

Proposed Revisions to Disciplinary Sanctions and Policies

To request that the Board adopt the review the proposed revised disciplinary policies pertaining to:

- 1) **Disciplinary Sanctions for Sexual Misconduct**
- 2) **Disciplinary Sanctions for Lying and Falsification**
- 3) **Disciplinary Sanctions for Fraud, Theft, and Deception**
- 4) **Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Substance Dependency, or other Substance Use Disorder**

On July 26, 2002, the Board approved the original disciplinary sanctions and policies addressing specific concerns and issues relating to issues that arise in eligibility and disciplinary matters under Texas Occupations Code § 301.452(b) and rules 213.27 (good professional conduct), 213.28 (criminal convictions), and 213.29 (chemical dependency and fitness issues). The present policies can be read or downloaded on the Board's website at www.bne.state.tx.us. In April of 2004, the policies were broadened to include LVNs. The last review and modification to the policies occurred in October of 2005.

The adoption of the policies was designed to clarify and define the Board's position on common and recurrent issues in licensure eligibility and disciplinary cases. The policies explore common areas of concern in the nursing practice and how the Board has historically dealt with these concerns in disciplinary and eligibility matters. Each policy begins by laying the groundwork for the Board's positions regarding these specific areas. The assumptions are unique to each situation depending on the type of patients, their vulnerability, the care setting, the nurse/patient relationship, the nature of the practice, the alleged violation, and the minimum standards of nursing.

Generally, policies lay out the Board's position when certain issues arise under the Nursing Practice Act and the Board's rules. Policies attempt to clarify the Board's reasoning, application, and logic underlying the existing rules. They educate nurses and the public regarding the standards of nursing and the responsibility that coincides with a licensure privilege. These policies will benefit nurses, in general, by providing a greater awareness of the Board's position on various concerns that arise in nursing and, specifically, nurses under investigation by the Board.

On November 30, 2007, the Eligibility and Disciplinary Taskforce met and discussed further review and modifications of the Board's disciplinary sanction policies. The taskforce reviewed and made some suggested revisions and clarifications to the policies which are attached for Board review. Staff apologizes for the various color changes in the documents. The new language of the policies is either underlined or in a different color (blue or red). The language which has been redacted has been struck out.

Pros and Cons:

Pros - The policies will promote greater understanding of the Board's position in disciplinary matters and the consistent steps the Board will take to ensure public safety, health, and welfare in matters involving issues of unprofessional conduct. The suggested revisions reflect continued experience in applying the policies in administrative hearings and settlement over the last several years. They also seek to incorporate statutory changes which have affected Board regulation.

Cons - The revised policies will require the Board to be consistent in its application of disciplinary actions imposed against nurses.

Staff Recommendation:

Board action: Move to adopt the revised disciplinary policies pertaining to 1) sexual misconduct, 2) lying and falsification, 3) fraud, theft, and deception, and 4) chemical dependency, to make them applicable to all nurses, and to publicize the revised policies by posting them on the Board's web site.

Disciplinary Sanctions for Sexual Misconduct

The **Texas** Board of ~~Nurse Examiners~~ Nursing for the State of Texas (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is ~~imperative~~ important to take a strong position regarding the licensure of individuals who engage in sexual misconduct towards patients or former patients in the workplace, who have been convicted of or put on probation for sexual misconduct, or whose sexual misconduct outside the workplace may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure. The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship.
2. Persons who are especially vulnerable include 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.
3. Nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients. Nurses may also care for these patients without direct supervision.
4. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability.
5. There are appropriate boundaries in the nurse - patient relationship ~~which~~ that nurses must clearly understand and be trusted not to cross.
6. A nurse's duty to maintain boundaries extends beyond a patient's discharge from nursing care, especially when it pertains to confidential medical records.
7. Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients.
8. Sexual misconduct ~~which~~ that occurs outside of the workplace, including conviction or deferred adjudication of or probation for a crime, may raise questions as to whether that same misconduct will be repeated in the workplace and therefore affects the ability of the nurse to safely provide patient care.
8. A nurse's duty to maintain boundaries extends beyond a patient's discharge from nursing care, especially when it pertains to confidential medical records.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Sexual Misconduct

The Board may rely solely on the conviction or deferred adjudication of a crime or probation for a crime, with or without an adjudication of guilt, to limit, deny, suspend, or revoke a license.

Sexual misconduct is a crime of moral turpitude. Crimes of sexual misconduct ~~which~~ that involve abuse of a minor or a vulnerable person or taking advantage of another person are extremely serious grounds for denial of an initial application for licensure or revocation of the license. The length of time between the conviction and the application for licensure is not a factor due to the high recidivism rate for sex offenders, lack of empirical evidence regarding the success of treatment, and the fact that many victims do not report that a sexual offense has been committed against them. Crimes ~~which~~ that disqualify an individual for licensure include Rape, Sodomy, Sexual Abuse, Contributing to the Sexual Delinquency of a Minor and other crimes related to children. Effective September 1, 2005, Texas Occupations Code § 301.4535 requires suspension, revocation, or refusal of a license for initial convictions of certain offenses. The sexually-related offenses are as follows: sexual assault, aggravated sexual assault, indecency with a child, and any offense for ~~which~~ that a defendant is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure. This includes offenses of a similar nature in other jurisdictions. Once a final conviction or a plea of guilty or nolo contendere is entered, eligibility for licensure is not available until five years after successful completion and dismissal from community supervision or parole.

There are other sexual misconduct crimes ~~which~~ that do not involve children or taking advantage of another person. There are also crimes ~~which~~ that involve conduct between consenting adults. These crimes are considered by the Board to be of a serious nature but not necessarily a disqualification for licensure.

Conviction or deferred adjudication of these crimes will be considered on an individual basis in regards **with regard** to the circumstances surrounding the crime and may require **involve** a forensic psychological evaluation with a sexual predator component - the sex MMPI, **as well as a polygraph**. This evaluation is to be performed by an **Board** approved psychologist or psychiatrist with forensic credentials who has expertise in evaluating sexual offenders.

Finally, it should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving sexual misconduct, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime.

Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code § 213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Sexual Misconduct Toward Patients

Sexual misconduct toward patients is never acceptable. Conduct such as rape, sex disguised as treatment (unnecessary or prolonged pelvic/breast/**genital** exams or touching intimate body parts when the touch is not necessary for care) and "sneaky sex" (surreptitious touch, voyeurism, or exposing the patient's body when not necessary) are grounds for limitation, denial, or revocation of licensure. Nurses should never engage in conduct with a patient that is sexual or may reasonably be interpreted as sexual or in any verbal behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient. Even if a client/**patient** initiates the sexual contact, a sexual relationship is still considered sexual misconduct for the nurse. The nurse should never use the patient to satisfy the nurse's need for personal amusement, gratification, power, control, sexual stimulation or satisfaction.

It is always the responsibility of the nurse to establish appropriate boundaries with present and former client/**patients**. Other sexual misconduct such as sexual harassment of a patient, verbal interaction of a sexual nature, or a romantic-like relationship with a patient are unacceptable but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at the level of a Reprimand or Warning following a thorough investigation.

Some factors to be considered are the length of time between the nurse-client/**patient** relationship and the personal relationship, the nature of the therapy the client/**patient** received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the client/**patient** or the former client/**patient** will need therapy in the future, and the risk to the patient. Subsequent conduct of a similar nature indicates a pattern and may require revocation. The Board believes that employers of nurses have a responsibility to discourage this conduct and take measures to ensure that patients are not subjected to this conduct.

Consensual sex between a nurse whose relationship or past relationship with the patient is that of a mental health therapist is serious and not acceptable to the Board. The nature of the therapist nurse - patient relationship places the patient or former patient in a vulnerable position and raises the question of ability for true consensual sex on the part of the patient.

This conduct is grounds for limitation, denial, or revocation of licensure. Consensual sex between a nurse and a former patient often involves exploitation by the nurse of the former patient's vulnerability and may be evidence of violations of appropriate nursing boundaries. Some factors to be considered are the length of time between the nurse-client/**patient** relationship and the personal relationship, the nature of the therapy the client/**patient** received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the client/**patient** or the former client/**patient** will need therapy in the future, and the risk to the patient.

Recommendations to Guide Nurses

- ~~1. Nurses should be aware of any feelings of sexual attraction to a patient and should discuss such feelings with a supervisor or trusted colleague. Under no circumstances should a nurse act on these feelings or reveal/discuss them with the patient.~~
- ~~2. Nurses should transfer the care of a patient to whom they are sexually attracted to another nurse. Recognizing that such feelings in themselves are neither wrong or abnormal, nurses should seek help in understanding and resolving them.~~

3. Nurses must be alert to signs that a patient may be interested in or encouraging a sexual relationship. All steps must be taken to ensure that the boundaries of the professional relationship are maintained. This could include transferring the care of the patient.
4. Nurses must respect a patient's dignity, independence, and privacy at all times. They should be particularly aware that examinations and treatments involving the sexual or private parts of the body can increase the patient's vulnerability and, therefore, should take steps to prevent or minimize any such trauma.
5. Nurses should provide a professional explanation of the need for each of the various components of examinations, procedures, tests, and aspects of care to be given. This can minimize any misunderstandings a patient might have regarding the nurse's intentions and the care being given.
6. Nurses' communications with patients should be clear, appropriate, and professional.
7. Nurses should never engage in communications with patients that could be interpreted as flirtatious, or which employ sexual innuendo, off-color jokes, or offensive language.
8. Nurses should not discuss their personal problem(s), or any aspects of their intimate lives with patients, and should not interfere with their client(s) personal relationships.
9. Nurses should avoid dual relationships where the nurse has a personal or business relationship, as well as the professional one.
10. Nurses should always be aware of feelings and behavior, observant of the behavior of other professionals, and always act in the best interest of the patient.

(Adapted from the Washington Board of Nursing, 1994, with additions)

Sexual Misconduct in the Workplace - Not Toward Patients

The Board's mission is protection of the public. The Board is not charged with protecting nurses and therefore believes that sexual misconduct in the workplace is the responsibility of the employer. If sexual misconduct in the workplace occurs in view or hearing of a patient or may affect the patient's care or feeling of safety, the Board believes this conduct should be treated the same as similar conduct towards a patient as described above. However, should any conduct lead to a criminal charge, conviction, or deferred judicial action, the Board should be notified.

Petition for Declaratory Order, Reconsideration or Reinstatement of License

An individual who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration of the Board's decision to deny or revoke the license.

The burden of proof that the individual no longer poses a risk to the health, safety, and welfare remains with the petitioner. At a minimum, the petitioner must show evidence of successfully completing treatment specific to sexual misconduct. **Additionally, the petitioner and must may be denied licensure without submitting** obtain a current **forensic** evaluation **which-that** addresses risk for re-offense, and includes recommendations on limitations in practice, patient population cared for, work setting and other issues related to the problem which originally brought the individual to the Board's attention. **. A polygraph exam may be included as part of the evaluation.** The evaluator must be a health care professional whose credentials and expertise are approved by the Board. **The recommended disciplinary or eligibility determination by the Board** for sexual misconduct may be revocation **or denial of licensure.**

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, modifications, and/or deletions))

Approved and adopted on July 26, 2002, modified on April 23, 2004, and October 20, 2005.

Disciplinary Sanctions for Lying and Falsification

The ~~Texas Board of Nurse Examiners~~ Nursing for the State of Texas (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is ~~imperative~~ important to take a strong position regarding the licensure of individuals who have engaged in deception in the provision of health care. This deception includes falsifying documents related to patient care, falsifying documents related to employment, and falsifying documents related to licensure. The Board is also concerned about persons who have been convicted of a crime involving deception to the extent that such conduct may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure. The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship.
2. Persons who are especially vulnerable include 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.
3. Critical care, pediatric, and geriatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.
4. 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.
5. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care (rule 213.27).
6. Patients have the right to expect that the nurse will always accurately report patient conditions, signs and symptoms, and the care the nurse provided.

The Board considers the following behaviors important in evaluating whether an individual possesses the integrity and honesty to practice nursing:

1. ~~7.~~ 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.
- ~~2.~~ ~~8.~~ 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 (rules 217.12 (22), (23) and 213.27).
- ~~3.~~ ~~9.~~ 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.
- ~~4.~~ ~~10.~~ A conviction or judicial order involving a crime of lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients at risk.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Lying and Falsification

The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, or revoke a license. A crime involving dishonesty

is a crime of moral turpitude. Reliance on judicial orders is designed to avoid subsequent collateral attacks by nurses when the nurse has already been convicted or has admitted to the criminal conduct.

The Board has adopted a policy on fraud, theft, and deception ~~which that~~, in part, addresses the issues of lying and falsification. The crime of lying or falsification is a concern to the Board if the conduct involved defrauding a vulnerable person; if the occurrence was within a short period of time prior to the application for initial licensure; if there is a demonstration of a pattern of lying or falsification; or if the act was obviously premeditated and the individual demonstrates a lack of insight or remorse related to the conduct. The presence of these factors is evidence to the Board that the same behavior is likely to be repeated towards patients and may place their well-being at risk. Crimes involving lying and falsification will be evaluated on an individual basis considering the above factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving lying or falsification, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code § 213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Lying on or Falsification of Licensing Documents to the Board

Each licensure form or document, whether it is an initial application, application by endorsement, or a renewal application, contains questions ~~which that~~ require a "yes" or "no" answer. These forms contain several questions that might affect the ability of an individual to function safely as a nurse. In addition, the Board asks the applicant, petitioner, or licensee to provide information to determine if he/she meets the practice requirements for nursing licensure. Answers to these questions are used by the Board to determine the applicant's fitness for initial licensure/recognition in regards to conviction history, physical or mental condition, chemical dependency, and eligibility to renew licensure or gain initial licensure/recognition by endorsement related to meeting the continuing education (CE) and practice requirements. The Board can understand that an applicant may mark a "yes" or "no" answer in error, or misunderstand the question being asked. The Board believes, however, that supplying false information in regards to eligibility requirements for licensure is a serious matter, not only because of the lying or falsification itself, but because those false answers would allow an otherwise disqualified applicant to be licensed. Proof of falsification on initial licensure is enough to establish the Board's right to revocation or denial of licensure. It should not be the Board's burden to answer or overcome Respondent's claims of current character or current practice once it is established an applicant or petitioner has knowingly falsified information upon which licensure was based. If Respondent believes he/she has good professional character, they should be required to start the application process over anew under non-deceptive means without the benefit of consideration of the intervening practice as a nurse.

The Board also asks questions on its applications for licensure to verify the individual's identity and provide the Board with demographic information. Falsification of that information is considered serious by the Board, but not as critical as information that directly relates to eligibility for licensure unless the falsification of this information was intended to hide relevant background information of the applicant.

Each case of falsifying an application for licensure will be considered on an individual basis. The investigative process will be used to determine whether the question was answered in error, misunderstood, or purposely answered falsely to deceive the Board. Intentional

falsification may result in denial of licensure or revocation of a license. The Board may show leniency towards an applicant for initial licensure because that person may be more likely to misunderstand the questions on the application. The Board believes that an applicant for renewal of licensure should understand the questions and the importance of answering them honestly. A pattern of falsification of information on an application for licensure will not be tolerated and is grounds for revocation.

Failure to cooperate during the course of a Board investigation by supplying false documents or failing to disclose information is grounds for denial or revocation of the license. Reckless disregard for the Nursing Practice Act, the Board's rules and regulations, and/or a Board Order is also grounds for denial or revocation and will require at a minimum, the imposition of a punitive fine in addition to other stipulations.

Nurse Imposter

The Board has no jurisdiction over a person who does not have a license to practice nursing in the State of Texas yet holds him or herself out to be a nurse. The Board does have jurisdiction over an individual who has a nursing license or has had one in the past and represents him or herself as licensed for a broader scope of practice, e.g., LVN to RN, RN to APN. The Board has no tolerance for any form of impostering and will impose the maximum dollar amount of fine allowed under Board rules and may impose a disciplinary sanction. The following factors will be considered in deliberating the level of discipline from remedial education with fine through revocation: intent, potential or actual harm to patients, length of time as an imposter, and insight/remorse.

The Board believes that employers of nurses should verify licensure [utilizing the Board's website](#) and thereby avoid hiring a nurse imposter or allowing a nurse to practice beyond his/her scope. The Board may impose a disciplinary sanction to the nurse employer found responsible for hiring a nurse imposter.

Lying or Falsification within the Practice of Nursing

The safe and effective practice of nursing as a licensed vocational nurse, registered nurse, or advanced practice nurse requires integrity, accuracy, and honesty in the provision of nursing care, including:

- X performing nursing assessments;
- X applying the nursing process;
- X reporting changes in patient condition;
- X acknowledging errors in practice and reporting them promptly;
- X accurate charting and reporting, whether verbal or written;
- X implementing care as ordered;
- X compliance with all laws and rules affecting the practice of nursing; and
- X compliance with minimum nursing standards.

Failure to be accurate and honest while providing patient care and keeping accurate records related to care, is potentially harmful to the overall care patients receive because nurses who provide subsequent care do not have a complete and accurate picture of the client's care and/or condition.

Each case of lying and falsification will be considered on an individual basis. The Board will consider the following factors:

- X actual harm to the patient as a result of the lying or falsification;
- X the potential for harm to patients clients;
- X the past performance record of the nurse;
- X prior complaints;
- X accountability for the act of falsification;
- X insight;
- X remorse; and
- X other mitigating or aggravating factors.

The Board will also consider whether or not the nurse was unduly influenced by a more experienced or supervising licensed nurse to falsify patient records or care, in which case that nurse's conduct will be investigated by the Board. The investigative process will be used as an opportunity to educate and reinforce acceptable standards of care. Disciplinary sanctions may range from remedial education with fine to revocation. The level of sanction may be directly proportionate to the harm caused to the patient. If a nurse falsifies, alters, fabricates, back-dates records, or any other form of lying in the home health setting, the nurse will be sanctioned with stipulations, and fined. During the stipulation period, home health and any other form of independent employment settings will be prohibited. Supervision in home health will be required where circumstances do not warrant removal from that practice setting.

Lying/Falsification to an Employer, Nursing Education Program, or other Nursing Training Program

The Board believes that falsification of an application to an employer, school of nursing, or other nursing training program is generally the responsibility of the employer, school, or training program to resolve, unless the falsification involves misrepresentation of credentials, competencies or work experience. Misrepresentation of credentials to an employer will be investigated and viewed by the Board in the same way that lying or falsification within the practice is viewed. A student nurse who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that he or she will continue the same dishonest acts after licensure. If the Board is made aware of acts committed as a student, an investigation will be conducted once the student makes application for licensure. The Board will consider the same factors as described above for lying and falsification within the practice of nursing.

Petition for Reconsideration or Reinstatement of License

A person who has been denied licensure, or whose license has been surrendered, suspended, or revoked has the right to petition the Board for reconsideration or reinstatement. The burden of proof that the person no longer poses a danger for deception, lying or falsification regarding patient care, record keeping related to nursing practice, or other acts of deception remains with the petitioner.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, deletions, and modifications

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Approved and adopted on July 26, 2002, modified on April 23, 2004.

Disciplinary Sanctions for Fraud, Theft, and Deception

The ~~Texas~~ Board of Nurse Examiners ~~Nursing for the State of Texas~~ (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who have engaged in dishonest behaviors that may place the public or patients at risk. The Board is concerned with individuals who have stolen or misappropriated property, money, or other possessions from patients, who have engaged in fraudulent behavior towards patients, who have engaged in fraud towards government programs or funds, e.g., Medicare and/or Medicaid, or who have been convicted or received a judicial order involving a crime or criminal behavior of theft or deception to an extent that such conduct may be repeated in connection with the individual's practice of nursing with patients who are vulnerable, thereby affecting the nurse's ability to safely care for patients. Furthermore, the Board's policy is consistent with and supports the Governor's Executive Order RP36 dated July 12, 2004, relating to preventing, detecting, and eliminating fraud, waste, and abuse ~~which that~~ can be found at www.governor.state.tx.us/divisions/press/exorders/rp36.

The Board's position applies to all nurse license holders and applicants for licensure. The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship.
2. Persons who are especially vulnerable include 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.
3. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility.
4. 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.
5. Nurses frequently provide care in settings without direct supervision.

The Board considers the following behaviors important in evaluating whether an individual possesses the integrity and honesty to practice nursing:

- ~~1. 6-~~ Theft from a patient raises serious concerns whether the nurse can be trusted to respect a patient's property/possessions in the future.
- ~~2. 7-~~ Theft or deception ~~which that~~ occurs outside of the workplace, including conviction or a judicial order involving criminal behavior, may raise concerns as to whether the same misconduct will be repeated in the workplace and, therefore, place patients at risk for theft and deception.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Fraud, Theft, and Deception

Fraudulent behavior is a crime of moral turpitude. The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, limit, or revoke a license. Criminal conduct involving fraud, theft, and/or deception may also reflect a lack of good professional character (rule 213.27). In addition, the Board is also concerned with fraud involving government funds or programs, such as Medicare or Medicaid. This type of fraud increases the price employers pay for worker's compensation, drains the unemployment insurance fund, and steals from those in need of vital Medicaid and/or Medicare services. A conviction or a judicial order involving the criminal behaviors of fraud, theft, falsification or deception is a concern to the Board but ~~does~~ may not in and of itself disqualify a person from licensure.

The magnitude of the behavior is not necessarily a major factor the Board will consider. Factors related to the crime ~~which that~~ would concern the Board the most are evidence of

premeditation, lack of remorse, and failure to pay restitution. The presence of these factors is evidence to the Board that the likelihood of the same behavior being repeated is great enough that patients may be at risk for the same conduct. Acts of an impulsive nature where there is insight/remorse regarding the conduct may be mitigating factors for the Board to consider. The criminal behavior of fraud, theft, or deception will be evaluated on an individual basis considering the foregoing factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving fraud, theft, or deception, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code section 213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct. Acts of fraud, theft, or deception will preclude a nurse from working in a home health or independent setting during the stipulation period. If circumstances do not warrant removal from that practice setting, supervision in the home health or independent setting will be required. Discipline by the Board will likely require the nurse to pay a civil penalty or fine and restitution as authorized by the Nursing Practice Act and Board rules. The Board will take under consideration any conviction or conduct that falls within the "youthful indiscretion" factors as stated in Board rules (rule 213.28 of 22 Texas Administrative Code), factors stated in Texas Occupations Code chapter 53 regarding criminal conviction consequences, and other factors in rules 213.27 and 213.28 of 22 Texas Administrative Code (Good Professional Character and Licensure of Persons with Criminal Convictions).

Theft from a Patient

Theft from a patient or engaging in fraudulent or deceitful behavior or conduct with or involving a patient is never acceptable. Theft of patient money, property, medicine, valuables, or items of sentimental value is ground for suspension or revocation of licensure. A license may be denied if the applicant engaged in theft while functioning in the role of a care giver. Other fraudulent conduct or deception towards a patient is unacceptable, but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at a level less than revocation or may be reprimanded or warned and limited from independent settings following a thorough investigation. Factors such as insight, remorse and premeditation will be considered as to whether a disciplinary sanction is imposed. The Board believes that employers of nurses have the responsibility to have safeguards in place to ensure that patients are not subjected to acts of fraud, theft, or deception.

Theft from the Workplace

Theft is an intentional act regardless who is the victim of the theft. The Board's position on theft from an employer is not as strong as its position on theft from a patient. However, if a nurse engages in fraud, theft, or deception toward his/her employer, there is the possibility that the nurse will also engage in the same behavior towards patients. The Board will consider the factors of premeditation, remorse and restitution as well as the steps taken by the employer toward the nurse in deciding whether or not discipline should be imposed.

Petition for Reinstatement

A person who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration or reinstatement after one year has elapsed. The burden of proof that the person does not pose a danger for fraud, theft, or deception toward patients remains with the petitioner or applicant.

Recommended Sanctions

The minimum allowed sanction for fraud, deceit, intentional, and/or willful **misconduct that results in harm or the potential for harm to another person will be removal** from practice in an independent setting, including but not limited to home health and agency nurse, practice under the supervision of another registered nurse, if practicing as a RN, or under the supervision of a licensed vocational nurse or registered nurse, if practicing as a LVN, employer reports, and a punitive fine. The recommended sanction may be revocation.

Approved and adopted on July 26, 2002, modified on April 23, 2004, modified on October 22, 2004 (included Medicare/Medicaid fraud).

Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Chemical Dependency, or other Substance Use Disorder

The Texas Board of ~~Nurse Examiners~~ Nursing (Board), in keeping with its mission to protect public health, safety, and welfare, believes it is important to have a clear position on how it will deal with nurses who are reported to the Board because they have:

- (1) been diagnosed with substance dependency or abuse but do not have evidence of current sobriety that dates back a minimum of 12 consecutive months;
- (2) exhibited impaired behavior that may be related to substance abuse, misuse, or intemperate use;
- (3) demonstrated a pattern of use of addictive substances, or pattern of substance mishandling or abuse;
- (4) shown evidence of criminal behavior or acts involving substances of addiction/abuse;
or
- (5) any combination or single factor listed above, whether or not the events reported to the Board occurred while a nurse was on duty.

Any of the above substance-related conditions may affect the ability of a nurse to safely perform nursing duties, thus creating a threat to public safety.

This policy applies to all nurses or those individuals seeking to obtain or regain licensure as a nurse in Texas.

The Board adopts the following assumptions as the basis for its position:

- 1) Patients¹ under the care of a nurse are vulnerable by virtue of illness or injury and the dependent nature of the nurse-patient relationship.
- 2) Persons who are especially vulnerable include 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.
- 3) Critical care, geriatric, and pediatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.
- 4) Nurses are able to provide care in private homes and home-like setting without direct supervision.
- 5) Nurses who ~~are chemically dependent~~ have active substance dependence, or who abuse, misuse, or engage in intemperate use of drugs or alcohol or other substance use disorder ~~and whose judgment may be~~ may exhibit impairment in both cognitive and motor functioning while caring for patients. Such impairment places patients at risk for harm due to the nurse's inability to accurately assess, make appropriate judgments, and intervene in a timely manner to stabilize the patient(s) and prevent complications. ~~are at risk for harming patients.~~
- 6) The disease of substance or chemical dependence or other substance use disorders as noted above may range in severity; however, the board believes all are potentially ~~is a~~ treatable ~~diseases-conditions.~~ Nurses who are in active recovery may be able to safely provide care to vulnerable patients, provided the nurse's practice can be adequately monitored for a defined period of recovery.

7) ~~Nurses who demonstrate a pattern of substance abuse, misuse, or intemperate use without a diagnosis of substance or chemical dependence and without recommended treatment, may require monitoring to assure the Board of their ability to safely perform the duties of a nurse.~~

Recovery is a process of learning new behaviors, attitudes and life style which that takes time after initial treatment to assure that the person is in a stable and sustainable state of recovery.

The Board believes it has a responsibility to both the public and the nurse when information about a nurse's substance use disorder comes to the Board's attention. The responsibility to the public is for swift action to remove a nurse from performing duties involving direct patient care until the nurse is deemed safe to return to those duties. The Board's responsibility towards the nurse is to recognize that person's past service in the provision of patient care and give that person an opportunity to seek treatment at an approved treatment facility² for the substance use disorder and then return to providing patient care when able to submit verifiable, documented proof that he/she has a year of sobriety and is in stable recovery.

If the Board finds disciplinary action is warranted, under no circumstance will a nurse be eligible for an unencumbered license until the nurse has successfully completed an approved treatment program plus a year of verifiable, documented sobriety and subsequent probationary monitoring by the Board for a minimum of three (3) years. If a nurse fails to maintain compliance with the Board order, the Board will accept the voluntary surrender of the nurse's license or the Board will seek revocation subject to the Administrative Procedures Act, Nursing Practice Act, and Board rules.

Impairment in the Workplace

A nurse may ~~be impaired~~ demonstrate impaired behavior in the workplace due to consumption of drugs and/or alcohol either before coming to work or during work hours. The Board encourages both employers and co-workers of nurses to be familiar with the myriad of signs and symptoms associated with impairment and to report suspicion of impairment so the nurse can be removed from a patient care assignment and the risk of harming patients.

The Board would encourage ~~that the facility~~ facilities, agencies, and others who employ or utilize nurses to implement ~~a policy~~ policies requiring "for cause" drug screens to eliminate the often unverifiable claims by the facility ~~of the nurse~~ regarding suspected workplace impairment ~~of the nurse~~. Impairment or ~~likely suspected~~ impairment of a nurse's practice by ~~chemical dependency drugs or alcohol~~ should be reported to the ~~Texas Peer Assistance Program for Nurses (TPAPN) state peer assistance program for nurses~~ or the Board for investigation (TEX. OCC. CODE ANN. § 301.401). The Nursing Practice Act requires ~~imposes a duty that a person to~~ report to the Board a nurse suspected of being impaired by chemical dependency or diminished mental capacity if the person believes that an impaired nurse committed a practice violation. ~~any practice violation in which a nurse has unnecessarily or likely exposed a patient or other person to a risk of harm. A nurse need not be "diagnosed" with an addictive/abusable or dependence problem to be reported to the board for impaired behavior and/or practice.~~

Nurses may ~~also~~ obtain medications or other substances through theft from the facility or from a patient in a home or home-like setting. Theft of drugs or other substances by a nurse must be investigated as it raises the question of ~~substance abuse~~ inappropriate use of drugs or other substances that have the potential and are likely to impair a nurse's practice, thus raising the risk of and possible harm to patients. ~~harm, and must also be investigated.~~

A nurse who fails to participate in or complete the TPAPN state peer assistance program for nurses and is reported to the Board for impairment in the workplace or diversion of drugs will be requested to obtain a chemical dependency evaluation³ from an evaluator who possesses credentials approved by the Board. Under no circumstance will an evaluation by a Licensed Chemical Dependency Counselor (LCDC) be deemed as acceptable proof that a nurse does not have a substance abuse or dependency diagnosis. If the person is diagnosed as chemically dependent, the nurse may be given the opportunity to enter an approved treatment facility, provide proof of verifiable, documented sobriety for the preceding twelve month period, and participate in Board monitoring for at least three years.

~~In addition, if TPAPN~~ If the state peer assistance program for nurses determines that a nurse is ineligible for its program, a nurse may be eligible to return to work under monitoring conditions determined through a suspend/probate agreement with the Board if he/she has verifiable, documented proof of sobriety for the previous twelve consecutive months and successful completion of a treatment program within the past six (6) months and subsequent to the last relapse. At a minimum those conditions will include an enforced suspension until a year of verifiable recovery and sobriety with supporting documentation and successful completion of an approved treatment program with a recommendation from the treatment program regarding fitness to return to work.

The nurse will be required to provide proof of working an active program of recovery, employer monitoring by another nurse, employer evaluations of performance, abstinence from drugs and alcohol unless prescribed by a licensed provider for a legitimate purpose with notification to the Board, random drug testing, proof of support group attendance for a period of at least three (3) years, and may be limited in practice settings and in his/her access to controlled substances in the workplace. A nurse who is not willing or able to attend and complete treatment will be offered the opportunity to voluntarily surrender his/her license or will be served with Formal Charges and be given the opportunity for a hearing as provided in the Administrative Procedures Act, Nursing Practice Act, and/or Board rules.

If the person does not receive a diagnosis of chemical dependence, the Board will take any recommendations of the evaluator into account, i.e., pain or disease management, and/or mental health issues, and determine whether or not a period of monitoring by the Board is in the best interest of public health and safety. In addition, if the evaluator determines that the nurse has a pain management, disease management, or mental health issue, the nurse will be sent to an appropriate specialist or clinic approved by the Board for evaluation and additional recommendations. If the evaluator determines that the individual has a low probability for substance abuse, but the evidence supports practice violations that relate to the drugs at issue ~~identical drug discrepancies~~, the Board will determine whether or not a period of monitoring is necessary to ensure public safety and welfare.

Crimes Related to Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder

The Board may rely solely on the conviction for a crime or probation for a crime, with or without an adjudication of guilt to impose a disciplinary sanction on a nurse. In addition, evidence of the conduct ~~which that~~ is the basis for the court's judgment may be of concern to the Board in that it implicates a nurse's professional character pursuant to rule 213.27 (Good Professional Character). The Board will also consider a pattern of arrests for crimes related to substance abuse in regards to a pattern of behavior which that may be of concern to the Board. 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 Nursing Practice Act or rules of the Board, the board may consider such evidence as a factor in its deliberations regarding any decision to grant a license, restrict a license, or impose licensure discipline.

Crimes related to substance abuse, misuse, substance dependency or other substance use disorder range from those that are primarily harmful to the nurse to those that are harmful to others. Nurses who have committed crimes such as Minor in Possession of Drugs/Alcohol, Possession of a Controlled Substance, or Driving Under the Influence of Intoxicants, or Driving While Intoxicated will be required to obtain an evaluation by an evaluator with credentials approved by the Board to determine if the person has a diagnosis of chemical dependence. Under no circumstance will an evaluation by a Licensed Chemical Dependency Counselor (LCDC) be deemed as acceptable proof that a nurse does not have a substance abuse or dependency diagnosis. The Board may additionally use the results of that evaluation to determine fitness to function as a nurse and whether monitoring by the Board is necessary for protection of the public.

Nurses who have committed crimes ~~which that~~ are clearly a danger to others, such as Manufacture and Distribution of a Controlled Substance or Conspiracy to Distribute ~~Opium~~ Illegal Drugs will be considered on an individual basis and may be required to complete a drug and alcohol or forensic psychological evaluation. The Board views crimes related to substance abuse ~~which that~~ are harmful to others as more serious than those where harm is directed mainly at the nurse. If the individual facts of a case show harm to others, the Board will serve Formal Charges against the nurse and the nurse will have the opportunity to a formal hearing as provided in the Administrative Procedures Act, Nursing Practice Act, and/or Board rules. It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving drugs, alcohol, or substance abuse, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code § 213.28 governs the consequences of criminal convictions and chapter 53 requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Petition for Reinstatement of License

A nurse whose license has been revoked or suspended or who has voluntarily surrendered his/her license due to chemical dependence or crimes related to substance abuse has the right to petition the Board for reinstatement of the license after one year has elapsed from the effective date of the Board action unless agreed otherwise. The burden of proof will be on the license holder that he/she is in recovery from chemical dependence, no longer abuses drugs or alcohol and has been rehabilitated to the extent that he/she no longer poses a threat to the public health, safety, and welfare.

Evidence of Verifiable Sobriety

It is highly recommended that evidence of sobriety include random drug screens, letters and evaluations from present and past employers, and signed logs of support group attendance. Should the Board reinstate licensure, the nurse may be required to take a refresher course before a license is issued to him/her.

¹ The terms "resident" or "client" are often used interchangeably with the term "patient" in health care facilities. For the purpose of this policy, the term "patient" includes all of these terms.

² An approved treatment facility means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the Department of State Health Services Texas Commission on Alcohol and Drug Abuse, or a facility licensed or operated by the Department of State Health Services Texas Department of Mental Health and Mental Retardation. The term does not include an educational

program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office. TEX. HEALTH & SAFETY CODE § 461.002 (9).

³ A chemical dependency evaluation requires:

- a) a release signed by the nurse ~~which~~ that allows the Board to send the investigatory file to the evaluator for review prior to the evaluation;
- b) a release ~~which~~ that allows the evaluator to send the evaluation directly to the Board;
- c) review of the Board's investigatory file by the evaluator prior to the evaluation;
- d) administration of a SASSI-III and/or MAST test by the evaluator; and
- e) a face-to-face interview between the evaluator and nurse.

Original policy adopted on July 26, 2002, amended on April 25, 2003, and revised on April 23, 2004.