

Agenda Item: 7.6
Prepared by: Jena Abel
July 23-24, 2009

Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.20, Concerning *Informal Proceedings and Alternate Dispute Resolution (ADR)*; §213.29, Concerning *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters*; §213.30, Concerning *Declaratory Order of Eligibility for Licensure*; and §213.33, Concerning *Factors Considered for Imposition of Penalties/Sanctions and/or Fines*

Summary of Request: Consider proposal of amendments to §213.20, Concerning *Informal Proceedings and Alternate Dispute Resolution (ADR)*; §213.29, Concerning *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters*; §213.30, Concerning *Declaratory Order of Eligibility for Licensure*; and §213.33, Concerning *Factors Considered for Imposition of Penalties/Sanctions and/or Fines* as part of the implementation of House Bill (HB) 3961, which was passed during the 81st Regular Legislative Session.

Background: HB 3961 amends the Nursing Practice Act by adding §301.4521 to Chapter 301 of the Occupations Code. New §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the person is unable to practice nursing safely due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. If the applicant refuses to submit to the requested evaluation, the Board may schedule a SOAH hearing on the issue of probable cause only as to whether an evaluation is required. An order issued by an ALJ on the issue of probable cause may not be vacated or modified by the Board. If an individual refuses to submit to the requested evaluation after an ALJ has issued an order requiring the evaluation, the Board may refuse to issue or renew a license, suspend a license, or issue an order limiting the license. The Board may also request an evaluation from an individual for a reason other than physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol under new §301.4521, although a SOAH hearing is not mandated if the person refuses to submit to the requested evaluation. HB 3961 took effect June 19, 2009, after the Governor signed the bill. A copy of HB 3961 is attached hereto as "Exhibit A".

HB 3961 requires the Board to adopt rules for requiring or requesting an individual to submit to an evaluation under new §301.4521. HB 3961 also requires the Board to adopt rules regarding the qualifications for a licensed practitioner to conduct an evaluation under new §301.4521. The proposed amendments to §213.33 implement these requirements by prescribing the circumstances under which an evaluation will be requested by the Board, the requirements that the evaluation must meet, and the credentials that an evaluator must possess in order to conduct the evaluation. The proposed amendments also clarify existing Board policy regarding random drug testing through urinalysis. The proposed amendments to §213.20, §213.29, and §213.30 are necessary for consistency

with the proposed amendments to §213.33. The proposed amended text for §213.20, §213.29, §213.30, and §213.3 is attached as “Exhibit B”.

Staff Recommendations:

Board Action: Move to approve §213.20, Concerning *Informal Proceedings and Alternate Dispute Resolution (ADR)*; §213.29, Concerning *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters*; §213.30, Concerning *Declaratory Order of Eligibility for Licensure*; and §213.33, Concerning *Factors Considered for Imposition of Penalties/Sanctions and/or Fines* and authorize staff to publish the proposals in the *Texas Register* for a 30-day comment period, with authority for General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt the proposed amendments to 22 Tex. Admin. Code §213.20, Concerning *Informal Proceedings and Alternate Dispute Resolution (ADR)*; §213.29, Concerning *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters*; §213.30, Concerning *Declaratory Order of Eligibility for Licensure*; and §213.33, Concerning *Factors Considered for Imposition of Penalties/Sanctions and/or Fines* as proposed.

AN ACT

relating to the regulation of nursing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 301.155(c), Occupations Code, is amended to read as follows:

(c) The board shall assess a [~~\$3~~] surcharge of not less than \$3 or more than \$5 for a registered nurse and a [~~\$2~~] surcharge of not less than \$2 or more than \$3 for a vocational nurse to the fee established by the board under Subsection (a) for a license holder to renew a license under this chapter. The board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under Section 105.002, Health and Safety Code. The board is not required to collect the surcharge if the board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

SECTION 2. Section 301.157, Occupations Code, is amended by amending Subsection (d-4) and adding Subsections (d-8), (d-9), (d-10), and (d-11) to read as follows:

(d-4) The board may recognize and accept as approved under this section a school of nursing or educational program operated in

1 another state and approved by a state board of nursing or other
2 regulatory body of that [~~another~~] state. The board shall develop
3 policies to ensure that the other state's [~~state board's~~] standards
4 are substantially equivalent to the board's standards.

5 (d-8) For purposes of Subsection (d-4), a nursing program
6 is considered to meet standards substantially equivalent to the
7 board's standards if the program:

8 (1) is part of an institution of higher education
9 located outside this state that is approved by the appropriate
10 regulatory authorities of that state;

11 (2) holds regional accreditation by an accrediting
12 body recognized by the United States secretary of education and the
13 Council for Higher Education Accreditation;

14 (3) holds specialty accreditation by an accrediting
15 body recognized by the United States secretary of education and the
16 Council for Higher Education Accreditation, including the National
17 League for Nursing Accrediting Commission;

18 (4) requires program applicants to be a licensed
19 practical or vocational nurse, a military service corpsman, or a
20 paramedic, or to hold a college degree in a clinically oriented
21 health care field with demonstrated experience providing direct
22 patient care; and

23 (5) graduates students who:

24 (A) achieve faculty-determined program outcomes,
25 including passing criterion-referenced examinations of nursing
26 knowledge essential to beginning a registered nursing practice and
27 transitioning to the role of registered nurse;

1 (B) pass a criterion-referenced summative
2 performance examination developed by faculty subject matter
3 experts that measures clinical competencies essential to beginning
4 a registered nursing practice and that meets nationally recognized
5 standards for educational testing, including the educational
6 testing standards of the American Educational Research
7 Association, the American Psychological Association, and the
8 National Council on Measurement in Education; and

9 (C) pass the National Council Licensure
10 Examination for Registered Nurses at a rate equivalent to the
11 passage rate for students of approved in-state programs.

12 (d-9) A graduate of a clinical competency assessment
13 program operated in another state and approved by a state board of
14 nursing or other regulatory body of another state is eligible to
15 apply for an initial license under this chapter if:

16 (1) the board allowed graduates of the program to
17 apply for an initial license under this chapter continuously during
18 the 10-year period preceding January 1, 2007;

19 (2) the program does not make any substantial changes
20 in the length or content of its clinical competency assessment
21 without the board's approval;

22 (3) the program remains in good standing with the
23 state board of nursing or other regulatory body in the other state;
24 and

25 (4) the program participates in the research study
26 under Section 105.008, Health and Safety Code.

27 (d-10) In this section, the terms "clinical competency

1 assessment program" and "supervised clinical learning experiences
2 program" have the meanings assigned by Section 105.008, Health and
3 Safety Code.

4 (d-11) Subsections (d-8), (d-9), (d-10), and (d-11) expire
5 December 31, 2017. As part of the first review conducted under
6 Section 301.003 after September 1, 2009, the Sunset Advisory
7 Commission shall:

8 (1) recommend whether Subsections (d-8) and (d-9)
9 should be extended; and

10 (2) recommend any changes to Subsections (d-8) and
11 (d-9) relating to the eligibility for a license of graduates of a
12 clinical competency assessment program operated in another state.

13 SECTION 3. Section 301.160(a)(2), Occupations Code, is
14 amended to read as follows:

15 (2) "Targeted continuing nursing education" means
16 continuing education focusing on a skill that would likely benefit
17 a significant proportion of [~~registered~~] nurses in a particular
18 practice area.

19 SECTION 4. Sections 301.160(b) and (j) are amended to read
20 as follows:

21 (b) The board may develop pilot programs to evaluate the
22 effectiveness of mechanisms, including proactive nursing peer
23 review and targeted continuing nursing education, for maintenance
24 of the clinical competency of a [~~registered~~] nurse in the nurse's
25 area of practice and the understanding by [~~registered~~] nurses of
26 the laws, including regulations, governing the practice of
27 [~~professional~~] nursing.

1 (j) The board shall issue an annual report regarding any
2 pilot programs developed or approved and a status report on those
3 programs, including preliminary or final findings concerning their
4 effectiveness. The board shall mail the report to statewide
5 associations of [~~registered~~] nurses and [~~registered nurse~~]
6 educators[~~7~~] and employers of [~~registered~~] nurses that request a
7 copy. [~~The board shall issue a final report not later than~~
8 ~~September 1, 2000.~~]

9 SECTION 5. Sections 301.1605(a) and (c), Occupations Code,
10 are amended to read as follows:

11 (a) The board may approve and adopt rules regarding pilot
12 programs for innovative applications in the practice and regulation
13 of [~~professional~~] nursing.

14 (c) In approving a pilot program, the board may grant the
15 program an exception to the mandatory reporting requirements of
16 Sections 301.401-301.409 or to a rule adopted under this chapter or
17 Chapter 303 that relates to the practice of [~~professional~~] nursing,
18 including education and reporting requirements for [~~registered~~]
19 nurses. The board may not grant an exception to:

20 (1) the education requirements of this chapter unless
21 the program includes alternate but substantially equivalent
22 requirements; or

23 (2) the mandatory reporting requirements unless the
24 program:

25 (A) is designed to evaluate the efficiency of
26 alternative reporting methods; and

27 (B) provides consumers adequate protection from

1 ~~[registered]~~ nurses whose continued practice is a threat to public
2 safety.

3 SECTION 6. Sections 301.1606(a) and (b), Occupations Code,
4 are amended to read as follows:

5 (a) The ~~[Before January 1, 2004, the]~~ board may ~~[shall]~~
6 solicit proposals for pilot programs designed to evaluate the
7 efficacy and effect on protection of the public of reporting
8 systems designed to encourage identification of system errors.

9 (b) The board may grant a pilot program approved under this
10 section an exception to the mandatory reporting requirements of
11 Sections 301.401-301.409 or to a rule adopted under this chapter or
12 Chapter 303 that relates to the practice of ~~[professional]~~ nursing,
13 including education and reporting requirements for ~~[registered]~~
14 nurses. If the board grants an exception, the board may require
15 that the program:

16 (1) provide for the remediation of the deficiencies of
17 a ~~[registered]~~ nurse who has knowledge or skill deficiencies that
18 unless corrected may result in an unreasonable risk to public
19 safety;

20 (2) provide for supervision of the nurse during
21 remediation of deficiencies under Subdivision (1);

22 (3) require reporting to the board of a ~~[registered]~~
23 nurse:

24 (A) who fails to satisfactorily complete
25 remediation, or who does not make satisfactory progress in
26 remediation, under Subdivision (1);

27 (B) whose incompetence in the practice of

1 [~~professional~~] nursing would pose a continued risk of harm to the
2 public; or

3 (C) whose error contributed to a patient death or
4 serious patient injury; or

5 (4) provide for a nursing peer review committee to
6 review whether a [~~registered~~] nurse is appropriate for remediation
7 under Subdivision (1).

8 SECTION 7. Subchapter E, Chapter 301, Occupations Code, is
9 amended by adding Sections 301.206 and 301.207 to read as follows:

10 Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR
11 EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief
12 program" means a program operated or sponsored by the federal
13 government, the state, or a nonprofit organization to provide
14 nurses to assist in providing health care to victims or potential
15 victims of a disaster or state or local emergency.

16 (b) A nurse's personal contact information, including
17 e-mail addresses, telephone numbers, and fax numbers, collected by
18 the board for use by an emergency relief program is:

19 (1) confidential and not subject to disclosure under
20 Chapter 552, Government Code; and

21 (2) not subject to disclosure, discovery, subpoena, or
22 other means of legal compulsion for release to anyone other than for
23 the purpose of contacting the nurse to assist in an emergency relief
24 program.

25 Sec. 301.207. CONFIDENTIALITY OF HEALTH INFORMATION
26 PROVIDED FOR LICENSURE. Information regarding a person's diagnosis
27 or treatment for a physical condition, mental condition, or

1 chemical dependency that the person submits to the board for a
2 petition for a declaratory order of eligibility for a license or for
3 an application for an initial license or a license renewal under
4 this chapter is confidential to the same extent information
5 collected on a nurse as part of an investigation of a complaint is
6 confidential under Section 301.466.

7 SECTION 8. Section 301.257(a), Occupations Code, is amended
8 to read as follows:

9 (a) A person may petition the board for a declaratory order
10 as to the person's eligibility for a license under this chapter if
11 the person has reason to believe that the person is ineligible for
12 the license and:

13 (1) is enrolled or planning to enroll in an
14 educational program that prepares a person for an initial license
15 as a registered nurse or vocational nurse; or ~~and~~

16 (2) is an applicant for a ~~[has reason to believe that~~
17 ~~the person is ineligible for the]~~ license.

18 SECTION 9. Section 301.401(2), Occupations Code, is amended
19 to read as follows:

20 (2) "Minor incident" means conduct by a nurse that
21 does not indicate that the nurse's continued practice poses a risk
22 of harm to a patient or another person. This term is synonymous
23 with "minor error" or "minor violation of this chapter or board
24 rule."

25 SECTION 10. Subchapter J, Chapter 301, Occupations Code, is
26 amended by adding Section 301.4521 to read as follows:

27 Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a)

1 In this section:

2 (1) "Applicant" means:

3 (A) a petitioner for a declaratory order of
4 eligibility for a license; or

5 (B) an applicant for an initial license or
6 renewal of a license.

7 (2) "Evaluation" means a physical or psychological
8 evaluation conducted to determine a person's fitness to practice
9 nursing.

10 (b) The board may require a nurse or applicant to submit to
11 an evaluation only if the board has probable cause to believe that
12 the nurse or applicant is unable to practice nursing with
13 reasonable skill and safety to patients because of:

14 (1) physical impairment;

15 (2) mental impairment; or

16 (3) chemical dependency or abuse of drugs or alcohol.

17 (c) A demand for an evaluation under Subsection (b) must be
18 in writing and state:

19 (1) the reasons probable cause exists to require the
20 evaluation; and

21 (2) that refusal by the nurse or applicant to submit to
22 the evaluation will result in an administrative hearing to be held
23 to make a final determination of whether probable cause for the
24 evaluation exists.

25 (d) If the nurse or applicant refuses to submit to the
26 evaluation, the board shall schedule a hearing on the issue of
27 probable cause to be conducted by the State Office of

1 Administrative Hearings. The nurse or applicant must be notified
2 of the hearing by personal service or certified mail. The hearing
3 is limited to the issue of whether the board had probable cause to
4 require an evaluation. The nurse or applicant may present testimony
5 and other evidence at the hearing to show why the nurse or applicant
6 should not be required to submit to the evaluation. The board has
7 the burden of proving that probable cause exists. At the conclusion
8 of the hearing, the hearing officer shall enter an order requiring
9 the nurse or applicant to submit to the evaluation or an order
10 rescinding the board's demand for an evaluation. The order may not
11 be vacated or modified under Section 2001.058, Government Code.

12 (e) If a nurse or applicant refuses to submit to an
13 evaluation after an order requiring the evaluation is entered under
14 Subsection (d), the board may:

- 15 (1) refuse to issue or renew a license;
16 (2) suspend a license; or
17 (3) issue an order limiting the license.

18 (f) The board may request a nurse or applicant to consent to
19 an evaluation by a practitioner approved by the board for a reason
20 other than a reason listed in Subsection (b). A request for an
21 evaluation under this subsection must be in writing and state:

- 22 (1) the reasons for the request;
23 (2) the type of evaluation requested;
24 (3) how the board may use the evaluation;
25 (4) that the nurse or applicant may refuse to submit to
26 an evaluation; and
27 (5) the procedures for submitting an evaluation as

1 evidence in any hearing regarding the issuance or renewal of the
2 nurse's or applicant's license.

3 (g) If a nurse or applicant refuses to consent to an
4 evaluation under Subsection (f), the nurse or applicant may not
5 introduce an evaluation into evidence at a hearing to determine the
6 nurse's or applicant's right to be issued or retain a nursing
7 license unless the nurse or applicant:

8 (1) not later than the 30th day before the date of the
9 hearing, notifies the board that an evaluation will be introduced
10 into evidence at the hearing;

11 (2) provides the board the results of that evaluation;

12 (3) informs the board of any other evaluations by any
13 other practitioners; and

14 (4) consents to an evaluation by a practitioner that
15 meets board standards established under Subsection (h).

16 (h) The board shall establish by rule the qualifications for
17 a licensed practitioner to conduct an evaluation under this
18 section. The board shall maintain a list of qualified
19 practitioners. The board may solicit qualified practitioners
20 located throughout the state to be on the list.

21 (i) A nurse or applicant shall pay the costs of an
22 evaluation conducted under this section.

23 (j) The results of an evaluation under this section are:

24 (1) confidential and not subject to disclosure under
25 Chapter 552, Government Code; and

26 (2) not subject to disclosure by discovery, subpoena,
27 or other means of legal compulsion for release to anyone, except

1 that the results may be:

2 (A) introduced as evidence in a proceeding before
3 the board or a hearing conducted by the State Office of
4 Administrative Hearings under this chapter; or

5 (B) included in the findings of fact and
6 conclusions of law in a final board order.

7 (k) If the board determines there is insufficient evidence
8 to bring action against a person based on the results of any
9 evaluation under this section, the evaluation must be expunged from
10 the board's records.

11 (l) The board shall adopt guidelines for requiring or
12 requesting a nurse or applicant to submit to an evaluation under
13 this section.

14 (m) The authority granted to the board under this section is
15 in addition to the board's authority to make licensing decisions
16 under this chapter.

17 SECTION 11. Sections 301.453(a) and (b), Occupations Code,
18 are amended to read as follows:

19 (a) If the board determines that a person has committed an
20 act listed in Section 301.452(b), the board shall enter an order
21 imposing one or more of the following:

22 (1) denial of the person's application for a license,
23 license renewal, or temporary permit;

24 (2) issuance of a written warning;

25 (3) administration of a public reprimand;

26 (4) limitation or restriction of the person's license,

27 including:

1 (A) limiting to or excluding from the person's
2 practice one or more specified activities of nursing; or

3 (B) stipulating periodic board review;

4 (5) suspension of the person's license [~~for a period~~
5 ~~not to exceed five years~~];

6 (6) revocation of the person's license; or

7 (7) assessment of a fine.

8 (b) In addition to or instead of an action under Subsection
9 (a), the board, by order, may require the person to:

10 (1) submit to care, counseling, or treatment by a
11 health provider designated by the board as a condition for the
12 issuance or renewal of a license;

13 (2) participate in a program of education or
14 counseling prescribed by the board, including a program of remedial
15 education;

16 (3) practice for a specified period under the
17 direction of a registered nurse or vocational nurse designated by
18 the board; or

19 (4) perform public service the board considers
20 appropriate.

21 SECTION 12. Section 301.4535, Occupations Code, is amended
22 by adding Subsection (a-1) and amending Subsection (b) to read as
23 follows:

24 (a-1) An applicant or nurse who is refused an initial
25 license or renewal of a license or whose license is suspended under
26 Subsection (a) is not eligible for a probationary, stipulated, or
27 otherwise encumbered license unless the board establishes by rule

1 criteria that would permit the issuance or renewal of the license.

2 (b) On final conviction or a plea of guilty or nolo
3 contendere for an offense listed in Subsection (a), the board, as
4 appropriate, may not issue a license to an applicant, shall refuse
5 to renew a license, or shall revoke a license [~~if the applicant or~~
6 ~~license holder did not previously disclose the conviction or plea~~
7 ~~and the fifth anniversary of the date the person successfully~~
8 ~~completed community supervision or parole has not occurred].~~

9 SECTION 13. Subchapter J, Chapter 301, Occupations Code, is
10 amended by adding Section 301.4551 to read as follows:

11 Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR
12 ALCOHOL USE. The board shall temporarily suspend the license of a
13 nurse as provided by Section 301.455 if the nurse is under a board
14 order prohibiting the use of alcohol or a drug or requiring the
15 nurse to participate in a peer assistance program, and the nurse:

- 16 (1) tests positive for alcohol or a prohibited drug;
17 (2) refuses to comply with a board order to submit to a
18 drug or alcohol test; or
19 (3) fails to participate in the peer assistance
20 program and the program issues a letter of dismissal and referral to
21 the board for noncompliance.

22 SECTION 14. Section 301.468, Occupations Code, is amended
23 by amending Subsection (a) and adding Subsections (e) and (f) to
24 read as follows:

25 (a) The board may determine that an order denying a license
26 application or suspending a license be probated. A person subject
27 to a probation order shall conform to each condition the board sets

1 as the terms of probation, including a condition:

2 (1) limiting the practice of the person to, or
3 excluding, one or more specified activities of professional nursing
4 or vocational nursing; ~~[or]~~

5 (2) requiring the person to submit to supervision,
6 care, counseling, or treatment by a practitioner designated by the
7 board; or

8 (3) requiring the person to submit to random drug or
9 alcohol tests in the manner prescribed by the board.

10 (e) A hearing under this section is limited to a
11 determination of whether the person violated the terms of the
12 probation order under Subsection (a) and whether the board should:

13 (1) continue, rescind, or modify the terms of
14 probation, including imposing an administrative penalty; or

15 (2) enter an order denying, suspending, or revoking
16 the person's license.

17 (f) If one of the conditions of probation is the
18 prohibition of using alcohol or a drug or participation in a peer
19 assistance program, violation of that condition is established by:

20 (1) a positive drug or alcohol test result;

21 (2) refusal to submit to a drug or alcohol test as
22 required by the board; or

23 (3) a letter of noncompliance from the peer assistance
24 program.

25 SECTION 15. Section 63.202(f), Education Code, is amended
26 to read as follows:

27 (f) Notwithstanding the limitation provided by Subsection

1 (b), grants awarded under Subsection (c) for the state fiscal
2 biennium ending on August 31, 2009, and the fiscal biennium ending
3 on August 31, 2011, by the Texas Higher Education Coordinating
4 Board shall be awarded to programs preparing students for initial
5 licensure as registered nurses or programs preparing qualified
6 faculty members with a master's or doctoral degree for the program,
7 including programs at two-year institutions of higher education,
8 four-year general academic teaching institutions, health science
9 centers, and independent or private institutions of higher
10 education, or to the nursing resource section established under
11 Section 105.002(b), Health and Safety Code. In awarding grants
12 under this subsection, the coordinating board may:

13 (1) give priority to institutions proposing to address
14 the shortage of registered nurses by promoting innovation in
15 education, recruitment, and retention of nursing students and
16 qualified faculty;

17 (2) award grants on a competitive basis; ~~and~~

18 (3) consider the availability of matching funds; and

19 (4) fund a study by the nursing resource section to
20 evaluate the competencies of clinical judgment and behaviors that
21 professional nursing students should possess at the time of
22 graduation.

23 SECTION 16. Chapter 105, Health and Safety Code, is amended
24 by adding Section 105.008 to read as follows:

25 Sec. 105.008. STUDY OF ALTERNATE WAYS TO ASSURE CLINICAL
26 COMPETENCY OF GRADUATES OF NURSING EDUCATIONAL PROGRAMS. (a) In
27 this section:

1 (1) "Clinical competency assessment program" means a
2 professional nursing prelicensure program that employs a
3 criterion-referenced summative performance examination, developed
4 by subject matter experts, to verify its graduates' attainment of
5 the clinical competency necessary for initial licensure as a
6 registered nurse.

7 (2) "Professional nursing prelicensure program" means
8 a professional nursing educational program that prepares students
9 to obtain an initial license as a registered nurse.

10 (3) "Research study" means the study described by
11 Subsection (b).

12 (4) "Supervised clinical learning experiences
13 program" means a professional nursing prelicensure program that
14 requires students to complete a required number of supervised
15 clinical learning experiences provided by qualified clinical
16 faculty involving multiple, ongoing assessments and feedback.

17 (b) To the extent funding is available, the nursing resource
18 section established under Section 105.002(b) shall conduct a
19 research study to identify:

20 (1) a set of expected student outcomes in terms of
21 clinical judgment and behaviors that professional nursing students
22 should possess at the time of graduation from a professional
23 nursing prelicensure program;

24 (2) standardized, reliable, and valid clinical exit
25 evaluation tools that could be used to evaluate the competencies in
26 clinical judgment and behaviors that professional nursing students
27 possess at the time of graduation from a professional nursing

1 prelicensure program;

2 (3) any correlation between the success rate of
3 graduates of professional nursing prelicensure programs on
4 standardized clinical exit evaluation tools and their educational
5 and experiential background, including:

6 (A) length and type of health care work
7 experience before entering the professional nursing prelicensure
8 programs;

9 (B) health care work experience during the
10 professional nursing prelicensure programs; and

11 (C) alternative methods of teaching clinical
12 judgment and behaviors, including supervised clinicals and
13 simulation laboratories; and

14 (4) any correlation between the required number of
15 hours in supervised clinical learning experiences and expected
16 student outcomes in terms of clinical judgment and behaviors.

17 (c) In addition to any other objective, the research study
18 must be designed to determine if the graduates of a clinical
19 competency assessment program are substantially equivalent to the
20 graduates of supervised clinical learning experiences programs in
21 terms of clinical judgments and behaviors. For purposes of this
22 subsection, the clinical competency assessment program must be one
23 that:

24 (1) has been requiring a clinical competency
25 assessment for at least 10 years;

26 (2) has students who reside in this state;

27 (3) has graduates who have been considered by the

1 Texas Board of Nursing to be eligible to apply for a registered
2 nurse license as a result of graduating from the program on or
3 before January 1, 2007; and

4 (4) conducts the clinical competency assessment at a
5 facility or facilities located in this state under the supervision
6 of a qualified clinical faculty member who is a registered nurse and
7 who holds a master's or doctoral degree in nursing.

8 (d) Considerations to be used in determining substantial
9 equivalence under Subsection (c) must include the differences
10 between the clinical competency assessment program and the
11 supervised clinical learning experiences program in:

12 (1) the methods of evaluating students' clinical
13 judgment and behaviors;

14 (2) performance on standardized clinical exit
15 evaluation tools;

16 (3) the ability of graduates to transition to and
17 assimilate in the registered nurse's role; and

18 (4) passage rates on the National Council Licensure
19 Examination.

20 (e) The nursing resource section shall contract with an
21 independent researcher to develop the research design and conduct
22 the research. The independent researcher must be selected by a
23 selection committee composed of:

24 (1) one representative elected by a majority of the
25 nursing advisory committee under Section 104.0155, who is the chair
26 of the selection committee;

27 (2) one representative designated by the Texas Health

1 Care Policy Council;

2 (3) the presiding officer of the Texas Board of
3 Nursing;

4 (4) one representative of the Texas Higher Education
5 Coordinating Board, designated by the governor;

6 (5) one representative designated by the Texas
7 Hospital Association;

8 (6) one representative designated by the Texas
9 Association of Business;

10 (7) one representative designated by a clinical
11 competency assessment program that meets the requirements of
12 Section 301.157(d-8), Occupations Code; and

13 (8) the nurse researcher member of the nursing
14 advisory committee under Section 104.0155.

15 (f) The nursing resource section shall complete the study
16 not later than June 30, 2014, and shall submit a report to the
17 office of the governor, the Senate Committee on Health and Human
18 Services, and the House Committee on Public Health. The report must
19 include a research abstract prepared by the independent researcher.

20 (g) The nursing resource section may cooperate with the
21 Texas Board of Nursing and the Texas Higher Education Coordinating
22 Board in conducting the study.

23 (h) The nursing advisory committee formed under Section
24 104.0155 shall serve as the oversight committee for the study.

25 (i) Any data collected as part of the study that contains
26 information identifying specific students, patients, or health
27 care facilities is confidential, is not subject to disclosure under

1 Chapter 552, Government Code, and may not be released unless all
2 identifying information is removed.

3 (j) In addition to funds appropriated by the legislature,
4 the nursing resource section may solicit, receive, and spend
5 grants, gifts, and donations from public or private sources for the
6 purpose of conducting the study.

7 (k) If grants or other funds are available through the
8 National Council of State Boards of Nursing that could be used to
9 fund the study, the nursing resource section shall apply for the
10 funds to the maximum amount available up to the estimated cost of
11 the study. In making the application or accepting the funding, the
12 nursing resource section may not relinquish any oversight
13 responsibility for the study, including responsibility for
14 designing and conducting the research or developing the findings.

15 SECTION 17. Section 301.202(b), Occupations Code, is
16 repealed.

17 SECTION 18. (a) The change in law made by Section 301.4521,
18 Occupations Code, as added by this Act, applies only to an
19 application filed with the Texas Board of Nursing on or after the
20 effective date of this Act. An application filed before the
21 effective date of this Act is covered by the law in effect when the
22 application was filed, and the former law is continued in effect for
23 that purpose.

24 (b) The changes in law made by Section 301.4551, Occupations
25 Code, as added by this Act, and Section 301.468, Occupations Code,
26 as amended by this Act, apply only to a violation of an order issued
27 by the Texas Board of Nursing on or after the effective date of this

1 Act. A violation of an order issued by the Texas Board of Nursing
2 before the effective date of this Act is covered by the law in
3 effect when the order was issued, and the former law is continued in
4 effect for that purpose.

5 SECTION 19. This Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 3961 was passed by the House on April 28, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3961 on May 23, 2009, by the following vote: Yeas 130, Nays 1, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3961 was passed by the Senate, with amendments, on May 21, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

“Exhibit “B”

§213.20. Informal Proceedings and Alternate Dispute Resolution (ADR).

(a) - (g) (No change).

(h) Referral to peer assistance after report to the Board.

(1) A nurse required to be reported under Texas Occupations Code Annotated §§301.401 - 301.409, may obtain informal disposition through referral to a peer assistance program as specified in Texas Occupations Code Annotated §301.410, as amended, if the nurse:

(A) - (B) (No change).

(C) makes a written contract with the Board of Nursing [Nurse Examiners] through its executive director promising to:

(i) undergo and pay for such physical and mental evaluations as the [~~executive director or the~~] peer assistance program determines [~~determine~~] to be reasonable and necessary to evaluate the nurse's impairment; to plan, implement and monitor the nurse's rehabilitation; and, to determine if, when and under what conditions the nurse can safely return to practice;

(ii) - (iv) (No change).

(2) - (3) (No change).

(i) - (l) (No change).

§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

(a) - (b) (No change).

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:

(1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this title (relating to Factors Considered for Imposition of Penalties/Sanctions) [a chemical dependency evaluation performed by a licensed chemical dependency evaluator or other professional approved by the executive director];

(2) - (4) (No change).

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this title [by a professional approved by the executive director to determine current sobriety and fitness. ~~The evaluation shall be limited to the conditions mentioned in subsection (b) of this section.~~].

(e) - (j) (No change).

§213.30. Declaratory Order of Eligibility for Licensure.

(a) (No change.)

(b) The person must submit a petition or application on forms provided by the Board which includes:

(1) - (2) (No change).

(3) if the potential ineligibility is due to mental illness, evidence of an

evaluation that meets the criteria of §213.33 of this title (relating to Factors Considered for Imposition of Penalties/Sanctions)[, including a prognosis, by a psychologist or psychiatrist,] and evidence of treatment[, including any medication];

(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of an evaluation that meets the criteria of 213.33 of this title and treatment, after care and support group attendance; and

(5) (No change).

(c) - (i) (No change).

§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 the appropriate penalty/sanction in disciplinary cases [~~whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine~~]. These factors shall also be used by the State Office of Administrative Hearings (SOAH) when recommending a sanction and the Board in determining the appropriate penalty/sanction in disciplinary cases:

(1) - (6) (No change).

(7) the length of time the person [~~licensee~~] has practiced;

(8) - (9) (No change).

(10) attempts by the person [~~licensee~~] to correct or stop the violation;

(11) - (13) (No change).

(b) - (d) (No change).

(e) If the Board has probable cause to believe that a person is unable to practice

nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol [~~When determining evidence of present fitness to practice~~], the Board [~~or Executive Director~~] may request an evaluation by a Board-approved addictionologist, addictionist, treatment evaluator, physician, medical doctor, neurologist, osteopathic, [a] psychologist, forensic psychologist, forensic psychiatrist, or psychiatrist, with credentials appropriate for the specific evaluation requested [~~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, fitness to practice, professional character, and veracity of the person subject to evaluation [nurse applicant or licensee]. If applicable, the evaluation must include information regarding the person's prognosis and medication regime. The person [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 person subject to evaluation [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 because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history [~~by a licensee or applicant for licensure~~]:

(1) The [~~the~~] Board [~~or Executive Director~~] may request an evaluation

~~[individual risk assessment]~~ conducted by a Board-approved forensic psychologist or forensic psychiatrist who:

(A) evaluates the behavior in question or the prior criminal history of the [a] person subject to evaluation; ~~[and]~~

(B) seeks to predict:

(i) the likelihood that the person subject to evaluation will engage in the behavior in question or criminal activity again, which may ~~[that may]~~ result in the person committing a second or subsequent reportable violation or 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 person subject to evaluation ~~[nurse applicant or licensee]~~.

(2) The person ~~[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 person subject to evaluation ~~[applicant or licensee]~~ should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person ~~[individual]~~ a copy.

(4) The provisions of the Occupations Code §301.4521 apply to an evaluation requested under this subsection.

(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 for [~~upon~~] violations of the provisions in the Occupations Code Chapter 301, Subchapter J. These [~~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)[;] of the 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) (No change).

(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) and (b)[;] of the NPA:

(A) Denial of the person's application for a license, license renewal, reinstatement of a revoked, suspended, or surrendered license, or temporary permit;

(B) 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[-] of the 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) (No change).

(ii) submit to an evaluation as outlined in subsections [subsection] (e) and (f) of this section or pursuant to the Occupations Code §301.4521;

(iii) - (v) (No change).

(vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(vii) (No change).

(C) 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) - (iii) (No change).

(iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(v) (No change).

(D) 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) - (iii) (No change).

(iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(v) (No change).

(E) (No change).

(F) 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) (No change).

(ii) submit to an evaluation as outlined in subsections [subsection] (e) and (f) of this section or pursuant to the Occupations Code §301.4521;

(iii) - (v) (No change).

(vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(vii) (No change).

(G) - (M) (No change).

(h) (No change).