



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: May 15, 2019

Purpose: Presentation/Report Recognition Discussion/ Possible Action

Closed/Executive Session Work Session Discussion Only Consent

From: Diane Olivo RN, BSN Health Service Coordinator

Item Title: Approve the Agreement for the TSNO Region XX Nursing Peer Review Services

Description:

Region XX will facilitate a committee to conduct nursing peer reviews in accordance with NPR Law (Chapter 303 of the Texas Occupations Code) for South San Antonio ISD. The District will designate one or two nurse employees to serve on the regional committee as needed. The committee could be the call upon to peer review nurses in the region and we have the option to use the committee to peer review any of our nurses. There is no cost to the district. The agreement will be renewed annually unless terminated by either party

Recommendation:

Approve the agreement for participation in the TSNO Region XX Nursing Peer Review Services.

District Goal/Strategy:

Objective 5.4: Establish systemic plans and procedures that ensure a safe learning environment for all.

Funding Budget Code and Amount:

CFO Approval

N/A

APPROVED BY:

SIGNATURE

DATE

Chief Officer:

5-5-19

Superintendent:



TSNO REGION XX NURSING PEER REVIEW COMMITTEE
AGREEMENT FOR NURSING PEER REVIEW SERVICES

Texas School Nurse Organization (TSNO) Region XX is an organization formed to advance the practice of professional school nurses while promoting students' optimal level of wellness and educational success.

South San Antonio ISD Independent School District (subsequently referenced in this document as "District") is a school district that employs licensed nurses to provide nursing care to students. TSNO Region XX and the District desire to secure for themselves, their members and employees the benefits afforded through nursing peer review conducted in accordance with Texas Occupation Code (TOC) Chapter 303.

TSNO Region XX has developed nursing peer review procedures that meet the requirements of Texas State Law and regulations. It is intended to serve school districts in Region XX.

TERMS

1. The parties to this Agreement for Nursing Peer Review Services are South San Antonio ISD Independent School District, located at 5622 Ray Ellison Blvd., San Antonio, TX 78242, Texas and Texas School Nurse Organization Region XX, San Antonio, Texas.
2. The term of this Agreement shall begin the date the Agreement is executed and shall be renewed annually unless terminated by either party.
3. TSNO Region XX shall conduct nursing peer review for complaints received or requests for Safe Harbor determination made concerning the provision of nursing services by District nurse employees.
4. Peer review shall be conducted in conformance to Texas State Law and regulations and through the TSNO Region XX Nursing Peer Review Procedures.
5. In the event remediation is advised for a nurse as a result of a peer review hearing, the District shall be responsible for supervising its completion and for reporting any failure to complete remediation.
6. The District shall designate one or more nurse employees to serve in a pool of school nurses from which shall be drawn the nurses necessary to serve on any committee that may be formed to conduct a peer review.
7. District employees called to serve on a committee shall receive regular pay, as shall any District employee called to be a witness or to furnish testimony in the matter under review.

8. The district shall timely provide TSNO Region XX copies of all documents in its possession necessary to fully review the incident or circumstances under review. The District shall also make available to the nurse under review and to the nurse's counselor documents to be considered in accordance with 22 Texas Administrative Code (TAC) Rule 217.19 (d) (3) (E).
9. TSNO Region XX shall timely provide the District a copy of any determination reached in the disposition of any complaint or request received. Upon request of the District, TSNO Region XX shall furnish copies of written statements furnished to the Peer Review Committee by District employees.
10. The District designates Diane Olivo, RS BSN to serve as the
Position Title
 contract administrator for all matters relating to the performance of the Agreement.
11. A party may designate a new contract administrator on written notice to the other party.
12. This Agreement may be terminated by either party on written notice.

Executed this day:

South San Antonio ISD Independent School District

Private, Charter, Parochial, Christian or other Schools: _____
Name of Institution

By: Dr. Alejandro M. Flores _____
Print Name Signature

Title: Superintendent of Schools _____
Superintendent of Schools or Equivalent

Texas School Nurse Organization Region XX

By: _____
Print Name Signature

Title: **President, Texas School Nurse Organization, Region XX**



December 5, 2018

Dear Superintendent,

Per Texas State Law, Texas Occupations Code (TOC) Chapter 303.0015, school districts and other entities employing ten or more licensed nurses are required to have in place a published, confidential process for investigating and making determinations of complaints regarding nursing care or nursing assignments.

This process is peer review; it must have written procedures in place that afford a committee composed primarily of registered nurses to conduct investigations and hearings regarding complaints against individual nurses and to review complaints by nurse employees regarding the safety and/or appropriateness of work assignments.

Texas State Law provides for a school district to meet its obligations by contracting with certain authorized organizations for peer review services. Texas School Nurses Organization (TSNO) Region XX is one such organization. As an organization dedicated to enhancing the practice of professional school nurses, TSNO Region XX has developed peer review procedures that met the peer review obligations of Region XX school districts lacking an existing process. The service is free.

Should you wish to take advantage of this service or should you have questions, please contact Donna Lynn at dlynn@fisd.us or 830-393-5300.

Sincerely,

Donna Lynn RN, MSN
TSNO Region XX President

Effective date: _____

TEXAS SCHOOL NURSES ORGANIZATION (TSNO) REGION 20 NURSING PEER REVIEW PROCEDURES

I. OVERVIEW

State law (Texas Occupations Code § 303.0015) requires any organization that employs or utilizes 10 or more nurses to establish a nursing peer review committee to provide nursing peer review. The committee is charged with implementing the peer review process which 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. The committee concludes its work through the issuance of a report to the appropriate persons or entities. The TSNO Region XX Peer Review Committee has been formed to conduct peer review for the districts served by TSNO Region XX and have agreed to participate in this service.

The Nursing Peer Review (NPR) law grants three important legal protections so that peer review can be successful when undertaken. It provides for:

- Confidentiality of the peer review process.
- Immunity from civil liability for the peer review committee and other persons participating in the process.
- Minimum due process rights to the nurse being reviewed.

Peer Review is the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by nurses, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint including:

- The evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;
- A report made to a nursing peer review committee concerning an activity under the committee's review authority;
- A report made by a nursing peer review committee to another committee or to the Board of Nursing (BON) as permitted or required by law;
- Implementation of a duty of a nursing peer review committee by a member, an agent or an employee of the committee.

Peer review applies to the nursing practice of a registered nurse (RN), a licensed vocational nurse (LVN) or an Advanced Practice Nurse (APN).

There are two types of peer review:

- Incident-based peer review, in which case peer review is initiated by a nurse, facility, association, school, agency, or any other entity that utilizes the services of nurses.
- Safe Harbor peer review, which may be initiated by an LVN, RN, or APN prior to accepting an assignment or engaging in requested conduct that the nurse believes would place patients at risk of harm, thus potentially causing the nurse to violate her/his

duty to the patient(s). Invoking safe harbor protects the nurse from licensure action by the Board of Nursing (BON) as well as from retaliatory action by the employer.

INCIDENT-BASED PEER REVIEW (IBPR)

The BON believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nurse Practice Act (NPA) or a board rule. To this end, incident-based peer review, as defined by Rule 217.19, focuses on determining if a nurse's actions, be it a single event or multiple events (such as in reviewing up to five minor incidents by the same nurse within a year's period of time) should be reported to the Board, or if the nurse's conduct does not require reporting because the conduct constitutes a minor incident that can be remediated. The review includes whether external factors beyond the nurse's control may have contributed to any deficiency in care by the nurse, and to report such findings to a patient safety committee as applicable.

Minor Incident

A minor incident is defined as conduct that does not indicate that the continuing practice of nursing by the nurse under review poses a risk of harm to the client or other persons. A nurse is required to be reported for peer review if the nurse commits five minor incidents within a 12 month period. There are four types of circumstances in which the conduct cannot be considered a minor incident:

- Any error that contributed to a patient's death.
- Criminal conduct as defined in the NPA.
- A serious violation of the BON's Unprofessional Conduct rule involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.
- A practice-related violation involving impairment or suspected impairment by reason of chemical dependency, intemperate use, misuse or abuse of drugs or alcohol, mental illness, or diminished mental capacity.

Request for Peer Review

A district's request for peer review is made by contacting the TSNO Region XX peer review administrator in writing. The request needs to include the identity of the nurse, a description of the conduct in question, and details such as date(s), time(s), location(s), and individual(s) involved as well as their contact information. Requests for IBPR shall be made in good faith. Information presented to and/or considered by the IBPR committee is required be kept confidential and may not be disclosed except as provided by law.

Notification of Peer Review

The nurse being peer reviewed shall be provided a copy of these peer review procedures and notification:

- That his/her practice is being evaluated by the IBPR committee.
- That the IBPR committee will meet on a date specified in the notice, that is not less than 21 or more than 45 calendar days from date of notice and includes:

- A description of the event(s) to be evaluated in enough detail to inform the nurse of the incident, circumstances and conducts, and should include the date(s), time(s), location(s), and the individual(s) involved. Any patient/client information shall be identified by initials or number to protect confidentiality, but the nurse shall be provided the name of the patient.
- The name, address and telephone number of the TSNO Region XX contact person to receive the nurse's response.

Prehearing Information Review

The nurse will be provided the opportunity to attend the hearing and to review, in person or by attorney, documents concerning the event under review prior to appearing before the committee. In addition, the nurse will be provided copies of the witness list and written testimony or evidence in advance of the hearing. A nurse may also decline to participate in the hearing.

Participation in the IBPR Hearing

During the hearing the nurse will have the opportunity to:

- Make an opening statement
- Call witnesses, question witnesses, present evidence and be present when testimony or evidence is being presented
- Confer with counsel
- Ask questions of the committee and respond to questions of the committee
- Make a closing statement

IBPR Committee Determination

The committee will complete its evaluation and notify the nurse in writing of its determination within the required time frames. The nurse shall have the opportunity to provide a written rebuttal to the committee's findings which shall become a permanent part of the peer review records. Upon written request, the IBPR committee shall disclose written or oral communications and the records and proceedings of the committee to the State Board of registration or licensure of any state or to a law enforcement authority investigating a criminal matter.

SAFE HARBOR PEER REVIEW

Safe Harbor Peer Review (SHPR) is a process that a nurse may initiate when asked to engage in an assignment or conduct that the nurse believes in good faith would place patients at risk of harm or that would potentially result in a violation of the NPA or BON 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. Safe Harbor also allows for a nurse to request that a determination be made on the medical reasonableness of a physician's order. A Safe Harbor Request to Determine Medical Reasonableness of a Physician's Order Form can be found at the BON website:

<https://www.bon.texas.gov>.

Provisions of Safe Harbor

A nurse who in good faith requests Safe Harbor:

- May not be disciplined or discriminated against for making the request.
- May engage in the requested conduct pending the Peer Review.
- Is not subject to the reporting requirement under Subchapter I of the NPA.
- May not be disciplined by the board for engaging in that conduct while the peer review is pending.

Invoking Safe Harbor

To activate SHPR the nurse must invoke Safe Harbor in good faith. "Good faith" means that the nurse believes that the requested conduct violates a nurse's duty to a patient and that the belief is one a reasonable nurse could hold. At the time the nurse is requested to engage in the activity, the nurse must notify the supervisor making the assignment that Safe Harbor is being invoked. This must be done prior to accepting an assignment or performing the requested conduct. The nurse then must make an initial request in writing that at a minimum includes the following:

- The nurse(s) name making the safe harbor request and his/her signature.
- The date and time of the request.
- The location of where the conduct or assignment is to be completed.
- The name of the person requesting the conduct or making the assignment.
- A brief explanation of why safe harbor is being requested.

A Safe Harbor Quick Request Form may be used as the initial request and can be found at the BON website: <https://www.bon.texas.gov/> under the Forms tab and Practice tab. However, as long as all the pertinent information is included a specific form is not required.

Decision to Engage and Collaboration

A nurse invoking Safe Harbor may engage in the requested conduct or assignment while awaiting SHPR determination unless the conduct or assignment is one in which:

- The nurse lacks the basic knowledge, skills, and abilities that would be necessary to render the care or engage in the conduct requested or assigned at a minimally competent level such that engaging in the conduct or assignment would expose one or more patients to an unjustifiable risk or harm.
- The requested conduct or assignment would constitute unprofessional conduct and /or criminal conduct such as fraud, theft, patient abuse, exploitation, or falsification.

If the nurse lacks the basic knowledge, skills, or abilities necessary for the conduct or assignment the nurse and supervisor must collaborate in an attempt to identify an acceptable assignment that is within the nurse's scope and enhances the delivery of safe patient care. The results of this collaborative effort must be documented in writing and maintained in peer review records by the chair of the peer review committee.

Comprehensive Written Request

Before leaving the work setting at the end of the work period, the nurse must submit a comprehensive request for SHPR. The comprehensive written request must include a minimum of the following information:

- The conduct assigned or requested, including the name and title of the person making the assignment or request
- A description of the practice setting(e.g., the nurse's responsibilities, resources available, extenuating or contributing circumstances impacting the situation)
- A detailed description of how the conduct would have violated the nurse's duty to a patient or any other provision of the NPA and BON rules. If possible, reference the specific standard or other section of the NPA and /or BON rules the nurse believes would have been violated
- Any other copies of pertinent documentation available at the time. Additional documents may be submitted to the committee when available at a later time; and
- The nurse's name, title, and relationship to the supervisor making the assignment or request

The BON Comprehensive Request for Safe Harbor Form may be used but is not required. The form may be found on the BON website under the Forms and Practice tabs. The nurse invoking Safe Harbor is responsible for keeping a copy of the request.

Protections of Safe Harbor

Under state law:

- A nurse may not be suspended, terminated, or otherwise disciplined or discriminated against for requesting Safe Harbor in good faith
- A nurse or other person may not be suspended, terminated, or otherwise disciplined or discriminated against for advising a nurse in good faith of the nurse's right to request a determination, or of the procedures for requesting a determination
- A nurse is not subject to being reported to the BON and may not be disciplined by the BON for engaging in the conduct awaiting the determination of the SHPR committee. A nurse's protections from disciplinary action by the BON for engaging in the conduct or assignment awaiting peer review remain in place for 48 hours after the nurse is advised of the SHPR committee's determination and does not affect the nurse's protection from retaliation by the facility, agency, entity or employer.

Safe Harbor protections do not apply to any civil action for patient injury that may result from the nurse's practice. Safe Harbor does protect the nurse from retaliatory actions such as demotion, forced change of shifts, pay cut or other retaliatory action and there is no expiration of the protection.

II. TSNO REGION XX PEER REVIEW PROCEDURES

Membership of the Committee:

- The TSNO Region XX Peer Review Committee (PRC) membership will include at least one licensed nurse from each participating district.
- A member nurse shall be appointed by each participating school district. If a District has both RNs and LVNs on staff, the district shall appoint both an RN and an LVN to be on the committee.
- A member nurse should have worked in a school setting for at least two years.
- Each member nurse will be allowed to serve on the committee for two two-year terms or a total of four years.
- The peer review team that will conduct the review will have a minimum of three committee members. If an LVN is being reviewed, at least one LVN will serve on the committee.
- At least one member nurse from participating districts must attend all scheduled Peer Review Committee meetings. The committee will meet once a school year unless a case comes up for review. The chairman will determine the dates and times for extra meetings.
- Each Member of the Committee will sign an Acknowledgment of Service and Confidentiality designating agreement with the policies of the Peer Review Committee.

Standing committee members

TSNO Region XX shall establish the qualifications and duties of standing PRC members, to include a chair, co-chair and secretary.

Voting committee members:

Only registered nurses will be voting members on the PRC. In accordance with 22 TAC 217.19(d) (3) (B) and 217.20(h) (2) (B)-(C), any person(s) with administrative authority for personnel decisions directly relating to the nurse is excluded from committee membership and from attendance at the PRC hearing. A person with administrative authority over the nurse under review may only appear as a fact witness.

PRC members shall:

- Attend all meetings that are called by the Chair.
- Recuse his/herself in a proceeding when the nurse under review is from his/her district.
- Maintain confidentiality regarding all case reviews.

Incident-Based Peer Review Process:

- The PRC shall be activated upon receipt by TSNO Region XX of a District's request for review.
- The chair will contact the necessary school district personnel to set up times to interview persons relevant to the investigation and to gather information. The chair, co-chair and secretary will make up the fact-finding team.

- Once the information has been gathered, the fact-finding team will consider the merits of the complaint and determine if a hearing is warranted or if the complaint should be dismissed.
- If a hearing is warranted, the Chair will notify the nurse by certified mail that his/her practice is being evaluated. All appropriate and required notices shall be given.
- The Chair will schedule a hearing to make a determination based on the facts and information obtained by the fact finding team as well as documents submitted by the complainant and nurse under review. The nurse being reviewed may attend this meeting if she/he wishes and may participate in accordance with his/her due process rights.
- In case the nurse being reviewed is from the district of one of the elected members (Chair, Co-chair, Secretary), another member of the committee should be selected as a replacement in the fact finding team.
- A final report of the Committee's findings will be given to the nurse under review and the initiating entity. Should the Committee determine that BON reportable conduct has occurred, the Chairman will report the nurse to the BON in accordance with the NPA and BON rules.

Timetable for IBPR Process:

- Time from initial request to determination of grounds for hearing or dismissal will be 21 calendar days (prescreening).
- If a hearing is required, it shall be set not less than 21 days nor more than 45 days from the date notice was given to the nurse.
- The nurse under review shall advise the Chair in writing within 14 days of having received the notice whether she/he intends to attend the hearing.
- The nurse and her/his attorney or representative shall be granted access to documents concerning the event at least 15 calendar days prior to the hearing.
- The nurse shall advise the Chair in writing not less than 7 days from the hearing whether she/he will be appearing with counsel or a representative.
- The nurse shall be provided with a witness list and with written testimony or evidence to be considered at the hearing at least 48 hours before the hearing.
- The nurse shall submit documents or written statements to be presented at the hearing to the Chair at least 48 hours prior to the date of the hearing.
- The PRC will issue its final report within 14 days of the hearing based upon the findings of the majority vote of the members.
- The nurse will be provided the PRC final report within 10 days of completion.
- The nurse will then have 10 calendar days to provide a written rebuttal to the Committee's findings which shall become a permanent part of the peer review records.

Safe Harbor Peer Review Process:

- Nurse notifies the supervisor making the assignment/request that Safe Harbor is being invoked.

- Nurse prepares an initial request for Safe Harbor in writing. The Quick Request form may be used. Prior to leaving the work setting, a comprehensive written request for SHPR must be completed. The Comprehensive Request form may be used.
- Nurse and supervisor attempt to work out a mutually satisfactory resolution.
- If no resolution is reached, the request is forwarded to the TSNO Region XX peer review administrator.
- The Committee will make a determination regarding Safe Harbor within 14 calendar days of the request.
- The nurse has the right to appear before the committee, ask and respond to questions, and to make a verbal and/or written statement to explain why s/he believes the requested conduct or assignment would have violated a nurse's duty to a patient.
- The report is submitted to the district after determination by the committee. The nurse supervisor has 48 hours to review the decision by the Committee and deliver it to the nurse with the supervisor's decision about whether the nurse will continue to be requested to engage in the conduct.
- If the Committee finds the requested conduct or assignment **does NOT** violate the nurse's duty, the nurse can engage in the conduct. The protection that the facility is prohibited from retaliating against the nurse for making the request continues indefinitely.
- If the Committee finds the requested conduct or assignment **does** violate the nurse's duty, the protection that the BON cannot discipline the nurse for engaging in the conduct ends in 48 hours after the nurse supervisor notifies the nurse of the Peer Review Committee's determination. The protection that the facility is prohibited from retaliating against the nurse for making the request continues indefinitely.
- The Texas Labor Code explicitly prohibits an employer from giving a nurse an unfavorable job reference for refusing to engage in conduct reportable to the BON or for requesting Safe Harbor Peer review.

Timetable for Safe Harbor Review:

- The unresolved request is forwarded to the TSNO Region XX peer review administrator within one calendar day. The request includes the nurse's request, any supplements, a written description of the supervisor and nurse's attempt to resolve the request and any other documentation/relevant information.
- The Chair shall within two days set a hearing date and advise the nurse and the supervisor of the date of the hearing by telephone call, e-mail or other expeditious means.
- Any written information or statements to be submitted to the PRC for consideration shall be delivered to the PRC Chair at least two days prior to the hearing in copies of 10.
- The nurse's rights during a hearing shall be the same as those rights accorded in an IBPR hearing.
- The PRC will deliver its findings within 14 days of having received the request.

Security and disposition of records:

- All records will be kept by the PRC Chair for three years.
- Unless otherwise required by statute, if the complaint is upheld, deemed a minor incident or a report is made to the BON, the records will be secured for a period of three years at which time they will be destroyed.

Chemical Dependency/Mental Illness:

Should the PRC determine that the nurse under review is compromised by either chemical dependency or mental illness, the following applies:

- The NPA authorizes nurses to be reported to a board-approved peer assistance program in lieu of either being reported to the BON or being reviewed by a nursing peer review committee provided no practice violation has occurred.
- The Texas Peer Assistance Program for Nurses (TPAPN) is the only BON-Approved program for RNs.
- If the nurse is referred and the program is not completed, it is TPAPN's responsibility to report the nurse to the BON.
- If, during the course of an incident-based peer review process, there is evidence of nursing practice violations in conjunction with evidence of impaired nursing practice, the incident-based peer review process must be suspended, and the nurse reported to the board in accordance with NPA (TOC) 301.410 (b).
- The PRC may need to re-convene for the sole purpose of determining whether or not external factors contributed to the incident that led to peer review. (Only external factors are being reviewed not the nurse's practice).

APPENDIX

A. 22 Texas Administrative Code Sections 217.19 and 217.20

B. Safe Harbor Quick Request Form

C. Comprehensive Request of Safe Harbor Form

D. Safe Harbor Request to Determine Medical Reasonableness of a Physician's Order

Revision: 2/10/2017 Jennifer Krueger, RN
TSNO Region XX Peer Review Committee