

**Consideration of Proposed Disciplinary Matrix, or
Alternative, Approval to Pilot Disciplinary Matrix**

House Bill 2426 amended the Nursing Practice Act to include section 301.4531 related to Licensing and Regulatory Functions. Section 301.4531 provides in part for the board to “adopt a schedule of the disciplinary sanctions that the board may impose under this chapter.”. *See* 301.4531(a). Further, that “the board shall ensure that the severity of the sanction is appropriate to the type of violation or conduct that is the basis for disciplinary action.” *id.* The statutory requirement appears to be the result of Sunset’s recommendation no. 7.6 as outlined its December 2006 Decision Material.

At the July 19-20, 2008, Board meeting the Board proposed the adoption of amendments to Rule 213.33 which outlined a schedule of sanctions. The amendments to Rule 213.33 were approved and recommended for adoption by the Eligibility and Disciplinary Task Force on July 13, 2007

The amended rule was published in the *Texas Register* on August 17, 2007 for a 30-day comment period. The rule was published in Texas Register on October 5, 2007 as adopted and became effective on October 10, 2007.

It should be noted, however, that Recommendation 7.6 of the Sunset Commission Decision Material repeated used the term “enforcement matrix,” rather than “schedule of sanctions” that was adopted by the legislature.

Recommendation 7.6 provides in part:

Require the Board adopt an enforcement matrix in rule.

This recommendation would require the Board to establish, in rule , a matrix to use when determining disciplinary actions for nurses who have violated state law or Board rules. . . . Adopting an enforcement matrix by rule would provide the public with the opportunity to comment on the development of the matrix, and would provide nurses with ready access to the Board’s *guidelines*, allowing them to better understand the potential consequence of violations. (emphasis added).

In addition to the adoption of the “schedule of sanctions” as required by HB 2426, the Board has considered the development of a more comprehensive “matrix” as contemplated in the Sunset Decision document.

During the past year, the Board’s Eligibility and Disciplinary Task force has been working to development a comprehensive enforcement matrix which can be used to analyze violations of the Nurse Practice Act in a fair and consistent manner with flexibility for determining the most appropriate decision.

The Taskforce approved the attached Disciplinary Matrix at its last meeting April 4, 2008. It was the taskforce's recommendation that the Board approve the matrix as a pilot. It may be that implementation of the matrix may lead to unfair or unintended consequences and that use of its guidelines should be tested against the current decision making and Board precedent.

Recommendation:

Move to approve the attached Disciplinary Matrix as a pilot for use by the public, Staff and the Board as a guideline in analyzing violations of the Nurse Practice Act and Board rules; and in the development of appropriate sanctions for violations. Publish the matrix in the Texas Register for comment. Have Staff report results of pilot for reconsideration and re evaluation of the matrix at next appropriate Board meeting

RULE §213.33 Factors Considered for Imposition of Penalties/Sanctions and/or Fines

(a) The following factors shall be considered by the executive director when determining whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine. These factors shall be used by the State Office of Administrative Hearings (SOAH) when recommending sanction and the Board in determining the appropriate penalty/sanction in disciplinary cases:

- (1) evidence of actual or potential harm to patients, clients, or the public;
- (2) evidence of a lack of truthfulness or trustworthiness;
- (3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- (4) evidence of practice history;
- (5) evidence of present fitness to practice;
- (6) evidence of previous violations or prior disciplinary history by the Board or any other health care licensing agency in Texas or another jurisdiction;
- (7) the length of time the licensee has practiced;
- (8) the actual damages, physical, economic, or otherwise, resulting from the violation;
- (9) the deterrent effect of the penalty imposed;
- (10) attempts by the licensee to correct or stop the violation;
- (11) any mitigating or aggravating circumstances;
- (12) the extent to which system dynamics in the practice setting contributed to the problem; and
- (13) any other matter that justice may require.

(b) Each specific act or instance of conduct may be treated as a separate violation.

(c) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(d) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(e) When determining evidence of present fitness to practice, the Board or Executive Director may request an evaluation by a psychologist or psychiatrist, who is licensed by the Texas State Board of Examiners of Psychologists or the Texas Medical Board, respectively. The evaluator must be familiar with the duties appropriate to the nursing profession. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments which at a minimum are designed to test the psychological stability and veracity of the applicant or licensee. The applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. The applicant or licensee should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the individual a copy.

(f) When determining evidence of present fitness to practice by a licensee or applicant for licensure:

(1) the Board or Executive Director may request an individual risk assessment conducted by a Board-approved forensic psychologist or psychiatrist who:

(A) evaluates the criminal history of a person; and

(B) seeks to predict:

(i) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and

(ii) the continuing danger, if any, that the person poses to the community.

(C) is familiar with the duties appropriate to the nursing profession.

(D) conducts the evaluation pursuant to professionally recognized standards and methods; and

(E) utilizes objective tests and instruments that, at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the nurse applicant or licensee.

(2) The applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3) The applicant or licensee should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the individual a copy.

(g) In accordance with the provisions of the Texas Occupations Code and the Nursing Practice Act (NPA), and in keeping with the obligation to protect the consumer of nursing services from the unsafe, incompetent or unprofessional nurse, the Board of Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the NPA. The purpose of these guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of the provisions in Chapter 301, Subchapter J. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple violations of the same provision or rule, or other unrelated violations included in the administrative complaint, will be grounds for an enhancement of penalties subject to §§301.4531(c)(1) and (2), NPA. All penalties at the upper range of the sanctions set forth in the guidelines, such as suspension, revocation, or surrender, include lesser penalties, i.e., fine, remedial education, or probation, which may also be included in the final penalty at the Board's discretion.

(1) In addition to subsection (a), the Board shall consider the following factors, as set forth in §301.4531(b) of the NPA, when determining the appropriate disciplinary action:

(A) whether the person is being disciplined for multiple violations of the NPA, or its derivative rules and orders;

(B) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;

(C) the seriousness of the violation;

(D) the threat to public safety; and

(E) any mitigating factors.

(2) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions under the authority of §301.453 (a) & (b), NPA:

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

2) Approval of the person's application for a license, license renewal, reinstatement of a revoked, suspended or surrendered license, or temporary permit; and set reasonable probationary stipulations as a condition of issuance, reinstatement or renewal of the license or temporary permit. Additionally, the Board may determine in accordance with §301.468, NPA, that an order denying a license application, license renewal or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to :

(i) 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;

(ii) submit to an evaluation as outlined in subsection 213.33(e);

(iii) participate in a program of education or counseling prescribed by the Board;

(iv) limit specific nursing activities and/or periodic board review;

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

- (vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or
- (vii) perform public service which the Board considers appropriate;

3) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

- (i) participate in a program of education or counseling prescribed by the Board;
- (ii) practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;
- (iii) perform public service which the Board considers appropriate;
- (iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or
- (v) limit specific nursing activities and/or periodic board review;

4) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

- (i) participate in a program of education or counseling prescribed by the Board;
- (ii) practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;
- (iii) perform public service which the Board considers appropriate;
- (iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or
- (v) limit specific nursing activities and/or periodic board review

5) Limitation or restriction of the person's license, including limits on specific nursing activities or periodic board review:

6) Suspension of the person's license. The Board may determine that the order of suspension be enforced and active for a specific period or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

- (i) Limit the practice of the person to, or excluding, one or more specified activities of professional or vocational nursing;
- (ii) submit to an evaluation as outlined in subsection 213.33(e);
- (iii) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license;
- (iv) participate in a program of education or counseling prescribed by the Board;
- (v) practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;
- (vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or
- (vii) remit payment of the administrative penalty, fine, or assessment of hearing costs

7) Acceptance of a Voluntary Surrender of a nurse license;

8) Revocation of the person's license;

9) Require participation in remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;

10) Assessment of a fine;

11) Assessment of costs as authorized by section 301.461, Texas Occupation Code and section 2001.177, Texas Government Code; or

12) Require successful completion of a Board approved peer assistance program.

(C) Every disciplinary order issued by the Board will require that the person subject to the order will participate in a program of education or counseling prescribed by the Board which at a minimum will include a review course in nursing jurisprudence and ethics.

Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in its Rule 213.33, published at 22 Tex. Admin. Code §213.33. The Matrix may list other more pertinent aggravating or mitigating factors which should be considered in addition to Rule 213.33.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and this chapter. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either this chapter, or a rule or order adopted under this chapter, 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

If the person has previously been the subject of disciplinary action by the Board, 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.

The Board may assess administrative penalties as outlined in §213.32 of 22 Tex. Admin. Code.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by Texas Occupations Code §301.461.

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

<p><u>First Tier Offense:</u></p> <p>Isolated failure to comply with procedural Board rule such as failure to renew license within six (6) months of its due date/renewal date or completing continuing education requirements. Failure to comply with a technical, non-remedial requirement in a prior order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification form.</p>	<p>Sanction Level I:</p> <p>Remedial Education, with or without \$250.00 fine.</p> <p><i>Additionally, full compliance with and continuation of prior Board order if stipulations still outstanding.</i></p>	<p>Sanction Level II:</p> <p>Warning or Reprimand with \$500 or more fine for each additional violation, including probationary stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic board review.</p>
<p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive requirement in a prior order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.</p>	<p>Sanction Level I:</p> <p>Fine of \$500.00 and requirement to complete conditions of original order. Respondent may be subject to next higher sanction and an extension to the stipulations. Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations).</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension, Revocation or Voluntary Surrender.</p>
<p><u>Third Tier Offense:</u></p> <p>Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required</p>	<p>Sanction Level I:</p> <p>Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

<p>in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.</p>		
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Aggravating Circumstances for §301.452(b)(1): Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.

Mitigating Circumstances for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period.

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

<p><u>First Tier Offense:</u></p> <p>Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license.</p>	<p>Sanction Level I:</p> <p>Remedial Education and \$500.00 fine.</p>	<p>Sanction Level II:</p> <p>Denial of Licensure or Revocation of nursing license.</p>
<p><u>Second Tier Offense:</u></p> <p>Intentional misrepresentation of previous nurse licensure, education, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure or Revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

Aggravating Circumstances for §301.452(b)(2): Multiple offenses; the relevance or seriousness of the hidden information as to the competency to practice nursing.

Mitigating Circumstances for §301.452(b)(2): Unforeseen financial or health issues; length of time since the discovery of the violation; age of applicant at time applicant committed violation; and applicant’s justified reliance upon advice of legal counsel.

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

Eligibility and Discipline will be reviewed under Board’s Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>. The Board will also utilize to the extent applicable: 22 Tex. Admin. Code 213.28, Tex. Occupations Code §301.4535 and Chapter 53 of the Texas Occupations Code.

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

<p><u>First Tier Offense:</u> Revocation of probation of a Misdemeanor.</p> <p>An evaluation should be conducted under Chapter 53, Texas Occupations Code</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand, including probationary stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review.</p> <p>If the Respondent is also on Board ordered probation then at least the next highest sanction up to and including revocation. If it is a violation of failure to comply with criminal probation, then an analysis should be conducted in accordance with the criteria outlined in 301.452(b)(3) above.</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>
<p><u>Second Tier Offense:</u></p> <p>Revocation of probation or parole for felony level criminal offense.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure or Revocation, Texas Occupations Code, Section 53.021(b).</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

Aggravating Circumstances for §301.452(b)(3) and §301.452(b)(4): Nature and serious of crime; patient harm or risk of harm to a patient; relationship of crime to practice of nursing; the extent to which practice of nursing may offer opportunity to engage in further criminal activity; and imprisonment after revocation of probation or parole;

Mitigating Circumstances for §301.452(b)(3) and §301.452(b)(4): Evidence of rehabilitative effort.

§301.452(b)(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;

Sanction:

Issuance of Cease and Desist Order with referral of all information to local law enforcement.

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

Sanction:

Revocation of license for this offense.

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

First Tier Offense:

Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.

Sanction Level I:

Remedial Education; \$500.00 fine for single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand including probationary stipulations that may include remedial education; supervised practice; limit specific nursing activities and/or periodic board review.

Sanction Level II:

Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.

Second Tier Offense:

Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.

Sanction Level I:

Denial of Licensure, Revocation or Voluntary Surrender.

Sanction Level II:

Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.

Aggravating Circumstances of §301.452(b)(7): Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.

Mitigating Circumstances of §301.452(b)(7): The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.

§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person’s license or privilege to practice nursing in another jurisdiction;

First Tier Offense:

Action in another jurisdiction resulting from a default order issued due to the nurse’s failure to answer violations and the violation is not one in which the other jurisdiction or Texas would have resulted in revocation but for the nurse’s failure to respond.

Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board’s alcohol or substance misuse policy.

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

Sanction Level I:

Warning or Reprimand, including probationary stipulations that may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol; limit specific nursing activities and/or periodic board review.

Order to participate in Board approved peer assistance program.

Sanction Level II:

Revocation, Suspension, or Denial of Licensure when the individual doesn’t respond or is eligible for stipulated license. Action should be at least consistent with action from other jurisdiction.

Second Tier Offense:

Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.

Sanction Level I:

Revocation, denial of licensure, or voluntary surrender.

Sanction Level II:

Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.

Aggravating Circumstances for §301.452(b)(8): Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.

Mitigating Circumstances for §301.452(b)(8): Nurse’s failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.

§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;

<p><u>First Tier Offense:</u></p> <p>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.</p>	<p>Sanction Level I:</p> <p>Referral to a Board approved peer assistance program for nurses pursuant to Board policy on alcohol or substance abuse or misuse. http://www.bon.state.tx.us/disciplinaryaction/dsp.html http://www.bon.state.tx.us/chemical.pdf</p>	<p>Sanction Level II:</p> <p>Warning with probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.</p>
<p><u>Second Tier Offense:</u></p> <p>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation.</p> <p>{clarification/examples who fits here; may or may not have hx PAP.}</p>	<p>Sanction Level I:</p> <p>Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board policy on alcohol or substance abuse or misuse. Includes individuals with non disciplinary history of peer assistance participation.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p>	<p>Sanction Level II:</p> <p>Suspension of License until evaluation, treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation.</p>
<p><u>Third Tier Offense:</u></p> <p>Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.</p>	<p>Sanction Level I:</p> <p>Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances;</p> <p>Board ordered participation in an approved peer assistance program if non disciplinary peer assistance participation, no actual patient harm.</p>	<p>Sanction Level II:</p> <p>Suspension of License until evaluation and treatment, sobriety, and thereafter a stay of suspension with probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review.</p>

	<p>and no other aggravating circumstances; or</p> <p>Warning or Reprimand including probationary stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic board review.</p> <p>Denial of Licensure until applicant establishes they have been evaluated by a board approved evaluator, received treatment as recommended by evaluator and demonstrates one (1) year of verifiable sobriety, then license with probationary stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing.</p>	
<p><u>Fourth Tier Offense:</u></p> <p>Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>
<p><i>Aggravating Circumstances</i> for §301.452(b)(9): Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation.; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.</p>		
<p><i>Mitigating Circumstances</i> for §301.452(b)(9): Self-remediation, including participation in impaired provider program. Verifiable proof of sobriety by random, frequent drug/alcohol screens. Nurse is not currently practicing as a nurse.</p>		

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

<p><u>First Tier Offense:</u></p> <p>Isolated failure to comply with board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects.</p> <p>Isolated violation involving minor unethical conduct where no patient safety is at risk such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.</p>	<p>Sanction Level I:</p> <p>Remedial Education and \$250-\$500 fine. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.</p>	<p>Sanction Level II:</p> <p>Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities and/or periodic Board review. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens and practice limitations).</p>
<p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand with stipulations. Fine of \$250–\$750 for each violation, remedial education, supervised practice, perform public service. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, limit specific nursing activities and/or periodic Board review. Board will use its disciplinary sanction polices related to drug or alcohol misuse in analyzing facts.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed evaluation and treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic Board review. Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable</p>

	http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html	Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.
<u>Third Tier Offense:</u> Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99.	Sanction Level I: Denial of licensure or revocation of nursing license. Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.
<i>Aggravating Circumstances</i> for §301.452(b)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.		
<i>Mitigating Circumstances</i> for §301.452(b)(10): Harm to patient was not a result of care, voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.		

§301.452(b)(11) adjudication of mental incompetency;		
	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.

§301.452(b)(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

<p><u>First Tier Violation:</u></p> <p>Diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.</p>	<p>Sanction Level I:</p> <p>Referral to the Board approved Peer Assistance Program or Warning with stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic Board review.</p>	<p>Sanction Level II:</p> <p>Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic Board review.</p>
<p><u>Second Tier Violation:</u></p> <p>Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. Evidence of harm or risk of harm to patient due to treatment or remediation.</p> <p>“Lack of fitness” includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.</p>	<p>Sanction Level I:</p> <p>With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9).</p> <p>Warning or Reprimand with stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic Board review.</p>	<p>Sanction Level II:</p> <p>With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9).</p> <p>Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; limit specific nursing activities and/or periodic Board review.</p>
<p><u>Third Tier Violation:</u></p> <p>Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.</p>	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

Aggravating Circumstances of §301.452(b)(12): Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.

Mitigating Circumstances of §301.452(b)(12): Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependency evaluation from a board approved evaluator who has opportunity to review the Board's file.

§301.452(b)(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.

<p><u>First Tier Offense:</u></p> <p>Practice below standard with a low risk of patient harm.</p>	<p>Sanction Level I:</p> <p>Remedial Education and \$500 fine when there is isolated incident.</p>	<p>Sanction Level II:</p> <p>Warning or Reprimand including probationary stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing, limit specific nursing activities and/or periodic board review.</p>
<p><u>Second Tier Offense:</u></p> <p>Practice below standard with patient harm or risk of patient harm.</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand with \$500-\$1,000 fine and stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review.</p>	<p>Sanction Level II:</p> <p>Denial, suspension of license, revocation of license, or request for voluntary surrender.</p>
<p><u>Third Tier Offense:</u></p> <p>Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.</p> <p>In addition, any intentional act or omission that risks or results in serious harm.</p>	<p>Sanction Level I:</p> <p>Denial, suspension of license; revocation of license or request for voluntary surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety.</p>

Aggravating Circumstances for §301.452(b)(13): Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.

Mitigating Circumstances for §301.452(b)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency.