, hospice, home care agencies, school nursing, etc.) where 8 or more nurses are regularly employed or contracted. Organizations that employ fewer than 8 nurses should be allowed to adopt the process if they so choose. The Task Force found this challenging in review of the different employment settings, and the capability of nurses to

invoke Safe Harbor in smaller settings. The Task Force would invite stakeholder comment regarding this aspect.

4. The process for resolution uses a format of representative peers; and there should be equal representation of direct-care givers and supervisory nurses/leadership.

- 4.1 A Chief Nurse Executive required to establish a nursing peer review committee may contract with other entities to conduct nursing peer review.

5. Any peer review process for nurses and reviewers must be protected from litigation, discoverability, or new private right of action. As contemplated, Safe Harbor nursing peer review would not be protected under the New Mexico Review Organization Immunity Act. This issue should be explored with NM Legislative Council Service for further follow-up.

APPENDICES

APPENDIX 1: Senate Joint Memorial 13

APPENDIX 2: Suggested definitions for legislation

APPENDIX 3: Slide presentation from Texas Board of Nursing

APPENDIX 4: Participants in Task Force

APPENDIX 5: Sample policy for Safe Harbor and Peer Review being proposed at one NM hospital

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A JOINT MEMORIAL

REQUESTING THE BOARD OF NURSING TO CONVENE A SAFE HARBOR FOR NURSES TASK FORCE TO IDENTIFY PROMISING NURSING PEER REVIEW MODELS TO PROTECT PATIENTS AND NURSES.

WHEREAS, safe harbor peer review is a process by which nurses can initiate nursing peer review when the nurse has been requested to engage in conduct that the nurse believes is in violation of that nurse's duty to a patient; and

WHEREAS, under Texas law, safe harbor peer review is available to nurses; and

WHEREAS, Texas law defines a nurse's "duty to a patient" to mean conduct, including administrative decisions directly affecting a nurse's ability to comply with the nurse's duty, that is required pursuant to standards of practice or professional conduct adopted by the nurse's licensing board; and

WHEREAS, a nurse invoking the nurse's right to safe harbor peer review makes a request to a committee of the nurse's peers that reviews the facts of the matter involving the nurse's duty to a patient and makes a determination; and

WHEREAS, the determination of the safe harbor peer review committee must be considered in any decision by the nurse's employer prior to disciplining the nurse for the refusal to engage in the requested conduct, though the

1 nurse's supervisor may override that determination in a
2 good-faith finding; and

3 WHEREAS, no employer or other person may retaliate
4 against a nurse for invoking the nurse's right to safe harbor
5 peer review; and

6 WHEREAS, in New Mexico, members of the nursing community
7 have raised the need for safe harbor peer review in order to
8 protect patients and nurses;

9 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
10 STATE OF NEW MEXICO that the board of nursing be requested to
11 convene a safe harbor for nurses task force to identify
12 promising nursing peer review models to protect patients from
13 violations of their rights to safe patient care in accordance
14 with their caregivers' professional standards and best
15 practices and to protect nurses from retaliation for invoking
16 their duties to their patients; and

17 BE IT FURTHER RESOLVED that the board of nursing be
18 requested to invite representatives from the New Mexico
19 nurses association, nurses' unions, the university of
20 New Mexico health sciences center's school of medicine, the
21 university of New Mexico college of nursing, the New Mexico
22 state university school of nursing, the Burrell college of
23 osteopathic medicine, the New Mexico hospital association and
24 the New Mexico health care association to join the safe
25 harbor for nurses task force; and

1 BE IT FURTHER RESOLVED that the safe harbor for nurses
2 task force be requested to present its findings, including
3 any recommendations for legislation, by August 30, 2018 to
4 the legislative health and human services committee; and

5 BE IT FURTHER RESOLVED that copies of this memorial be
6 transmitted to the governor, the legislative health and human
7 services committee and the executive director of the board of
8 nursing.

SJM 13
Page 3

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SUGGESTED DEFINITIONS FOR LEGISLATION ON SAFE HARBOR

- A. ASSIGNMENT--Designated responsibility for the provision or supervision of nursing care for a defined period of time in a defined work setting. This includes but is not limited to the specified functions, duties, practitioner orders, supervisory directives, and amount of work designated as the individual nurse's responsibility. Changes in the nurse's assignment may occur at any time during the work period.
- B. CHIEF NURSE EXECUTIVE (CNE)--The registered nurse, by any title, who is administratively responsible for the nursing services at a facility, association, school, agency, or any other setting that utilizes the services of nurses.
- C. DIRECT CARE – The percent of a nurse’s time spent in direct care of a client or clients (for example, documentation, checking vital signs, administering medication, education, etc.). Nurses identified as direct care givers for the purpose of Safe Harbor NURSES IDENTIFIED AS DIRECT CARE GIVERS FOR THE PURPOSE OF SAFE HARBOR PEER REVIEW SHOULD SPEND 50% OR MORE OF THEIR TIME IN DIRECT CARE.
- D. GOOD FAITH--Taking action supported by a reasonable factual or legal basis. 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.
- E. NURSE’S DUTY --A nurse's duty is to advocate for CLIENT safety, including any nursing action necessary to comply with the standards of nursing practice (§NM 61-3-28) and to avoid engaging in unprofessional conduct (§NMAC 16.12.1.9 [c]). This includes administrative decisions directly affecting a nurse's ability to comply with that duty.
- F. NURSING PEER REVIEW – Means a committee established under the authority of the chief nurse executive of any organization that employs eight or more nurses for the purpose of conducting peer review.
- G. SAFE HARBOR NURSING PEER REVIEW--Defined as the process of assessment utilized by a nurse invoking Safe Harbor to aid in resolution of workplace and practice questions relating to nursing and clients. The nursing 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, under the assumption there may be a systems issue needing review.
- H. SAFE HARBOR--A process that protects a nurse from employer retaliation, discipline, discrimination, or recommendation for Board of Nursing action when a nurse makes a good faith request for an immediate assessment of a situation or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NURSE PRACTICE ACT or Board rules and follow up peer review as needed. 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.

Nursing Peer Review (NPR)



NPA 303.001(5)



Objective

**DIFFERENTIATE INCIDENT BASED
PEER REVIEW FROM SAFE
HARBOR PEER REVIEW**



NPR Requirements

New 9/1/17

- ✓ Employers that employ 8 or more nurses MUST have NPR
- ✓ NPR for RNs: at least 4 of the 8 nurses employed must be RNs
- ✓ Employer may contract NPR



NPA 303.0015; NPA 303.004



Nursing Peer Review Committee (NPRC)

- ✓ Established by employer
- ✓ Purpose: to conduct peer review



NPA 303.001(4)

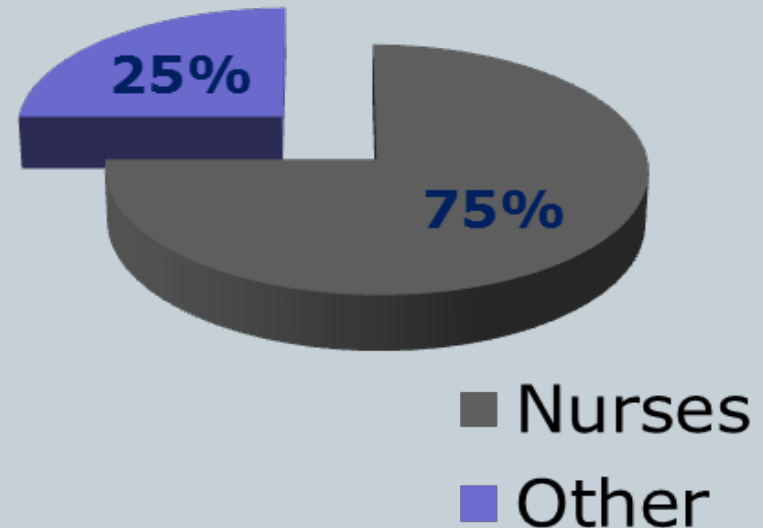


NPRC Composition



Composition:

- ✓ $\frac{3}{4}$ nurses
- ✓ Review of the RN:
 - ✓ $\frac{2}{3}$ of the 75% nurse composition must be RNs
- ✓ Nurse with expertise
- ✓ EXCLUDES administrators-
 - ✓ AND/OR those with personnel decisions



*NPA 303.001(4); 303.003;
Board Rules 217.19(a)(14)&(d)(3)(B); 217.20 (a)(14) & (h)(2)(B)*



Patient Safety Committee

- ✓ Established by employer
- ✓ Purpose:
 - ✓ to address patient safety
- ✓ NPRC may share information



*NPA 303.001(4-a); 303.0075; 303.011(b)
Board Rules 217.19(a)(13) &(i)(5) & 217.20 (a)(13)*



CNO Responsibility

- ✓ Knowledge of NPA, Board Rules and Resources
 - ✓ Assure Peer Review is conducted in compliance
- ✓ NPR Policies and Procedures
 - ✓ Due Process
- ✓ Confidentiality



*Board Rules 217.19(d)(2); (h)(3); (l)(2) and (3);
217.20(h)(1); (j)(1)*



Nursing Peer Review: General Due Process

- ✓ Nurse being reviewed is entitled to minimum due process:
 - ✓ Written plan
 - ✓ Policies & procedures
 - ✓ Timelines
 - ✓ Notice
 - ✓ Opportunity for hearing
 - ✓ Confidential

*NPA 303.002(e)
Board Rules 217.19(d) and 217.20(h)*



Exclusions to Minimum Due Process

✓ EMPLOYER REPORT TO THE BOARD

- ✓ *NPA 301.405; Board Rule 217.19(f)(1)*

✓ IMPAIRED PRACTICE

- ✓ *NPA 301.401(1)(B); NPA 301.410; Board Rules 217.19(f)(2) and (3); 217.19(g)*





Nursing Peer Review: Confidentiality

- ✓ NPRC
 - ✓ Proceeding
 - ✓ Records
 - ✓ Communications to NPRC
- ✓ With limited exceptions

*NPA 303.006; 303.007
Board Rules 217.19(h) & 217.20 (j)(3)*



Routes to NPRC



- ✓ Minor Incidents
 - ✓ 5 Minor Incidents or
 - ✓ Any one incident
- ✓ Incident-Based
- ✓ Reportable Conduct
- ✓ Employer action(s)
- ✓ Safe Harbor Request



*NPA 303.005; 301.401 (1) & (2); 301.402; 301.405
Board Rules 217.16 & 217.20*



Reporting Through NPR: A Culture of Safety



- ✓ Permits addressing nursing practice at the facility level
 - ✓ Whether conduct is “conduct subject to reporting”
 - ✓ Whether conduct is a non-reportable minor incident
- ✓ NPR must consider external factors and share information with patient safety committee
- ✓ Remember duty of individual nurses and state agencies to report to BON is satisfied by reporting to NPR



Minor Incidents



- ✓ Red flag indicator
- ✓ Incident does not pose risk of harm
- ✓ Evaluation of Conduct
- ✓ 5 or more in 12 months – NPRC IBPR review required

Board Rule 217.16



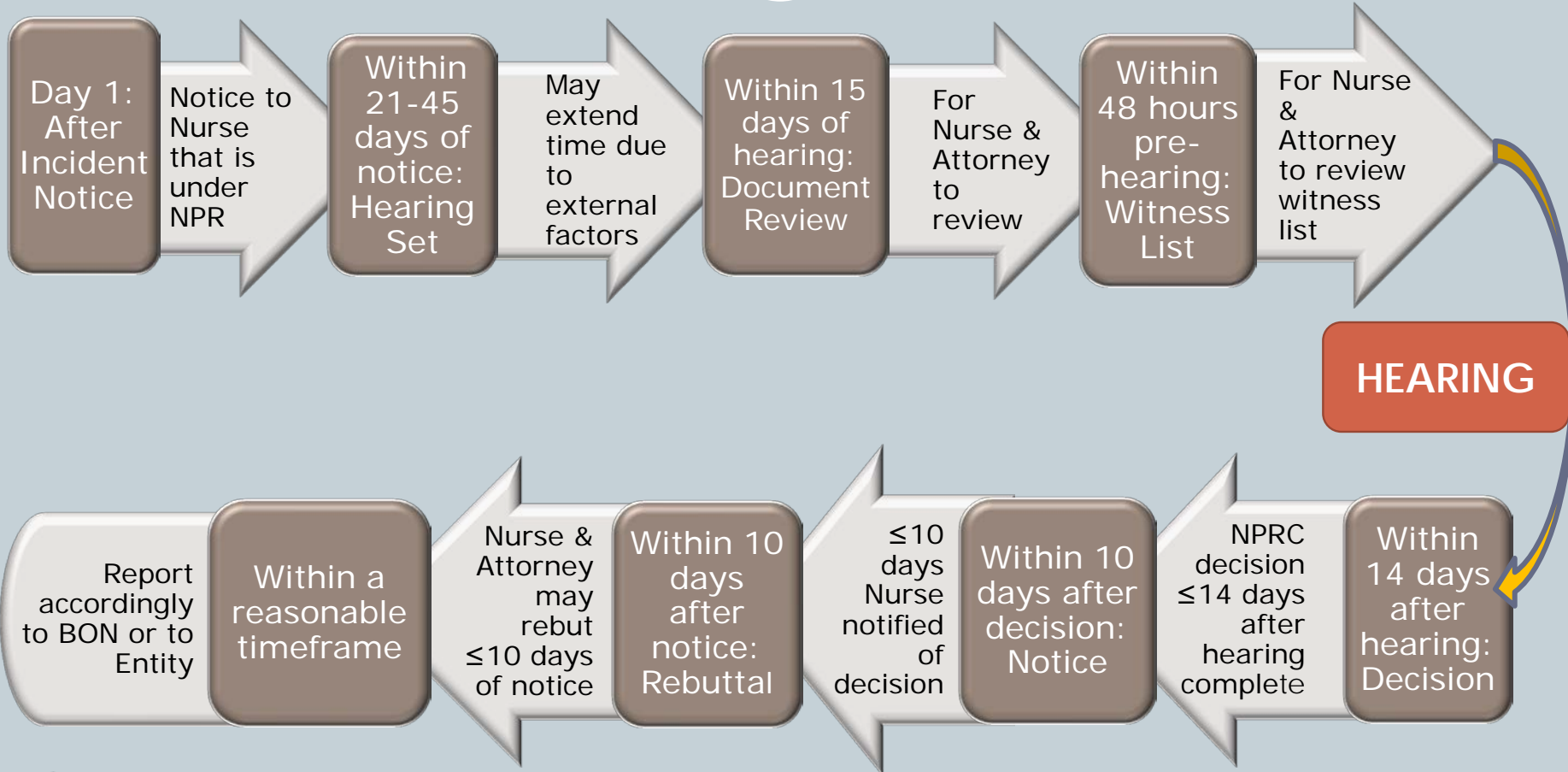
Incident-Based (IBPR)

NURSING PEER REVIEW

Something Went Wrong
Something Went Wrong
Something Went Wrong



**Total Time to Hold the NPRC Meeting 45 Days (Can extend another 45 days)
Not to Exceed 90 Days**



Board Rule 217.19 (d)



Integrity of NPR



✓ Committee Responsibilities

- ✓ Conduct in Good faith (not Bad faith)
- ✓ Knowledge of Board Rules and Resources
- ✓ Listen to testimony
- ✓ Examine evidence
- ✓ Fair recommendation



*NPA 301.4011
Board Rule 217.19 (I); Board Rule
217.19(a)(2); Board Rule 217.19 (a)(6)*



NPRC Responsibility with IBPR



- ✓ Review and evaluate evidence:
 - ✓ Is conduct a minor incident;
 - ✓ Can Nurse be remediated

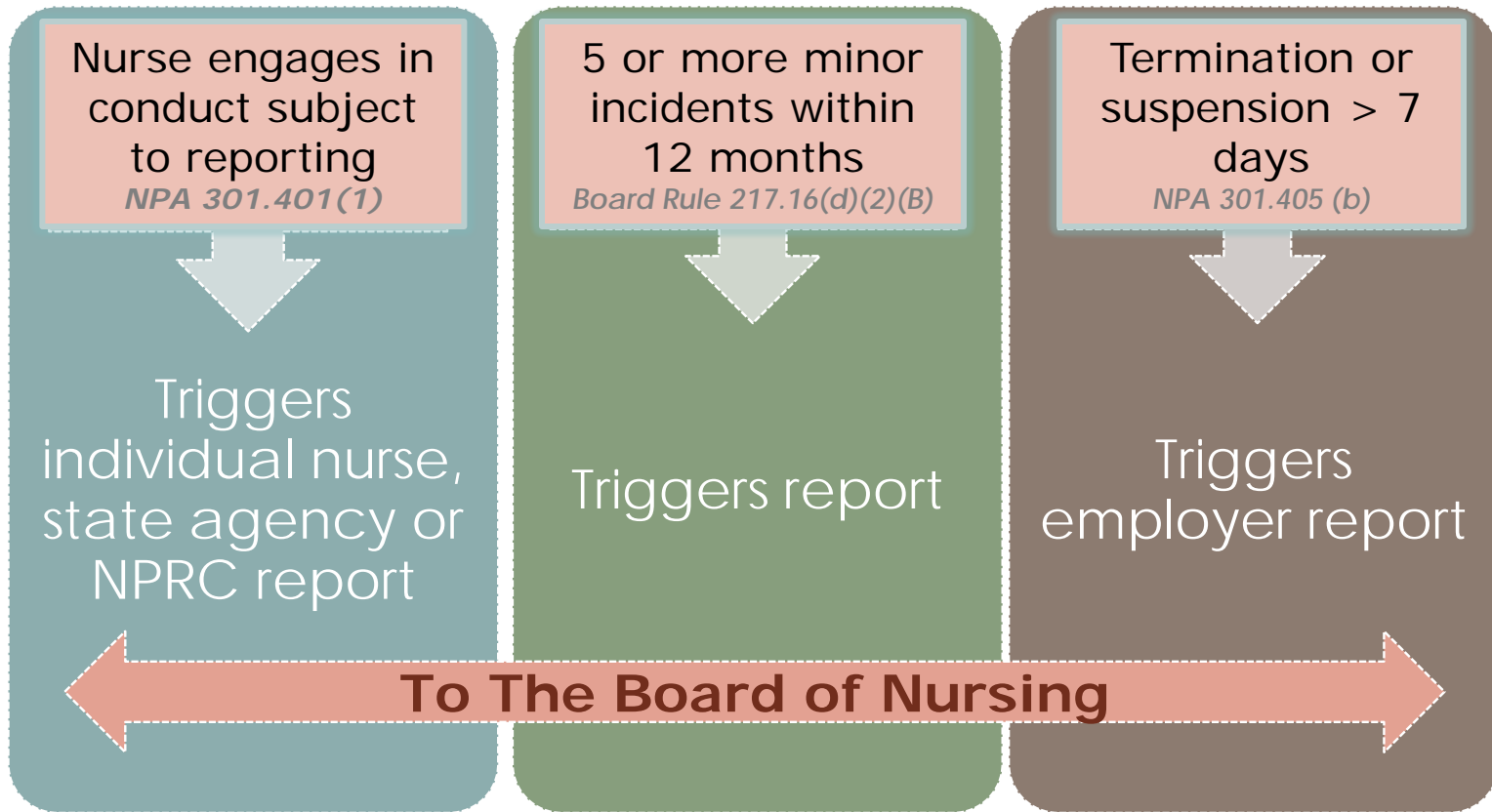
OR

- ✓ Should conduct be reported to:
 - ✓ BON:
 - ✓ If conduct is reportable
 - ✓ If conduct is not remediable
 - ✓ Patient safety committee
 - ✓ If there are any systems issues



Board Rule 217.19 (i)

Reportable Conduct



Reporting Practice Errors: NPRC vs. BON



Report to NPRC	Report to BON
<ul style="list-style-type: none">✓ Review at the local level✓ Ability to identify system deficiencies✓ NPRC decision to report or not to report to BON✓ No disciplinary action on nurse's record permanently✓ Nurse not reported to National Practitioner Databank	<ul style="list-style-type: none">✓ Some disciplinary action by BON<ul style="list-style-type: none">✓ Disciplinary action will be on nurse's record permanently✓ Deferred disciplinary action is possibility but is still on record for five years✓ Nurse reported to Nursys database and National Practitioner Databank



Safe Harbor Nursing Peer Review



The Nurse's Duty to a Patient



- ✓ *NPA 303.005*
- ✓ *Board Rule
217.20 (a)(5)*
- ✓ *Position
Statement
15.14*

- ✓ Conduct required by the BON's standards of practice or professional conduct
- ✓ Nurse's duty is to always advocate for patient safety
- ✓ Including any nursing action necessary to comply with standards of nursing practice and to avoid unprofessional conduct.
- ✓ Includes administrative decisions directly affecting nurse's ability to comply with duty

What is Safe Harbor?

- ✓ Safe Harbor provides protections to a nurse who believes s/he has been asked to engage in conduct that could violate or violates a nurse's duty to a patient.
- ✓ Safe Harbor:
 - ✓ Provides for review by a nursing peer review committee (NPRC)
 - ✓ Prohibits disciplinary action by the BON for engaging in questioned conduct awaiting NPRC review



NPA 303.005



The Purpose of Safe Harbor



- ✓ Safe Harbor Peer Review prevents a nurse from having to choose between:
 - ✓ Refusing an assignment because of concern that it may violate the nurse's duty to a patient,
- OR**
- ✓ Agreeing to the assignment even though it may violate the nurse's duty to a patient and the nurse may risk disciplinary action by the BON



Goal for Safe Harbor: *PROBLEM SOLVE*



- ✓ Encourage communications between employees and supervisors/employers
- ✓ Discover untapped resources
- ✓ Modify work assignments
- ✓ Work together



Time to Invoke Safe Harbor



Onset of Unsafe Assignment

Board Rule 217.20 (d)(1)



Three Key Requirements



Key Requirement #1: *Good Faith*



- ✓ Safe Harbor requests must be made in *Good Faith*
- ✓ *Good Faith* means taking action supported by a reasonable factual or legal basis
- ✓ *Good Faith* precludes:
 - ✓ Misrepresenting facts surrounding event under review;
 - ✓ Acting out of malice or personal animosity; and
 - ✓ Acting from conflict of interest

Board Rule 217.20 (a)(6)



Key Requirement #2: Timing

Safe Harbor must be invoked **prior** to engaging in the conduct or assignment AND:

- ✓ When the conduct is requested or assignment made;
- ✓ When changes occur in request or assignment that so modify what was originally requested and the nurse believes patient harm may result; or
- ✓ When nurse refuses to engage in conduct or assignment

What is an “assignment”?

- ✓ Designated responsibility for the provision or supervision of nursing care for a defined period in a work setting
- ✓ Includes specified duties, functions, orders, supervisory directives and amount of work designated as an individual nurse’s responsibility.

Board Rule 217.20(a)(1)
Board Rule 217.20(d)



Key Requirement #3: Procedure



- ✓ Nurse must notify supervisor requesting the conduct or assignment that Safe Harbor will be invoked
- ✓ Request must be in writing and include:
 - ✓ Nurse's name and signature
 - ✓ Date and time of request
 - ✓ Location of conduct or assignment
 - ✓ Name of person making request
 - ✓ Brief explanation of why SHPR is being requested

Board Rule 217.20(d)(2)-(3)



Required Information



Safe Harbor Quick Request Form



Texas Board of Nursing
SAFE HARBOR QUICK REQUEST FORM
(Remember to Complete Comprehensive Form/Information on Same Day)
Published May 2008 (rev. 9/08)

The Nurse's Request for Safe Harbor must be made before accepting the assignment (including any point during the work period when the assignment changes) and the request MUST be made **IN WRITING**. **DO NOT FAX OR MAIL THIS FORM TO THE BON**

Minimum Required Information to Make Initial Request Invoking Safe Harbor

The following information must be in writing, but may be on any form and in any format provided it is in writing (includes electronic transmittals such as e-mail):

1. Nurse(s) Name(s) invoking Safe Harbor;
2. Date/Time of Request;
3. Location of requested conduct/assignment;
4. Name of person/supervisor making assignment or requesting the conduct;
5. Brief explanation of why invoking Safe Harbor (It may be helpful to review rules 217.11 and 217.12);
6. Document collaboration between nurse(s) and supervisor (always recommended; required if nurse(s) refuse assignment/conduct requested).

REMEMBER TO COMPLETE COMPREHENSIVE REQUEST FOR SAFE HARBOR (SEE FORM) REQUIRED PRIOR TO THE END OF, OR BEFORE LEAVING THE WORK ASSIGNMENT AREA.

1. Nurse(s) Name(s) invoking Safe Harbor:

2. Date/Time of Request: _____

3. Location of requested conduct/assignment: _____

4. Name of person/supervisor (and title) making assignment or requesting the conduct: _____

5. Brief explanation of why invoking Safe Harbor (It may be helpful to review rules 217.11 and 217.12):

Signature(s) of Nurse(s) Invoking Safe Harbor:

Signature of Supervisor/Person Making Assignment (Note: A supervisor's refusal to sign this form does not render the nurse's request for Safe Harbor invalid): _____



Safe Harbor Comprehensive Request Form

COMPREHENSIVE REQUEST FOR NURSING SAFE HARBOR PEER REVIEW (SHPR)

NOTE: ONLY SECTION I (pages 3-6) MUST BE COMPLETED BY THE NURSE WHEN INITIALLY INVOKING SAFE HARBOR

A nurse's request for Safe Harbor Must be in Writing, however, use of this form is not required for a nurse to invoke safe harbor. Any request for safe harbor, be it on this form or in any other written form or format, is subject to confidentiality requirements of NPA (TOC) §303.006, §303.007, §303.0075, and Rule 217.20.

Date: _____ Time: _____ Location: _____

I. NURSE'S REQUEST

Check if you completed a Quick Request for Safe Harbor Peer Review: date _____ time _____ (*Skip to #3 and attach Quick Request Form copy to this Comprehensive Request)

- (1) I(we) are invoking Safe Harbor and requesting a safe harbor peer review for the following requested conduct or assignment because I (we) believe in good faith that the conduct/assignment requested would potentially cause me (us) to violate my(our) duty to maintain a safe environment and provide safe nursing care to a patient(s) or client(s), or would constitute unprofessional conduct under BON statutes and rules, or criminal conduct.

I(we) request that a Safe Harbor Peer Review Committee (SHPRC) examine the facts and evidence of the situation described below to make a determination if compliance with the requested conduct or assignment is one that would cause me (us) to place patients at risk of harm, and thus violate our duty under standards §217.11(1)(B) and (1)(T), or any other BON statutes or rules.

I(we) understand that unless the conduct or assignment requested would constitute:

- A. Unprofessional conduct (rule 217.12)
- B. A criminal act, or
- C. An act that the nurse is unable to perform because he/she lacks the competency required to provide care that meets minimal standards of acceptable nursing practice

that I(we) may accept the assignment and carry it out to the best of my(our) ability, without fear of risking licensure action by the Texas Board of Nursing.

The following nurse(s) hereby attest that we are invoking Safe Harbor:

Print Full Name and Type of License (LVN, RN) Nurse's Signature

1. _____

2. _____

3. _____

[Attach additional names separately in writing if necessary]



Medical Reasonableness of Order



Texas Board of Nursing
Safe Harbor
Request to Determine Medical Reasonableness
of a Physician's Order

Published May 2008

Complete this form when you question the medical reasonableness of a physician's order with regard to accuracy, safety, and/or effectiveness of an order(s) for a given patient or set of patients [i.e. nurse believes carrying out the physician's order may violate the nurse's duty to the patient to provide a safe environment for the patient(s)]. It is the nurse's responsibility to keep a copy of the request he/she submits for review.

Minimum Required Information to Make Initial Request Invoking Safe Harbor

The following information must be in writing, but may be on any form and in any format provided it is in writing (includes electronic transmittals such as e-mail):

1. Nurse(s) Name(s) Invoking Safe Harbor;
2. Date/Time of Request;
3. Location of requested conduct/assignment;
4. Name of physician issuing order;
5. Brief explanation of why invoking Safe Harbor (It may be helpful to review rules 217.11 and 217.12).

1. Nurse(s) Name(s) invoking Safe Harbor (print name(s)): _____

Date/Time of Request: _____

Location of requested conduct/assignment: _____

Name of physician (and specialty) writing order: = Patient Specific = Standing Order

Brief explanation of why invoking Safe Harbor (It may be helpful to review rules 217.11 and 217.12):

- I(we): Believe it is safe to carry out this order pending determination of medical reasonableness, or
- Believe it would place a patient or patients at unjustifiable risk of harm, and therefore, have notified the ordering physician, charge nurse, and any other necessary staff that I (we) refuse to carry out this order as given.

Signature(s) of Nurse(s) Invoking Safe Harbor: _____



Options on a Safe Harbor Request



- ✓ Engage in the requested conduct or assignment pending NPRC review:
 - ✓ Protected from BON disciplinary action
 - ✓ Protected from action by employer for making Safe Harbor request

- ✓ Refuse to engage in requested conduct



Right to Refuse



- ✓ Specific conditions to refuse:
 - ✓ Lack basic skill, knowledge, ability
 - ✓ Unprofessional conduct and/or criminal conduct
- ✓ Must collaborate and document collaboration



What if Supervisor Fixes the Assignment?

- ✓ Before the NPRC review is initiated, if the supervisor remedies the situation, the nurse may:
 - ✓ Withdraw Safe Harbor request
 - ✓ Pursue Safe Harbor request



Due Process: Safe Harbor

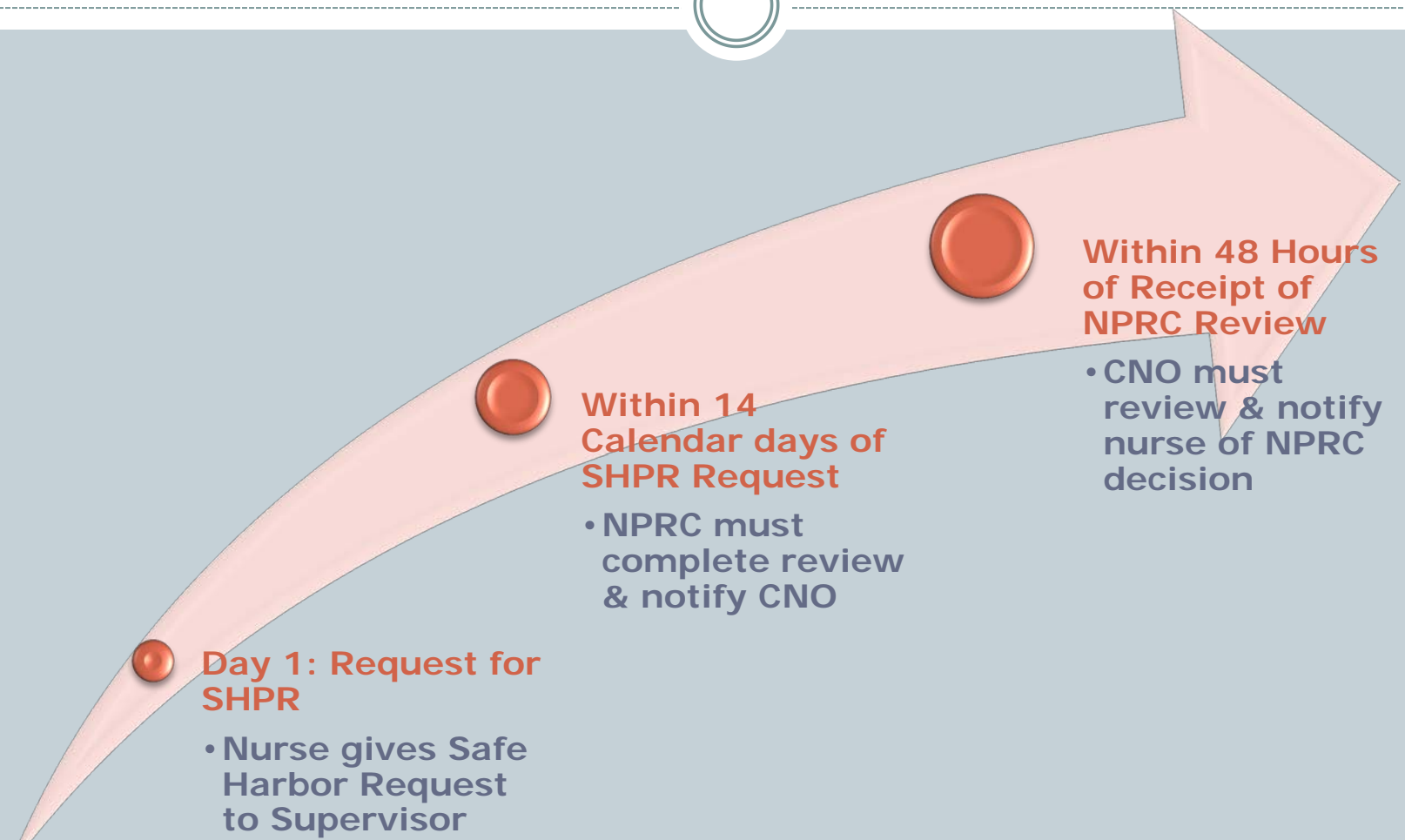


- ✓ Policy and Procedure required
- ✓ Permit the nurse to:
 - ✓ Appear
 - ✓ Ask and respond to questions
 - ✓ Make a verbal/written statement

Board Rule 217.20 (h)



Timelines



Day 1: Request for SHPR

- Nurse gives Safe Harbor Request to Supervisor

Within 14 Calendar days of SHPR Request

- NPRC must complete review & notify CNO

Within 48 Hours of Receipt of NPRC Review

- CNO must review & notify nurse of NPRC decision



Board Rule 217.20 (i)

Other Timelines



- ✓ Protection from BON disciplinary action expires 48 hours after the nurse is advised of the NPRC findings
- ✓ Protection from retaliation from the employer for requesting Safe Harbor never expires



Safe Harbor Protections

- ✓ Board of Nursing
 - ✓ May not be reported
 - ✓ May not be disciplined
- ✓ Employment
 - ✓ Suspension, termination, or other discipline



Board Rule 217.20 (e)



Exclusions to Protections

- ✓ Bad faith
 - ✓ Example – sees assignments and then leaves assignment; does not make effort to collaborate
- ✓ Conduct prior to invoking
- ✓ Unrelated conduct



Board Rule 217.20 (f)



Whistleblower Protections



Whistleblower:

A person who makes a public disclosure of corruption or wrongdoing



In Texas

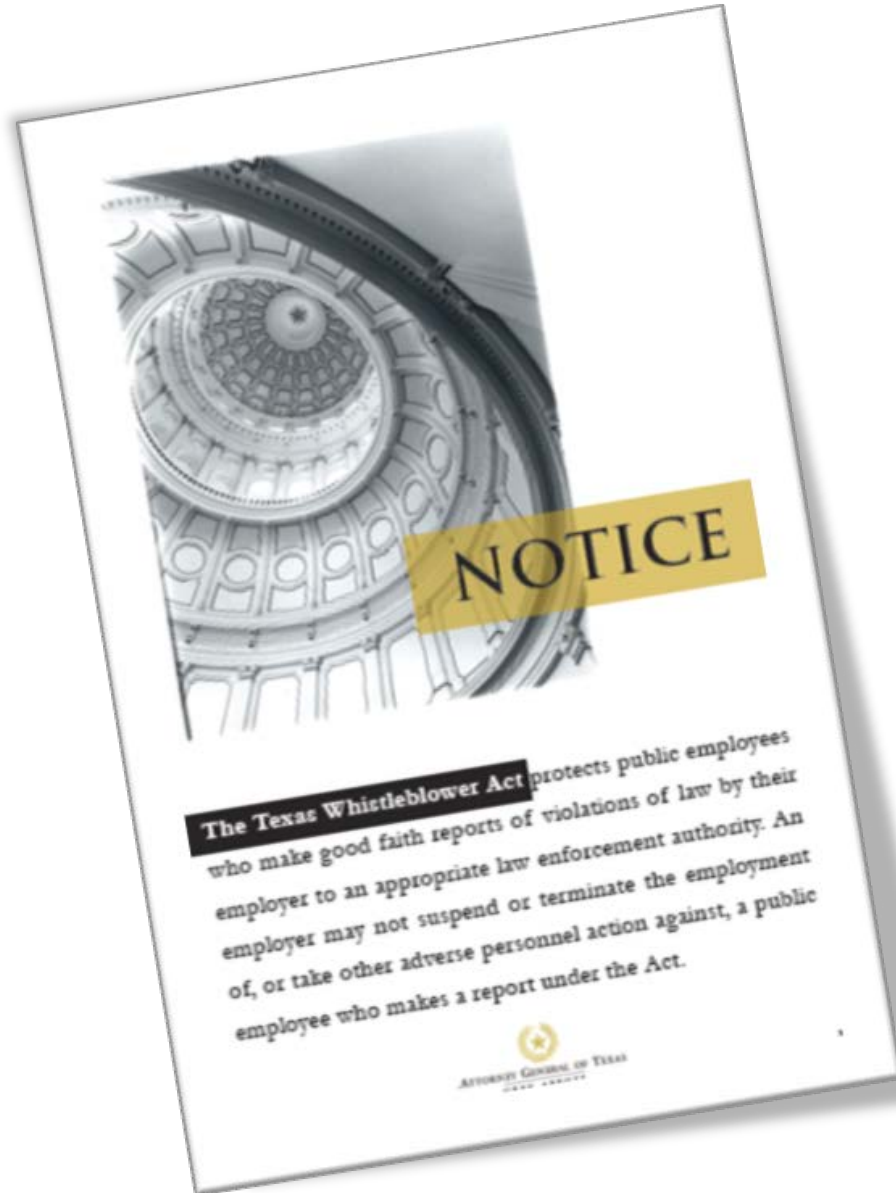
WE

DO NOT

HAVE TO

REMAIN

SILENT



WHY Do Nurses Need Whistleblower Protections?



Comparison: IBPR and SHPR

Incident Based Peer Review

Based on an incident or incidents

External Factors Review

Focus on nurse's conduct- remediate or report

Longer Timelines (up to 90 days)

Safe Harbor Peer Review

Based on a potential violation of nurse's duty to patient(s)

Nurse may engage in conduct pending NPRC determination

Offers nurse protection from employer action and licensure sanction

Shorter Timelines



Test Your Knowledge



A patient has come into the ER complaining of epigastric burning and chest pain. The physician orders a cocktail containing Mylanta. The nurse withdraws Milk of Magnesia from the Pyxis. This has happened 3 previous times. The Milk of Magnesia is located in a bin next to the Mylanta in the Pyxis machine.

What do you think?



For Consideration

- ✓ Experience in ER?
- ✓ Staffing?
- ✓ Knowledge of medications?
- ✓ Systems Issues?
- ✓ Remediable?



Test Your Knowledge



A Nurse is regularly scheduled to care for Labor and Delivery patients. Because of the census, the nurse is being floated (or reassigned) to a pediatric med-surg unit.

What do you think?



For Consideration



- ✓ Experience in med-surg?
- ✓ Acuity of the pediatric population?
- ✓ Experience with pediatrics?
- ✓ Is there a more appropriate staffing assignment?



Test Your Knowledge



A nurse regularly provides patient care utilizing a ratio staffing model of a 1 nurse to every 6 patients. The nurse is now being assigned 2 additional patients (1:8 ratio).

What do you think?



For Consideration



- ✓ What is acuity of the six (6) patients?
- ✓ What is acuity of additional two (2) patients?
- ✓ What other resources available?





Submit questions at
<https://tbon.cnf.io>



Participants in SJM 13 Safe Harbor for Nurses Task Force

Organizations:

UNM College of Nursing

UNM School of Medicine

NMSU School of Nursing

New Mexico Nurses Association

New Mexico Hospital Association

NM Organization of Nurse Leaders

New Mexico Health Care Association

National Union of Hospital and Health Care
Employees, District 1199

Individuals who signed in as attending Task Force meetings:

Christine Delucas

Linda Siegle

Carolyn Green

Cheryl Lombardi

Jeff Dye

Robert Middleton

Ellen Interlandi

Susan de Leon

Pat Whitacre, RN

Sandra Oliver

Sheena Ferguson

Penny Beattie

Jason Bloomer

Deborah Walker

Nancye Cole

Suzanne Canfield

Lorie MacIver

Joyce LyDawn Blount

Safe Harbor workforce items

Definitions

- **Safe harbor**: The ability granted to nurse, allowing for a nurse to be able to assess, recognize and verbalize that a situation, or assignment is unsafe and requires review.
 - This ability allows for an immediate assessment of an assignment for appropriateness with regards to a nurse's ability to care for a patient.
 - through review of competence and the nurse's training to be able to care for the assignment at hand.
 - Followed by an intervention from leadership to assess, change or adjust assignments or provide further assistance to the nurse to protect the patient from undue harm.
 - And protecting the nurse, nurse team leader and nurse managers from repercussion related to the invocation of safe harbor in good faith to assess the current situation.
- **Competence**: having the capacity to function with adequate ability or qualities through appropriate education and training.
 - *The nurse should be able to recognize situations within their clinical judgement where their individual competencies are not appropriate or adequate to be able to care for a patient without further training or assistance.*
- **Good Faith**: with good intention based on clinical judgement.

Example of how safe harbor can be operationalized

1. A nurse begins report with the off going team and realizes that her/his assignment is inappropriate based on their own individual competencies and requires intervention. The oncoming nurse notifies the previous shift that at this time they are not accepting the assignment based on report and requires leadership involvement.
 - a. Note: if the nurse has an assignment and the situation changes that a nurse is unable to further care for a patient due to said changes. This process can be invoked at this time as well.
2. The nurse speaks with the charge nurse and discusses how the assignment is inappropriate.
 - a. This can be the final step with this process if the team is able to come to a consensus and changes to the assignment based on available team members who are competent to take the patient.
 - i. i.e. changing the assignment completely, partially changing the assignment, or finding that the nurse is able to take the assignment and provide additional resources available to assist in the care.
3. If the nurse is not satisfied with changes or lack thereof at this juncture, the nurse may invoke safe harbor on a short form and turn it into the charge nurse
4. If safe harbor is invoked the charge nurse has a responsibility to stop and call in additional leadership resources to assist in reviewing the matter
 - a. These additional leadership resources are to include but not limited to:

- b. Clinical nurse managers, directors, administrators on duty (AOD), up to including assistant Chief Nursing officer (CNO) and the CNO.
 - i. The addition of additional leadership would be based on the chain of command.
 - 1. i.e. on a night and weekend shift this would go to the team leader, and the AOD would be contacted first, followed by unit leadership and then progress further.
 - c. The goal of this invocation at this level is to initiate the assistance of leadership in ensuring safe patient care is being provided to the patient, by providing the patient with a competent and appropriate nurse
- 5. If there is no solution to the matter at this juncture having followed the chain of command to the fullest extent available, the nurse will accept the assignment and provide care to the patient for the remainder of the shift
 - a. Or until another nurse may be available to take the patient who is competent with regards to the needs of the patient.
- 6. Following an invocation if not resolved and the nurse agreeing that the situation does not need to go any further
 - a. The leadership team will conduct a safe harbor peer review committee to assess the situation from a systems error stand point and assess the invoked assignment from a systems error stand point
 - i. Allowing this to be directed as a systems error initiation will allow the staff to assess all appropriate items involved in the situation.
 - 1. Staffing levels, training and education, the acuity of the patient load, call ins, and other extemporaneous stressors to the system.
 - 2. The committee should provide a response to the CNO with regards to their findings and recommendations if:
 - a. The committee finds that the nurse has indeed engaged in the invocation with good faith
 - b. The committee finds that there was a systems error in place
 - c. Or the matter requires further review that the committee is unable to provide based on the information available.
 - d. a Root Cause Analysis (RCA) should be completed with all of the normal procedures and those involved to find a solution to the situation. As a part of the committee to relieve undue repetition in the process
 - 3. Committee members
 - a. Facilitator
 - b. Risk management
 - c. HR
 - d. Patient safety officer
 - e. CNO/Representative of
 - f. Department director
 - g. Reasonable number of clinical nurses in addition. (6)

- i. ½ from unit in question
 - ii. ½ from other units
- 7. 5 business days to convene the committee
 - i. Finding the 6 nurses to the committee is the issue here
 - ii. The nurse is involved in the process so the timeline may be reduced to completion of the process.
 - b. If the process has not been relieved and the Nurse feels that further discrepancies or issues arise the nurse should follow a grievance policy.
- 8. We should implement whatever RCA or Deep dive process to analyze the situation. As a member of the committee or as the committee with nurses included.