

**APPOINTMENT OF A TASK FORCE TO REVIEW AND MAKE RECOMMENDATIONS REGARDING
LICENSURE, ELIGIBILITY AND DISCIPLINARY RULES AND POLICIES**

Summary of Request: Consider appointment of a Task Force and issuance of charges to review rules regarding licensure, eligibility and discipline.

Background and Historical Perspective:

The Board has established several voluntary advisory committees which identify, study, and analyze major issues that significantly or potentially impact the regulation and practice of nursing. These advisory committees include the Advance Practice Nursing Advisory Committee (APNAC), the Advisory Committee on Education (ACE) and Nursing Practice Advisory Committee (NPAC). Representative of nursing practice and education, nursing organizations, and state agencies heavily involved with nursing are often included on these Committees. Ex officio members are invited on an ad hoc basis as needed to address pertinent issues. The Board has successfully used these advisory committees to address major rule modifications.

However, the Board has not utilized these committees with regard to rules affecting licensure discipline or eligibility. These rules have normally been presented to the Board based on Staff recommendations. Legal and Enforcement Staff have been heavily involved based on the extensive use of these rules during investigations, informal hearings and contested case proceedings before SOAH. The product of these efforts are seen in the rules at issue, the disciplinary sanction policies and the recently adopted disciplinary guidelines pilot. Although the NPAC committee suggested extensive amendments to the unprofessional conduct rules and minimum standard rules, the Committee did not make recommendations on rules related to discipline and eligibility.

Since the consolidation of LVN and RN Boards in February 1, 2004, the importance of having well defined criteria for minimum professional character and eligibility for licensure has risen significantly. The NPA makes it clear that all nurses must demonstrate "good professional character" in order to obtain or retain a nursing license. House Bills 2208 and 660 added requirements that applicants for licensure submit to FBI criminal background check prior to issuance of a license. In 2005, the Legislature provided funding for Board to conduct FBI criminal background checks on all nurse applicants over a ten year period. New licensure provisions of NPA include denial or revocation for certain felony crimes and criminal sex offenses.

Additionally, there is increasing pressure on nursing schools to conduct criminal background checks on its nursing students prior to admission because a student's criminal background may be an impediment to clinical experiences. The individuals currently enrolled in a nursing educational program are required to receive both verbal and written information "regarding conditions that may disqualify graduates from licensure."

Eligibility rules are not unique to nursing and similar cases are routinely heard before the State Office of Administrative Hearings for other professions. Similarly, the Board's licensure process is subject to the provision of Chapter 53 of the Texas Occupations Code (Consequences of Criminal Convictions) as well as the provisions of the NPA.

The need for consistency in the Board's processes for eligibility and discipline is apparent. Staff believes that an advisory committee specifically for this purpose would improve the Board's rules by allowing interested parties to participate in development of recommendations to the Board. Staff believes that experts in areas relevant to licensure can provide evidence-based recommendations that would improve the Board's disciplinary process.

STAFF RECOMMENDATION:

Move to adopt committee composition recommended by staff of the Advisory Committee on Licensure, Eligibility and Discipline to consist of thirteen (11) members including one Board member, staff, and representatives from the nursing community. Further, move to adopt the following charge: review and makes recommendations for revision to the following rules and any applicable policies:

1. Section 213.27; Good Professional Conduct
2. Section 213.28; Licensure of Persons with Criminal Convictions
3. Section 213.29; Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters; and
4. Section 213.30; Declaratory Order of Eligibility for Licensure; and
5. Section 213.33; Factors Considered for Imposition of Penalties/Sanction and/or Fines.

Proposed Advisory Committee

Board of Nurse Examiners Member:

Board Member, Serving as Chairperson

Board Staff:

General Counsel

Director of Enforcement

Vocational Nursing Representatives:

Texas Association of Vocational Nurse Educators (TAVNE)

Licensed Vocational Nurses Association of Texas (LVNAT)

Texas League of Vocational Nurses (TLVN)

Professional Nursing Representatives:

Texas Organization of Associate Degree Nursing (TOADN)

Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE)

Texas Nurses Association (TNA)

Vocational Nursing and Professional Nursing - Joint Representation:

Texas Organization of Nurse Executives (TONE)

Coalition for Nurses in Advanced Practice

Proposed Representatives to Serve in Advisory Capacity Only

Representative from the Texas Office of Attorney General

Representative from the Texas Peer Assistance Program for Nurses

Representative from the State Office of Administrative Hearings

Expert in Forensic Psychological Testing and Polygraph

Expert in Sex Offender Crimes and Treatment

Additional Experts as needed and requested by Committee