

**Amended Agenda Item: 7.9**  
**Meeting Date: October 19 & 20, 2006**  
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**Proposed Amendments to 22 Texas Administrative Code § 213.28, Regarding the  
Nature of Certain Crimes and How they Relate to the Practice of Nursing  
in Discipline and Eligibility Matters**

In September 2006, the Staff of the Sunset Advisory Commission recommended in its report that the Board more clearly identify which crimes relate to the practice of nursing. Due to the nature of nursing, the crimes that affect nursing are broad.

The practice of nursing is in essence the “front lines” of health care provision. The scope of the nursing profession allows nurses to have unfettered access to people and their property more than any other profession. Nurses attend to people at their most vulnerable state and provide care to the most vulnerable individuals in our society – the elderly, children, the mentally ill, sedated and anesthetized patients, patients whose mental or cognitive ability is compromised and patients who are disabled and immobilized. The provision of care can be in private homes and home-like settings without direct or, at times, without any supervision. Because of this scope and level of trust required of a nurse, he/she must possess professional character and integrity. The scope and nature of nursing require that nurses not commit crimes against persons, not commit crimes against property, be of sound mind and not under the influence of mood-altering substances, be truthful and honest, and be accountable for their actions. For these reasons, a wide variety of criminal acts affect the practice of nursing. To address these issues and the concerns of the Sunset Advisory Committee, the Board proposes amendments to 22 Texas Administrative Code § 213.28.

This proposed rule was provided to the Board’s Eligibility and Disciplinary Task Force. The recommendations by the committee have been included in the attached rule.

Staff recommends that the Board move to propose amendments to 22 Texas Administrative Code section 213.28 pertaining to the Licensure of Persons with Criminal Backgrounds, as attached, and have it published in the *Texas Register* for a 30-day comment period. If no negative comments are received, adopt the rule as proposed.

§ 213.28. Licensure of Persons with Criminal ~~Convictions~~ Offenses.

(a) This section sets out the considerations and criteria on the eligibility of persons with criminal ~~convictions~~ offenses to obtain a license as a registered or vocational nurse or those already licensed who renew their license. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of or received a deferred disposition for a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation. ~~imposed pursuant to such a conviction.~~

(b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or 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 similar to those outlined in Title 5 of the Texas Penal Code 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, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients 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 or have contact with partially clothed or fully undressed patients 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 vulnerability; and

(E) nurses who commit these crimes outside the workplace may raise questions as to whether that same misconduct will be repeated in the workplace and raises serious questions regarding the individual's ability to provide safe, competent care to patients.

(2) offenses against property e.g. robbery, burglary and theft, etc. 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, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may provide easy opportunity to be victimized;

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

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

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

(F) nurses who commit these crimes outside the workplace may raise questions as to whether that

same misconduct will be repeated in the workplace and, therefore, place patients' property at risk.

(3) offenses involving fraud or deception 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, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

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

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

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

(F) nurses who commit these crimes outside the workplace may raise questions as to whether that same misconduct will be repeated in the workplace and, therefore, place patients at risk.

(4) offenses involving lying and falsification 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, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(C) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients 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 care, incomplete or inaccurate documentation of patient 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 care in the future;

(F) falsification of employment applications and failing to answer specific questions that would have affected the 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

(H) a crime of lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients 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 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, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(C) nurses provide care to critical care, geriatric, and pediatric patients 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 are chemically dependent or who abuse drugs or alcohol may have impaired judgment while caring for patients and are at risk for harming patients; and

(F) An offense regarding delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug or mood altering drug may raise questions as to whether that same misconduct will be repeated in the workplace

(c) In considering whether a criminal offense conviction renders the individual ineligible for licensure or renewal of licensure as a registered or vocational nurse, the Board shall consider:

(1) the knowing or intentional practice of nursing without a license issued under the 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; and

(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 revocation of mandatory supervision; and

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

(d) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of or received a deferred order for a crime, shall consider:

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

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

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

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

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

(6) 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.

(e) It shall be the responsibility of the applicant, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and 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 in which he or she has been convicted or received a deferred order.

(f) If requested by staff, it shall be the responsibility of the individual seeking licensure to ensure that staff is provided with 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. Failure to provide complete, legible and accurate documentation will result in delays prior to licensure or renewal of licensure and possible grounds for ineligibility.

(g) Behavior that would otherwise bar or impede licensure may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior using the factors set out in §213.27 of this title (relating to Good Professional Character), subsections (a)-(e) of this section and at least the following criteria:

- (1) age of 22 years or less at the time of the behavior;
- (2) absence of criminal plan or premeditation;
- (3) presence of peer pressure or other contributing influences;
- (4) absence of adult supervision or guidance;
- (5) evidence of immature thought process/judgment at the time of the activity;
- (6) evidence of remorse;
- (7) evidence of restitution to both victim and community;
- (8) evidence of current maturity and personal accountability;
- (9) absence of subsequent undesirable conduct;
- (10) evidence of having learned from past mistakes;
- (11) evidence of current support structures that will prevent future criminal activity; and
- (12) evidence of current ability to practice nursing in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing.

(h) With respect to a request to obtain a license from a person who has a criminal history, the executive director is authorized to close an eligibility file when the applicant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof.

(i) The board shall revoke a license or authorization to practice as an advanced practice nurse upon the imprisonment of the licensee following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(j) The board shall revoke or deny a license or authorization to practice as an advanced practice nurse for the crimes listed in Texas Occupations Code § 301.4535.