

Disciplinary Guidelines for Criminal Conduct

Summary of Request:

To request that the Board adopt the Disciplinary Guidelines for Criminal Conduct which is attached. The guidelines propose criteria for the staff to use in proposing eligibility and disciplinary orders involving individuals with criminal conduct for the Board's approval. The criteria is generally based on a one time incident. The disciplinary grid was originally proposed as a pilot project for a nine month period for staff to use and make revisions. The revisions made to the grid were the modification to felony drug offenses and the addition of factors that the Board would consider in making its decision. The applicable provisions of the Texas Penal Code and Health & Safety Code were inserted into the grid with the new provisions of the Nursing Practice Act and, based on Staff's general experience, recommendations were applied. These guidelines are intended to provide consistency and guidance to Staff in its recommended Agreed Orders to the Board. The revised Disciplinary Guidelines for Criminal Conduct is attached.

Pros and Cons:

Pros - The grid will promote clarity and greater understanding of the Board's expectations of the Executive Director and staff members when making recommendations for Agreed Orders for the Board's approval. It will provide consistency and guidance in the eligibility and disciplinary process.

Cons - Though the guidelines will provide consistency and cases will be decided on a case-by-case basis when the factors are applied, the guidelines will limit the actions that Staff can propose and the Board can impose.

Staff Recommendation:

Board action: Move to adopt the "Disciplinary Guidelines for Criminal Conduct" to be used in Eligibility and Disciplinary Matters. Move to place on the website to guide candidates for licensure and licensees under investigation.

Disciplinary Guidelines for Criminal Conduct

This document is a pilot introduced by the board to provide licensees and the public with guidance to the board's view of the effect of the first commission of certain crimes on nurse licensure and applicants for licensure. In some instances, the document may provide guidance when multiple crimes are at issue. Additionally, for further guidance, please review the Nursing Practice Act, Texas Occupations Code ch. 301, board's rules at 22 Texas Administrative Code chs. 211 - 227, and the board's disciplinary policies located on the board's web site, www.bne.state.tx.us.

The board may require evaluations from Board-approved evaluators to better determine the appropriate recommendation and/or to determine whether an individual is safe to practice nursing and able to comply with the NPA and Board's rules and regulations.

Licensees or applicants for licensure receiving Judicial orders on or after September 1, 2005, shall not be licensed, shall be revoked, and/or shall not be renewed and not considered for re-licensure until at least the fifth anniversary following release from probation or community service has occurred (TOC § 301.4535). Other applicable laws and rules are Texas Occupations Code ch. 53 and 22 Texas Administrative Code §§ 213.27 - 213.30.

The following list includes some of the factors the Board will use in its case-by-case analysis:

- the nature and seriousness of the crime, i.e. absence of criminal plan or premeditation, presence of contributing influences, evidence of immature thought process/judgment at the time of activity, etc.;
- failure to disclose criminal offense to the Board;
- the actual damages, physical or otherwise, resulting from the criminal activity;
- the extent and nature of the person's past criminal activity;
- conduct evidences a lack of truthfulness or trustworthiness;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
- a record of steady employment and has supported his or her dependents;
- 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 person;

- paid all outstanding court costs, supervision fees, fines, and evidence of restitution to both victim and community;
- whether conduct indicates inability to practice nursing in an autonomous role with patients/clients, their families and significant others and members of the public who are or who may become physically, emotionally or financially vulnerable;
- evidence of remorse;
- evidence of current maturity and personal accountability;
- evidence of having learned from past mistakes;
- evidence of current support structures that will prevent future criminal activity;
- evidence of current ability to practice in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing;
- 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;
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
- whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision;
- conduct that results in the revocation of probation imposed because of criminal conduct;
- evidence of the licensee's safe practice;
- Expunction, nondisclosure of criminal offense;
- Successful completion of probation/community supervision;
- if criminal activity due to chemical dependency including alcohol, evidence of evaluation and treatment, after care and support group attendance (written verification of compliance with any treatment); and
- if criminal activity due to mental illness, evidence of evaluation, including a prognosis, by a psychologist or psychiatrist, evidence of treatment, including any medication (written verification of compliance with any treatment).

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction or deferred adjudication occurred 0-5 years ago:	If judicial order for conviction or deferred adjudication occurred greater than 5 years ago and fifth year anniversary since release from probation has not occurred:
*Abandonment/Endangerment of a Child	F	22.041	Deny/Revoke License	Deny/Revoke License
*Agree to Abduct Child for Remuneration: Younger than Eighteen	F	25.031	Deny/Revoke License	Deny/Revoke License
*Aiding Suicide: Serious Bodily Injury/Death	F	22.08	Deny/Revoke License	Deny/Revoke License
*Assault, Aggravated	F	22.02	Deny/Revoke License	Deny/Revoke License
*Attempt, Conspiracy, or Solicitation of ch. 62 offense	M,F	ch. 62	Deny/Revoke License	Deny/Revoke License
*Capital Murder	F	19.03	Deny/Revoke License	Deny/Revoke License
*Child Pornography, Possession or Promotion	F	43.26(a),(e) (ch .62)	Deny/Revoke License	Deny/Revoke License
*Indecency w/Child	F	21.11(ch. 62)	Deny/Revoke License	Deny/Revoke License
*Indecent exposure x 2 (2d n/deferred)	M	21.08 (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Injury to Child/Elderly/Disabled	F	22.04	Deny/Revoke License	Deny/Revoke License
*Kidnapping	F	20.03, 20.04 (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Manslaughter	F	19.04	Deny/Revoke License	Deny/Revoke License
*Murder	F	19.02	Deny/Revoke License	Deny/Revoke License
*Online Solicitation of a Minor (conviction)	F	33.021(b),(c),(f); (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Prostitution, Compelling	F	43.05 (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Protective Order, Violation	F	25.07, 25.071	Deny/Revoke License	Deny/Revoke License
*Robbery	F	29.02	Deny/Revoke License	Deny/Revoke License
*Robbery, Aggravated	F	29.03	Deny/Revoke License	Deny/Revoke License
*Sale or Purchase of a Child	F	25.08	Deny/Revoke License	Deny/Revoke License
*Sexual Assault	F	22.011 (ch. 62)	Deny/Revoke License	Deny/Revoke License

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*Sexual Conduct, Prohibited	F	25.02 (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Sexual Assault, Aggravated	F	22.021 (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Sexual Performance by Child	F	43.25(b), .24(d) (ch. 62)	Deny/Revoke License	Deny/Revoke License
*Unlawful Restraint	F	20.02	Deny/Revoke License	Deny/Revoke License
Arson	F	28.02(d)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Assault	F	22.01(b)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Burglary	F	30.02	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Criminal Attempt or Conspiracy	F	15.01, 15.02	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Criminal Mischief	F	28.03	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Criminally negligent homicide	F	19.05	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Drug Violations	F	HSC 481, 482, 483	0-3 yrs old Deny/Revoke/ Suspend; 4-5 yrs issue license w/ sanctions or TPAPN	Issue License w/ stipulations or issue TPAPN Order (if chemically dependent) if not on felony probation; if on felony probation, then Deny/Revoke.
Forgery	F	32.21(d),(e)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Improper Relationship between Educator and Student	F	21.12	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Improper photography	F	21.15	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke

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Insurance Fraud: Intent to Defraud	F	35.02(a-1), (d)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Insurance Fraud: Claim greater than \$500	F	35.02(c)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Medicaid Fraud greater than \$1500	F	35A.02(b)(4)-(7)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke (See Note below)
Money Laundering greater than or equal \$1500	F	34.02(e)(1)-(4)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Obscenity, Wholesale promotion	F	43.23(a),(h)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Online Solicitation of a Minor (deferred)	F	33.021(b),(c),(f)	Deny/Revoke License	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Prostitution X 3 or Aggravated Promotion	F	43.02, 43.04	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Resisting Arrest, Use of Deadly Weapon	F	38.03(d)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Stalking	F	42.072(b)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Tampering w/ Government Record	F	37.10	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Theft greater than \$1500	F	31.03(e)(4)-(7)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke

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Vehicle, Unauthorized Use	F	31.07	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Assault, Simple	M	22.01(a)(1), (c)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Driving While Intoxicated X 3	M, F	49.09	0-3 yrs old Deny/Revoke/Suspend; 4-5 yrs issue license w/ sanctions or TPAPN	Deny license or require proof of completion of TPAPN or TPAPN Order
Driving While Intoxicated X 2	M, F	49.09	Deny license or TPAPN	Deny license or require proof of completion of TPAPN or TPAPN Order
Driving While Intoxicated or Possession of Marijuana X 1	M	49.04	Issue license	Issue license
Drug Violations	M	Health & Safety Code chs. 481, 482, 483	0-3 yrs old issue w/sanctions or issue TPAPN Order (if appropriate w/ chemically dependent); 4-5 yrs issue license w/stipulations if proof of successful treatment and one year sobriety	Issue License w/ Stipulations unless proof of successful treatment and five years of sobriety
False Report or Statement	M, F	32.32, 42.06	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation; Deny/Revoke if on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Harassment	M	42.07	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Insurance Fraud: Claim less than or equal to \$500	M	35.02 (c)(1)-(3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license
Medicaid Fraud less than \$1500	M	35A.02(b)(2)-(3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license (See Note below)

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Prostitution or Promotion of	M	43.02	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Protective Order, Violation	M	25.07, 38.112	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Resisting Arrest	M	38.03(a)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Criminal Trespass	MA	30.05(d)	Issue license w/ sanctions	Issue License
Cruelty to Animals	MA, F	42.091	Issue license w/ sanctions if misdemeanor or not on felony probation; Deny/Revoke if on felony probation	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Deadly conduct	MA	22.05(a)	Issue license w/ sanctions	Issue License
Forgery	MA	32.21(c)	Issue license w/ sanctions	Issue License
Obscenity, Participates	MA, F	43.23(c),(h)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke
Theft less than or equal to \$1499	MA	31.03(e)(1) - (3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license (stipulations if theft during practice of nursing)	Issue license
Weapon, Unlawful Carrying	MA	46.02(b)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Criminal Trespass	MB	30.05(a)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License
Aiding Suicide	MC	22.08	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license

* Texas Occupations Code § 301.4535 (Nursing Practice Act) offenses (effective September 1, 2005 - bars to nurse licensure). This does not prevent a nurse or applicant for licensure from exercising any right or privileges to have a formal hearing as established by virtue of Texas Occupations Code § 301.454©).

Note: Licensees may be excluded from working in various federally-funded facilities for convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans. The Office of Inspector General states that “[n]o payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. Federal health care programs include Medicare, Medicaid, and all other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan). For exclusions implemented prior to August 4, 1997, the exclusion covers the following Federal health care programs: Medicare (Title XVIII), Medicaid (Title XIX), Maternal and Child Health Services Block Grant (Title V), Block Grants to States for Social Services (Title XX) and State Children's Health Insurance (Title XXI) programs.” For more information, see <http://www.oig.hhs.gov/fraud/exclusions/aboutexclusions.html>, and 1 Tex. Admin. Code §§ 371.1655 & 371.1657 (mandatory and permissive exclusions from Medicaid and Title V, XIX, XX, and CHIP programs by the Texas Health and Human Services Commission, Office of Inspector General).