

Licensure Eligibility

Texas Administrative Code

<u>TITLE 22</u>	EXAMINING BOARDS
<u>PART 11</u>	TEXAS BOARD OF NURSING
<u>CHAPTER 213</u>	PRACTICE AND PROCEDURE
RULE §213.27	Good Professional Character

(a) Every individual who seeks to practice nursing in Texas must have good professional character. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

(b) The Board defines good professional character as the integrated pattern of personal, academic, and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice. An individual must maintain good professional character to ensure that he/she is able to consistently act in the best interest of patients/clients and the public. In all cases, it is the individual's burden to provide evidence of good professional character in order to obtain or retain licensure.

(c) When evaluating whether an individual has demonstrated good professional character in an eligibility or disciplinary matter, the Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) shall consider the following factors:

- (1) the individual's age, education, experience, and behavioral history;
- (2) whether the individual is able to distinguish right from wrong;
- (3) whether the individual is able to think and act rationally;
- (4) whether the individual is able to keep promises and honor obligations;
- (5) whether the individual is accountable for his/her own behavior and/or accepts responsibility for his/her actions;
- (6) whether the individual is able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable;
- (7) whether the individual is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;
- (8) whether the individual is able to make appropriate judgments and decisions that could affect patients/clients and/or the public;
- (9) whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct) of this title, and generally accepted standards of nursing practice;
- (10) whether the individual is able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the health status of patients/clients or the public and/or could protect

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patients/clients or the public from an unnecessary risk of harm; and

(11) any other behaviors bearing on the individual's honesty, accountability, trustworthiness, reliability, or integrity.

(d) The following eligibility and disciplinary sanction policies, as applicable, and §213.28(d) of this chapter (relating to Licensure of Individuals with Criminal History) shall be used by the Executive Director, Board, and SOAH in conjunction with this section when evaluating good professional character in eligibility and disciplinary matters, as applicable:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(e) Actions from Other Jurisdictions.

(1) A certified copy of an order of adverse action or a judgment from another jurisdiction relating to an individual's license or privilege to practice nursing in that jurisdiction is prima facie evidence of the matters contained in such order or judgment and is conclusive evidence that the disciplined individual committed the misconduct set forth in the order or judgment.

(2) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas during the period of discipline imposed by a disciplining jurisdiction, or, in the case of revocation or surrender, prior to licensure reinstatement in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.

(3) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas following the completion of the disciplinary period assessed by a disciplining jurisdiction, or, in the case of revocation or surrender, after the reinstatement of licensure in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.

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CHAPTER 213

RULE §213.28

EXAMINING BOARDS

TEXAS BOARD OF NURSING

PRACTICE AND PROCEDURE

Licensure of Individuals with Criminal History

(a) This section establishes the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure. This section applies to all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

(b) The practice of nursing involves patients/clients, their families, significant others, healthcare professionals, and the public in diverse settings. Nurses practice in autonomous roles with individuals who are physically, emotionally, and financially vulnerable. Nurses have access to personal information about all aspects of a patient/client's life, resources, and relationships. Therefore, criminal behavior, whether violent or non-violent, directed against persons, property, or the public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:

(1) Offenses against the person. These types of crimes relate to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable, including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized and may be subject to harm by similar criminal behavior;

(C) nurses are frequently in situations where they provide intimate care to patients/clients or have contact with partially clothed or fully undressed patient/client who are vulnerable to exploitation, both physically and emotionally;

(D) nurses are in the position to have access to privileged information and opportunity to exploit patient/client vulnerability; and

(E) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat similar misconduct in the workplace and raise concern regarding the individual's ability to provide safe, competent care to patients/clients.

(2) Offenses against property.

(A) These types of crimes relate to the practice of nursing because:

(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) nurses have access to persons who are especially vulnerable, including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized, and may provide easy opportunity to be victimized;

(iii) nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, a checkbook or credit cards, etc.) with them to a health care facility with no security to prevent theft or exploitation;

(iv) nurses frequently provide care in private homes and home-like settings where all of the patient/client's property and valuables are accessible to the nurse;

(v) nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and

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(vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat similar misconduct in the workplace and, therefore, place patient/clients' property at risk.

(B) Certain crimes involving property, such as cruelty to animals and criminal trespass, may also concern the safety of persons and, as such, raise concern about the propensity of the nurse to repeat similar conduct in the workplace, placing patients/clients at risk.

(3) Offenses involving fraud or deception. These types of crimes relate to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized;

(C) nurses are in the position to have access to privileged information and opportunity to exploit patient/client vulnerability;

(D) nurses are frequently in situations where they must report patient/client condition, record objective/subjective information, provide patients/clients with information, and report errors in the nurse's own practice or conduct;

(E) the nurse-patient/client relationship is of a dependent nature; and

(F) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat similar misconduct in the workplace and, therefore, place patients/clients at risk.

(4) Offenses involving lying and falsification. These crimes are related to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized;

(C) nurses are frequently in situations where they must report patient/client condition, record objective/subjective information, provide patients/clients with information, and report errors in the nurse's own practice or conduct;

(D) honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;

(E) falsification of documents regarding patient/client care, incomplete or inaccurate documentation of patient/client care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient/client care in the future;

(F) falsifying employment applications and/or failing to answer specific questions that would have affected a decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;

(G) falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and

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(H) a crime of lying or falsification raises concerns about the nurse's propensity to engage in similar conduct while practicing nursing and place patients/clients at risk.

(5) Offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance. These crimes relate to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized;

(C) nurses provide care to critical care, geriatric, and pediatric patients/clients who are particularly vulnerable, given the level of vigilance demanded under the circumstances of their health condition;

(D) nurses are able to provide care in private homes and home-like setting without supervision;

(E) nurses who have a substance use disorder or who abuse or misuse drugs or alcohol may have impaired judgment while caring for patients/clients and are at risk for harming patients/clients;

(F) an offense regarding the delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug, or mood altering drug raises concern about the nurse's propensity to repeat similar misconduct in the workplace; and

(G) Driving While Intoxicated offenses involve the use and/or abuse of mood altering drugs while performing a state licensed activity affecting public safety, and repeated violations suggest a willingness to continue in reckless and dangerous conduct or an unwillingness to take appropriate corrective measures, despite previous disciplinary action by the state.

(c) The Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) shall utilize this section in conjunction with the Disciplinary Guidelines for Criminal Conduct (Guidelines) set forth in subsection (d) of this section in all disciplinary and eligibility matters involving an individual's criminal history. Taken together, this section and the Guidelines identify the categories of criminal offenses, as well as specific criminal offenses, that the Board has determined relate to or affect the practice of nursing. However, neither this section nor the Guidelines contain an exhaustive listing of all of the criminal offenses that may affect an individual's ability to obtain or retain a license or privilege to practice nursing in Texas. In matters involving an offense that is not specifically listed in this section or the Guidelines, including a violation of another state law, federal law, the Uniform Code of Military Justice, or other law, the appropriate sanction shall be determined by comparing that offense to the specified categories of crimes in this section and the specific crimes in the Guidelines that contain substantially similar elements.

(d) The Guidelines are as follows:

[Attached Graphic](#)

(e) The Executive Director, the Board, and SOAH shall consider the following factors in conjunction with the Guidelines when determining the appropriate sanction in disciplinary and eligibility matters involving criminal conduct. To the extent applicable, this section and the Guidelines should also be considered in conjunction with the recommended sanctions in the

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Board's Disciplinary Matrix, located at §213.33(b) (relating to Factors Considered for Imposition of Penalties/Sanction) of this chapter. If multiple criminal offenses are present in a single case, the most severe sanction recommended for any one of the individual offenses should be considered by the Board pursuant to Tex. Occ. Code §301.4531. The factors include:

(1) the knowing or intentional practice of nursing without a license issued under the Nursing Practice Act (NPA);

(2) any felony or misdemeanor involving moral turpitude;

(3) the nature and seriousness of the crime;

(4) the relationship of the crime to the purposes for requiring a license to engage in nursing practice;

(5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;

(7) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole, or re-vocation of mandatory supervision;

(8) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(9) the extent and nature of the person's past criminal activity;

(10) the age of the person when the crime was committed;

(11) the amount of time that has elapsed since the person's last criminal activity;

(12) the conduct and work activity of the person before and after the criminal activity;

(13) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(14) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) The Board is required under Tex. Occ. Code §301.4535(b) to deny an individual initial licensure or licensure renewal and/or to revoke an individual's nursing license or privilege to practice nursing in Texas upon a final conviction or a plea of guilty or nolo contendere for a criminal offense specified in §301.4535(a). Further, pursuant to Tex. Occ. Code §53.021(b), the Board is required to revoke an individual's license or privilege to practice nursing in Texas upon the individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(g) In matters involving an individual's criminal history, the record of conviction, order, or deferred adjudication is conclusive evidence of guilt. Further, in addition to the remedies available to the Board pursuant to Tex. Occ. Code §301.452(b)(3) and (4) and Tex. Occ. Code Chapter 53, an individual guilty of a felony is conclusively deemed to have violated Tex. Occ. Code §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

(h) It shall be the responsibility of the individual seeking to obtain or retain a license or privilege to practice nursing in Texas, to the extent possible, to obtain and provide to the Board recommendations of the prosecution, law enforcement, and correctional authorities. The individual shall also furnish proof in such form as may be required by the Board that the individual has maintained a record of steady employment, has supported his or her dependents,

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has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution, as may have been ordered in all criminal cases.

(i) If requested, and to the extent possible, it shall be the responsibility of the individual seeking to obtain or retain a license or privilege to practice nursing in Texas to ensure that legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional is provided in a timely fashion to the Board. Failure to provide complete, legible, and accurate documentation will result in the delay of the resolution of an eligibility or disciplinary matter involving an individual's criminal history.

(j) The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the NPA or rules of the Board, the Board may consider such evidence as a factor in its deliberations regarding any eligibility or disciplinary matter.

(k) Youthful Indiscretions. Some criminal behavior that would otherwise affect an individual's licensure status may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior utilizing the factors set out in §213.27 of this chapter (relating to Good Professional Character), this section, and the following criteria:

- (1) age of 22 years or less at the time of the behavior;
- (2) the offense was not classified as a felony;
- (3) absence of criminal plan or premeditation;
- (4) presence of peer pressure or other contributing influences;
- (5) absence of adult supervision or guidance;
- (6) evidence of immature thought process/judgment at the time of the activity;
- (7) evidence of remorse;
- (8) evidence of restitution to both victim and community;
- (9) evidence of current maturity and personal accountability;
- (10) absence of subsequent undesirable conduct;
- (11) evidence of having learned from past mistakes;
- (12) evidence of current support structures that will prevent future criminal activity; and
- (13) evidence of current ability to practice nursing in accordance with the NPA, Board rules, and generally accepted standards of nursing. If an individual's behavior is deemed to be a youthful indiscretion under this subsection, then the matter may be eligible for resolution through a lower sanction than would otherwise be considered.

(l) Minor Criminal History. The Board has adopted a Minor Criminal History Policy. Some criminal behavior that would otherwise affect an individual's licensure status may fall within the Board's Minor Criminal History Policy. If behavior is deemed to fall within the Board's Minor Criminal History Policy, then the matter may be closed without further action, in accordance with the provisions of that policy. However, the mere listing of a criminal offense in the Board's Minor Criminal History Policy does not mean that the offense does not affect or is not related to the practice of nursing or that an individual will not be subject to licensure action due to the criminal behavior. To the extent that a conflict exists between this section, the Guidelines, and the Board's Minor Criminal History Policy, this section and the Guidelines control.

(m) The following eligibility and disciplinary sanction policies, as applicable, shall be used by the Executive Director, the Board, and SOAH in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

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(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(n) The Executive Director is authorized to close an eligibility file when the individual seeking licensure has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days of the request or proposed denial, as applicable.

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PRACTICE AND PROCEDURE

RULE §213.29

Fitness to Practice

(a) Each individual who seeks to practice nursing in Texas must possess current fitness to practice. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas and applies in all eligibility and disciplinary matters. Each individual has a duty to self-evaluate to ensure that he/she is fit to practice before providing nursing care.

(b) An individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice. An individual's fitness to practice may be subject to Board review due to an individual's substance use disorder; possession, abuse, or misuse of alcohol or drugs, prescribed or otherwise; or physical or mental health condition. This is not an exhaustive list. If an individual exhibits any conduct that may prevent him/her from practicing nursing with reasonable skill and safety, the Board will review the individual's conduct to determine if he/she possesses current fitness to practice.

(c) Evaluations. If an individual exhibits conduct that raises questions about his/her fitness to practice, the Board may require the individual to undergo a physical and/or psychological evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penal-ties/Sanctions). Pursuant to §301.4521, an individual subject to this rule is responsible for paying the costs of the evaluation. Utilizing the results of the evaluation and the individualized facts of the case, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from

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a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state.

(d) Substance Use Disorders and Abuse/Misuse of Alcohol or Drugs.

(1) Individuals who have been diagnosed, treated, or hospitalized for a substance use disorder that may impair their ability to practice nursing safely, will, at a minimum, be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months, through verifiable and reliable evidence, in order to obtain or retain licensure. Verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. Depending upon the individualized facts of each case, an individual may be required to establish this period of sobriety and abstinence prior to being permitted to practice nursing in this state. If appropriate, based upon the individualized facts of the case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board or through participation in a Board-approved peer assistance program created pursuant to the Texas Health and Safety Code Chapter 467 or other lawfully authorized peer assistance program. Licensure conditions/restrictions may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(2) Individuals who have not been diagnosed, treated, or hospitalized for a substance use disorder, but have nonetheless exhibited behaviors raising concerns about the individual's ability to practice nursing with reasonable skill and safety due to the possession, misuse, or abuse of alcohol or drugs, prescribed or otherwise, including related criminal conduct, may be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months, through verifiable and reliable evidence, in order to obtain or retain licensure. Verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. If appropriate, and depending upon the individualized facts of each case, an individual may be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board, which may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(3) An individual's prior substance use disorder diagnosis or history of prior criminal conduct involving drugs or alcohol, prescribed or otherwise; or misuse or abuse of alcohol or drugs, prescribed or otherwise; will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

(e) Mental Health Conditions and Diminished Capacity.

(1) Individuals who have been diagnosed, treated, or hospitalized for a mental health condition that may impair their ability to practice nursing safely, will, at a minimum, be required to demonstrate controlled behavior and consistent compliance with recommended treatment,

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including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. Depending upon the individualized facts of each case, an individual may be required to establish controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, prior to being permitted to practice nursing in this state. If appropriate, and depending upon the individualized facts of the case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board or through participation in a Board-approved peer assistance program created pursuant to the Texas Health and Safety Code Chapter 467. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(2) Individuals who have not been diagnosed, treated, or hospitalized for a mental health condition, but have nonetheless exhibited behaviors raising concerns about the individual's fitness to practice due to a mental health condition or diminished capacity may be required to demonstrate controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. If appropriate, and depending upon the individualized facts of each case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(3) An individual's prior mental health diagnosis or behavioral history will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

(f) Other Medical Conditions.

(1) The Board recognizes that individuals may have a variety of medical conditions that require medical treatment and/or a medication regime that includes prescription drugs. Although authorized by law and medically necessary, prescription drugs may affect an individual's fitness to practice. An individual must be able to function safely while under the effects of prescription drugs. An individual who abuses his/her prescription drugs or who has been unable to stabilize the synergistic effect of his/her medications may not possess current fitness to practice. Further, some prescription medications may cause side effects that affect an individual's fitness to practice, even when taken properly. In some cases, an individual's physical condition may prevent the individual from practicing nursing safely. In addition to an individual's medication regime, the Board will review an individual's behavior, diagnosis/condition, and treatment plan to determine if he/she possesses current fitness to practice. Based upon the individualized facts of the case, including the results of a required evaluation, if any, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, including limiting the practice setting to one in which the individual is safe to practice nursing.

(2) An individual's prior medical condition and/or diagnosis will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

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(g) Authority of Executive Director. In eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may:

(1) review information submitted by the individual and materials and information gathered or prepared by Board Staff; including evidence of the individual's safe practice, compliance with the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice; verification of compliance with treatment; and evidence of sobriety;

(2) identify any deficiencies in the information necessary for a determination regarding the individual's current fitness to practice;

(3) close any eligibility file in which the individual seeking licensure has failed to respond to a request for information from the Board or to a proposal for denial of licensure within 60 days of the request or proposed denial, as applicable;

(4) approve an individual's eligibility for licensure, enter eligibility orders as authorized in §211.7 (relating to Executive Director) of this title, and approve renewals, without Board ratification, when the evidence is clearly insufficient to support denial of licensure; and

(5) propose eligibility and disciplinary orders in eligibility, disciplinary, and renewal matters consistent with the Board's rules and regulations and the interests of public safety and enter disciplinary orders as authorized in §211.7 of this title.

(h) The following eligibility and disciplinary sanction policies, as applicable, shall be used by the Executive Director, SOAH, and the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

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PRACTICE AND PROCEDURE

RULE §213.30

Declaratory Order of Eligibility for Licensure

(a) For purposes of this section only, "petitioner" means an individual who:

(1) is enrolled or planning to enroll in an educational nursing program that prepares individuals for initial licensure as a registered or vocational nurse;

(2) seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement); or

(3) seeks licensure by examination pursuant to §217.2 (relating to Licensure by Examination for

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Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions) or §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction) of this title.

(b) An individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement due to issues discussed in this rule may petition the Board for a declaratory order as to his or her eligibility.

(c) A petitioner must submit a petition, on forms provided by the Board, and the following information:

(1) a statement by the petitioner indicating the reason(s) and basis of his/her potential ineligibility;

(2) if the potential ineligibility is due to the petitioner's criminal history, all court documents, including, but not limited to: indictments, agreements for pre-trial diversion or deferred prosecution, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, as applicable;

(3) if the potential ineligibility is due to the petitioner's mental health condition or diminished capacity, verifiable and reliable evidence of controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, as applicable;

(4) if the potential ineligibility is due to the petitioner's substance use disorder and/or the abuse/misuse of alcohol or drugs, verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance;

(5) the required fee, which is not refundable; and

(6) an evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions), as applicable.

(d) Once the Board has received all necessary information, including the information required by subsection (c) of this section, an investigation of the petition and the petitioner's eligibility shall be conducted. The investigation will be based upon an evaluation of the individualized factors of the case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the petitioner's ability to meet the requirements of §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice) of this chapter, as applicable. Based upon the individualized facts of the case, the Board may approve licensure without encumbrance, impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, or deny licensure.

(e) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(f) If an individual is seeking licensure by endorsement pursuant to §217.5 of this title and has been licensed to practice nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the provisions of §213.27(e) of this chapter will apply to the eligibility of the petitioner.

(g) If a petitioner's potential ineligibility is due to his/her criminal history, the provisions of §213.28 of this chapter will apply to the eligibility of the petitioner.

(h) If a petitioner's potential ineligibility is due to a substance use disorder and/or the

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abuse/misuse of alcohol or drugs, a mental health condition or diminished capacity, or another issue relating to the individual's fitness to practice, the provisions of §213.29 of this chapter will apply to the eligibility of the petitioner.

(i) If the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. The hearing shall be conducted in accordance with §213.22 of this chapter (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this chapter (relating to Decision of the Board).

(j) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. If the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

(k) The following eligibility and disciplinary sanction policies, as applicable, shall be used by the Executive Director, SOAH, and the Board in evaluating an eligibility matter under this section:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(l) If an individual seeking licensure by endorsement under §217.5 of this title or licensure by examination under §217.2 or §217.4 of this title should have had an eligibility issue addressed pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order under this section, and the individual will be treated as a petitioner under this section and will be required to pay the non-refundable fee required by this section and §223.1 of this title (relating to Fees).

(m) This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.

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Sec. 301.252. LICENSE APPLICATION. (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:

- (1) has good professional character;
- (2) has successfully completed a program of professional or vocational nursing education approved under Section [301.157\(d\)](#); and
- (3) has passed the jurisprudence examination approved by the board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements under this chapter and board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The board shall adopt rules for the jurisprudence examination under Subsection (a)(3) regarding:

- (1) the development of the examination;
- (2) applicable fees;
- (3) administration of the examination;
- (4) reexamination procedures;
- (5) grading procedures; and
- (6) notice of results.

(b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:

- (1) a professional nursing school approved under Section [301.157\(d\)](#); or
- (2) a school of professional nurse education located in another state or a foreign country.

(c) The board by rule shall determine acceptable levels of education under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.015, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 19, eff. September 1, 2007.

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Sec. 301.257. DECLARATORY ORDER OF LICENSE ELIGIBILITY. (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or

(2) is an applicant for a license.

(b) The petition must state the basis for the person's potential ineligibility.

(c) The board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

(d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(e) If the board determines that a ground for ineligibility does not exist, instead of issuing an order, the board shall notify the petitioner in writing of the board's determination on each ground of potential ineligibility. If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

(f) The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

(g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

(h) The information required under Subsection (g) must be submitted in a form approved by the board.

(i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

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(j) The board may file a petition under this section based on the results of a criminal history record information check conducted under Section [301.2511](#). The board by rule shall adopt requirements for the petition and determination under this subsection. The rules must:

(1) identify the criminal offenses that constitute grounds for the board to file the petition; and

(2) describe the documents required by the board to make a determination of license eligibility.

(k) The board shall make a determination of license eligibility under Subsection (j) not later than the 120th day after the date the person submits the required documents to the board under that subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.123(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.018, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 8, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. [1058](#)), Sec. 3, eff. September 1, 2013.

Sec. 301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonating or acting as a proxy for another person in the licensing examination required under Section [301.253](#) or [301.255](#);

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(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;

(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law;

(9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

(c) The board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

(d) The board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the board under this section is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.124(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.045, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. [1366](#)), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 26, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. [1058](#)), Sec. 5, eff. September 1, 2013.

Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a) In this section:

(1) "Applicant" means:

(A) a petitioner for a declaratory order of eligibility for a license; or

(B) an applicant for an initial license or renewal of a license.

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(2) "Evaluation" means a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

(b) The board may require a nurse or applicant to submit to an evaluation only if the board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of:

- (1) physical impairment;
- (2) mental impairment; or
- (3) chemical dependency or abuse of drugs or alcohol.

(c) A demand for an evaluation under Subsection (b) must be in writing and state:

- (1) the reasons probable cause exists to require the evaluation; and
- (2) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

(d) If the nurse or applicant refuses to submit to the evaluation, the board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the board's demand for an evaluation. The order may not be vacated or modified under Section [2001.058](#), Government Code.

(e) If a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under Subsection (d), the board may:

- (1) refuse to issue or renew a license;
- (2) suspend a license; or
- (3) issue an order limiting the license.

(f) The board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than a reason listed in Subsection (b). A request for an evaluation under this subsection must be in writing and state:

- (1) the reasons for the request;
- (2) the type of evaluation requested;
- (3) how the board may use the evaluation;
- (4) that the nurse or applicant may refuse to submit to an evaluation; and

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(5) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

(g) If a nurse or applicant refuses to consent to an evaluation under Subsection (f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant:

(1) not later than the 30th day before the date of the hearing, notifies the board that an evaluation will be introduced into evidence at the hearing;

(2) provides the board the results of that evaluation;

(3) informs the board of any other evaluations by any other practitioners; and

(4) consents to an evaluation by a practitioner that meets board standards established under Subsection (h).

(h) The board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under this section. The board shall maintain a list of qualified practitioners. The board may solicit qualified practitioners located throughout the state to be on the list.

(i) A nurse or applicant shall pay the costs of an evaluation conducted under this section.

(j) The results of an evaluation under this section are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be:

(A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under this chapter;

(B) included in the findings of fact and conclusions of law in a final board order; and

(C) disclosed to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, and to which the board has referred the nurse.

(k) If the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the board's records.

(l) The board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under this section.

(m) The authority granted to the board under this section is in addition to the board's authority to make licensing decisions under this chapter.

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Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 10, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 4, eff. September 1, 2011.

Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:

(1) denial of the person's application for a license, license renewal, or temporary permit;

(2) issuance of a written warning;

(3) administration of a public reprimand;

(4) limitation or restriction of the person's license, including:

(A) limiting to or excluding from the person's practice one or more specified activities of nursing; or

(B) stipulating periodic board review;

(5) suspension of the person's license;

(6) revocation of the person's license; or

(7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

(1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;

(2) participate in a program of education or counseling prescribed by the board, including a program of remedial education;

(3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board;

(4) perform public service the board considers appropriate; or

(5) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

(c) The board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

(d) If the board suspends, revokes, or accepts surrender of a license, the board may impose conditions for reinstatement that the person must satisfy before the board may issue an unrestricted license.

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Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.046, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 11, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. [1058](#)), Sec. 6, eff. September 1, 2013.

Sec. 301.4531. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this chapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(b) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the board and has previously complied with board rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

(c) In the case of a person described by:

(1) Subsection (b)(1)(A), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

(2) Subsection (b)(1)(B), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 27, eff. September 1, 2007.

Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES.

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(a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

- (1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;
- (2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;
- (3) sexual assault under Section 22.011, Penal Code;
- (4) aggravated sexual assault under Section 22.021, Penal Code;
- (5) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code;
- (6) aggravated assault under Section 22.02, Penal Code;
- (7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;
- (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code;
- (9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;
- (10) an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072, Penal Code, punished as a felony;
- (11) an agreement to abduct a child from custody under Section 25.031, Penal Code;
- (12) the sale or purchase of a child under Section 25.08, Penal Code;
- (13) robbery under Section 29.02, Penal Code;
- (14) aggravated robbery under Section 29.03, Penal Code;
- (15) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
- (16) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

(a-1) An applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the board establishes by rule criteria that would permit the issuance or renewal of the license.

(b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

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(c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.46, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 12, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. 743), Sec. 8, eff. September 1, 2013.

Sec. 301.454. NOTICE AND HEARING. (a) Except in the case of a temporary suspension authorized under Section 301.455 or 301.4551 or an action taken in accordance with an agreement between the board and a license holder, the board may not take any disciplinary action relating to a license unless:

(1) the board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and

(2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.

(b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.

(c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the board proposes to:

(1) refuse to admit the person to examination;

(2) refuse to issue a license or temporary permit;

(3) refuse to renew a license; or

(4) suspend or revoke the person's license or permit.

(d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board for any sanction imposed as the result of a hearing conducted by that office.

(e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:

(1) fails to submit a renewal application; or

(2) submits an application that:

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- (A) is incomplete;
(B) shows on its face that the person does not meet the renewal requirements; or
(C) is not accompanied by the correct fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 7, eff. September 1, 2013.

Sec. 301.455. TEMPORARY LICENSE SUSPENSION OR RESTRICTION. (a) The license of a nurse shall be temporarily suspended or restricted on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.

(b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension or determination to restrict; and

(2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 17th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists. The probable cause hearing shall be conducted as a de novo hearing.

(d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension or restriction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.047, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 5, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 5, eff. September 1, 2011.

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Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR ALCOHOL USE. (a) The board shall temporarily suspend the license of a nurse as provided by Section 301.455 if the nurse is under a board order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse:

- (1) tests positive for alcohol or a prohibited drug;
- (2) refuses to comply with a board order to submit to a drug or alcohol test; or
- (3) fails to participate in the peer assistance program and the program issues a

letter of dismissal and referral to the board for noncompliance.

(b) For the purposes of Section 301.455(c), proof of the elements required for the board to suspend a license under this section is proof that probable cause of a continuing and imminent threat to the public welfare exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 13, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 6, eff. September 1, 2011.

Sec. 301.456. EVIDENCE. A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.124(b), eff. Sept. 1, 2001.

Sec. 301.457. COMPLAINT AND INVESTIGATION. (a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a nurse. The complaint must be in writing and signed by the complainant.

(b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a nurse that requires a determination of nursing competency shall be reviewed by a board member, consultant, or employee with a nursing background the board considers sufficient.

(c) On the filing of a complaint, the board:

(1) may conduct a preliminary investigation into the identity of the nurse named or described in the complaint;

(2) shall make a timely and appropriate preliminary investigation of the complaint; and

(3) may issue a warning or reprimand to the nurse.

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(d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.

(e) The board shall conduct an investigation of the complaint to determine:

(1) whether the nurse's continued practice of nursing poses a risk of harm to clients or other persons; and

(2) whether probable cause exists that a nurse committed an act listed in Section 301.452(b) or that violates other law.

(f) In making a determination under Subsection (e), the board shall review the evidence to determine the extent to which a deficiency in care by the registered nurse was the result of deficiencies in the registered nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a registered nurse must be based on the extent to which the registered nurse's conduct was the result of a deficiency in the registered nurse's judgment, knowledge, training, or skill.

(g) If the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control, the board shall report that determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.048, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 15, eff. September 1, 2007.

Sec. 301.458. INITIATION OF FORMAL CHARGES; DISCOVERY. (a) Unless there is an agreed disposition of the complaint under Section 301.463, if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall file formal charges against the nurse.

(b) A formal charge must:

(1) be written;

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(2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and

(3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.

(c) A copy of the formal charge shall be served on the nurse or the nurse's counsel of record.

(d) The board shall adopt reasonable rules to promote discovery by each party to a contested case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.049, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 8, eff. September 1, 2013.

Sec. 301.459. FORMAL HEARING. (a) The board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. The State Office of Administrative Hearings shall conduct a formal hearing.

(b) In any hearing under this section, a nurse is entitled to appear in person or by counsel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.050, eff. Sept. 1, 2003.

Sec. 301.460. ACCESS TO INFORMATION. (a) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:

(1) all known exculpatory information in the board's possession; and
(2) information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

(b) The board is not required to provide:

(1) board investigative reports or investigative memoranda;
(2) the identity of nontestifying complainants;

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- (3) attorney-client communications;
- (4) attorney work product; or
- (5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.461. ASSESSMENT OF COSTS. The board may assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE. The board may revoke a nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.051, eff. Sept. 1, 2003.

Sec. 301.463. AGREED DISPOSITION. (a) Unless precluded by this chapter or other law, the board may dispose of a complaint by:

- (1) stipulation;
- (2) agreed settlement;
- (3) agreed order; or
- (4) dismissal.

(b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.

(c) An agreed order is a public record.

(d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

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Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.052, eff. Sept. 1, 2003.

Sec. 301.464. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section [2001.056](#), Government Code; and
- (2) an informal proceeding held in compliance with Section [2001.054](#), Government Code.

(b) Rules adopted under this section must:

- (1) provide the complainant and the license holder an opportunity to be heard; and
- (2) require the presence of a representative of the board's legal staff or of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.465. SUBPOENAS; REQUEST FOR INFORMATION. (a) Notwithstanding Section [2001.089](#), Government Code, the board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator or by certified mail.

(b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the board. A request or subpoena may not be refused, denied, or resisted unless the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.

(c) The board may pay a reasonable fee for photocopies subpoenaed at the board's request. The amount paid may not exceed the amount the board charges for copies of its records.

(d) The board shall protect, to the extent possible, the identity of each patient named in information received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. [1058](#)), Sec. 9, eff. September 1, 2013.

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Sec. 301.466. CONFIDENTIALITY. (a) A complaint and investigation concerning a nurse under this subchapter, all information and material compiled by the board in connection with the complaint and investigation, and the information described by Subsection (d) are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

(1) a person involved with the board in a disciplinary action against the nurse;

(2) a nursing licensing or disciplinary board in another jurisdiction;

(3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

(d) Notwithstanding Subsection (c), if the board orders a nurse to participate in a peer assistance program approved by the board under Section 467.003, Health and Safety Code, the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings are subject to disclosure:

(1) only to the same extent as information regarding a complaint is subject to disclosure under Subsection (b); or

(2) in a subsequent matter relating to the board order or a subsequent violation of this chapter or a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.053, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 10, eff. September 1, 2013.

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Sec. 301.467. REINSTATEMENT. (a) On application, the board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

(b) An application to reinstate a revoked license:

(1) may not be made before the first anniversary of the date of the revocation;

and

(2) must be made in the manner and form the board requires.

(c) If the board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.054, eff. Sept. 1, 2003.

Sec. 301.468. PROBATION. (a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

(1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing;

(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board; or

(3) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the board.

(b) At the time the probation is granted, the board shall establish the term of the probationary period.

(c) At any time while the person remains subject to the probation order, the board may hold a hearing and rescind the probation and enforce the board's original action in denying or suspending the license. The hearing shall be called by the presiding officer of the board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:

(1) sets the time and place for the hearing; and

(2) contains the charges or complaints against the probationer.

(d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the board's records.

(e) A hearing under this section is limited to a determination of whether the person violated the terms of the probation order under Subsection (a) and whether the board should:

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(1) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or

(2) enter an order denying, suspending, or revoking the person's license.

(f) If one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by:

(1) a positive drug or alcohol test result;

(2) refusal to submit to a drug or alcohol test as required by the board; or

(3) a letter of noncompliance from the peer assistance program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.055, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 14, eff. June 19, 2009.

Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a final disciplinary action, including a warning or reprimand, against a nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.056, eff. Sept. 1, 2003.