

**Consideration of Adoption of Proposed Amendments to 22 Tex. Admin. Code §213.33, Pertaining to *Factors Considered for Imposition of Penalties/Sanctions and/or Fines*, Including the Adoption of the Disciplinary Matrix in Rule, Written Comments Received, and Board Responses to Comments**

**Summary of Request:** Consider final adoption of proposed amendments to 22 Tex. Admin. Code §213.33, Pertaining to *Factors Considered for Imposition of Penalties/Sanctions and/or Fines*, including the adoption of the Disciplinary Matrix (Matrix) in rule. The proposed amendments to §213.33 were approved by the Board at its October 22-23, 2009, meeting for submission to the *Texas Register* for public comment. The proposed amendments were published in the *Texas Register* on December 4, 2009, and the comment period ended on January 3, 2010. The Board received one written comment on the proposal from an organization. Further, the Eligibility and Disciplinary Advisory Committee convened on December 7, 2009, and considered the proposal and recommended amendments to the proposal.

The proposed amendments to §213.33 implement the requirements of HB 3961, enacted by the 81st Legislature, Regular Session, effective June 19, 2009, as they relate to physical and psychological evaluations for fitness to practice and include the Matrix, which is used in the resolution of eligibility and disciplinary matters before the Board, in rule.

Attached hereto for the Board's review as Attachment "A" are the comments received from the Texas Nurses Association (TNA) concerning the proposal. TNA's comments focus mainly on amendments to the proposal that discuss the Board's authority to require evaluations that could lead to license suspension under new §301.4521(b) if refused, as well as those evaluations that may only be requested, but not required by the Board.

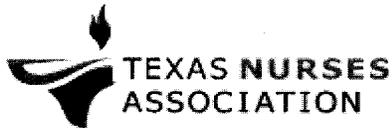
Additionally, the Board's Eligibility and Disciplinary Advisory Committee was asked to review the proposal, which resulted in recommendations to Staff regarding clarifications to proposed §213.33, particularly regarding the provisions associated with required or requested evaluations. The Committee's recommendations are summarized in Attachment "B".

The Government Code §2001.033 requires that an agency's order adopting a final rule, such as §213.33, contain a summary of comments received and a discussion as to whether the agency agrees or disagrees with the comments. Attached hereto for the Board's consideration as Attachment "B" are Staff's proposed responses to the comments received, as required by §2001.033.

As a result of the comments received and discussion during the December 7, 2009,

Eligibility and Disciplinary Advisory Committee meeting, Staff has recommended changes to the rule text to address selected modifications, which Staff believes adds clarity. Attached hereto for the Board's consideration as Attachment "C" are Staff's recommended changes to the rule text.

**Staff's Recommendation:** Move to adopt the proposed amendments to 22 Tex. Admin. Code §213.33, Pertaining to *Factors Considered for Imposition of Penalties/Sanctions and/or Fines*, with changes. Further, move to adopt the summary of the written comments and Staff's responses to the comments as attached hereto as Attachments "B" and authorize Staff to publish the summary of comments and response to comments in the *Texas Register*, 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*. Further, move to adopt the revised rule text attached hereto as Exhibit "C" and authorize Staff to publish the revised rule text attached hereto as Exhibit "C" in the *Texas Register*, 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*.



Sent via email to:  
[dusty.johnston@bon.state.tx.us](mailto:dusty.johnston@bon.state.tx.us)

December 30, 2009

James W. Johnston  
General Counsel  
Texas Board of Nursing  
333 Guadalupe, Ste 3-460  
Austin, Texas 78701

Re: Comments on proposed Rule §213.33 as published at 34 Tex Reg 8628, (12/4/2009)

Dear Mr. Johnston:

The Texas Nurses Association (TNA) submits the following comments on proposed Rule §213.33 as published at 34 Tex Reg 8628, (12/4/2009). These comments are divided into the following sections:

- A. Comments on Subsections (k) and (l)
- B. Comments on Subparagraphs (e)(2)(B), (e)(3)(B) and (e)(4)(B)
- C. Comments on Paragraph (c)(1)
- D. Proposed Language

#### **A. COMMENTS ON SUBSECTIONS (k) AND (l) on Pg 8642**

##### Background

As stated in the preamble to the proposed rule, Subsecs. §213.33(k) and (l) are designed to implement Nursing Practice Act §301.4521 as added by H.B. 3961. Section 301.4521 was added to clarify the BON's authority to utilize physical and psychological evaluations as part of the licensure and disciplinary process. In addition to recognizing the Board's current authority to request persons submit to voluntary evaluations, it authorizes the BON to require a physical and psychological evaluation under certain specified circumstances. A crucial distinction between required and requested/voluntary evaluations was that the required evaluations would be more limited in scope. Required evaluations would not include what the board has historically characterized as "forensic" evaluations including polygraph examinations. This type of "forensic" evaluation would continue to be an evaluation the Board could only request but not require.

### Scope of Required Evaluations Under Subsec. (k)

TNA does not believe Subsecs. (k) and (l) as proposed adequately reflect the clear distinction §301.4521 makes between the scope of evaluations the Board can require and those it can only request. More specifically, Subsec. (k) does not clearly preclude the board from using what the board has historically characterized as “forensic” evaluations including polygraph examinations as a component of required evaluations. TNA has particular concerns about the following language in Subsec. (k):

The Board reserves the right to request a forensic component for any evaluation.

and

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. *[Emphasis added]*

The use of the wording “must include . . . which at a minimum . . . test” suggests professional character and veracity, e.g., requiring a polygraph, are testing the Board can require a person submit to. TNA believes testing of professional character and veracity, e.g., by requiring a polygraph, are not appropriate components of a required evaluation. Testing of these two items should be limited to requested/voluntary evaluations. TNA also believes it is not appropriate to require testing of psychological stability when evaluating fitness to practice solely because of a physical impairment.

TNA wishes to make clear that it does not object to adequate evaluation. For example, TNA believes the Board should require that any testing utilized be verified as valid and reliable based on accepted standards for determining validity and reliability. It also believes the Board should require an evaluation under Subsec. (k) be sufficiently comprehensive to test adequately the extent of the suspected impairment, e.g., requiring an evaluation for chemical dependency include more than a client interview.

Attached is draft language TNA requests be adopted to address these concerns.

### Application of §301.4521

Paragraph (4) of Subsec. (l) states that the provisions of §301.4521 apply to evaluations requested under (l). There is no similar language in (k) stating that the provisions of §301.4521 apply to evaluations required under (k). Putting this language in (l) and not in (k) could be construed as suggesting that the provisions of §301.4521 do not apply to evaluations under (k). This could create ambiguity as to whether §301.4521 provisions not set out in (k) apply. These include provisions relating to costs, confidentiality of evaluations, and expunging of evaluations under certain circumstances. TNA requests that the following language be added to Subsec. (k):

The provisions of the Occupations Code §301.4521 apply to an evaluation required under this subsection.

## Protections for Nurse Under §301.4521

Section 301.4521 provides some significant protections for the nurse being evaluated that are not identified in Subsecs. (k) or (l). These include protections relating to confidentiality and expunging of evaluations. While these protections would apply by virtue of the fact that they are set out in §301.4521, TNA believes it is preferable that they be included in the rule. Accordingly, it requests the following language be added to both Subsecs. (k) and (l):

The provisions of Occupations Code §301.4521 shall apply to evaluations under this subsection including §301.4521(j) relating to confidentiality of evaluations and §301.4521(k) relating to expunging of evaluation results.

### **B. COMMENTS ON SUBPARAGRAPHS (e)(2)(B), (e)(3)(B) AND (e)(4)(B) on Pg 8939**

These three sections all address submitting to an evaluation as a probationary stipulation and all read:

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section *or* pursuant to the Occupations Code §301.4521; [*Emphasis added*]

The use of “or” suggests that evaluations outlined in subsections (k) and (l) differ from evaluations described in §301.4521. Subsections (k) and (l) implement §301.4521. Proposed Subsection (l) explicitly states §301.4521 applies to evaluations under Subsec. (l) and TNA has recommended above that a similar statement be added to Subsec. (k). To avoid creating confusion about the relationship between §301.4521 and Subsecs. (k) and (l), TNA requests the wording “or pursuant to the Occupation Code, §301.4521” be either:

- a. deleted; or
- b. reworded to read “implementing Occupations Code §301.4521.

TNA is not sure what is the purpose of Subsecs. (e)(2)(B), (3)(B) and (4)(B). While TNA understands the imposition of treatment as a condition of probation, it is not sure it understands how submitting to an evaluation would work as a condition of probation. It would seem that the evaluation would normally occur before probation is imposed and be used to determine the appropriate probationary stipulations.

### **C. COMMENTS ON PARAGRAPH (c)(1) on Pg 8638**

Subsection (c) relates to factors the Board considers in determining the appropriate penalty/sanction to impose in a disciplinary and eligibility matter. Paragraph (1) reads:

(1) evidence of actual or potential harm to patients, clients, or the public;

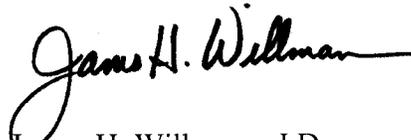
While TNA understands that actual harm cannot be ignored, it does not believe the presence or absence of harm should be the focal point. Rather, TNA believes the focus should be on the extent of risk of harm the nurse exposed the patient to and whether the nurse knowingly or recklessly exposed the patient to that risk. Whether actual harm resulted or not does not necessarily make the nurse an unsafe or safe practitioner. TNA would also point out that Paragraph (1) appears to be somewhat redundant of Paragraph (8) which reads:

(8) the actual damages, physical, economic, or otherwise, resulting from the violation.

#### **D. PROPOSED LANGUAGE**

Attached is proposed language revising Subsec. (k) to address TNA concerns and suggestions as set out in these comments.

Respectively submitted,

A handwritten signature in black ink that reads "James H. Willmann". The signature is written in a cursive style with a horizontal line extending to the right.

James H. Willmann, J.D.

General Counsel and Director Governmental Affairs

**TNA PROPOSED REWORDING OF SUBSECTION (k) TO ADDRESS CONCERNS IT  
RAISED ABOUT SUBSECTION (k) AS PROPOSED**

(k) 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, the Board may require an evaluation that meets the following standards:

(1) The evaluation is conducted by a Board-approved addictionologist, addictionist, medical doctor, neurologist, doctor of osteopathy, psychologist, advanced practice registered nurse, \_\_\_\_\_ or psychiatrist, with credentials appropriate for the specific evaluation requested, as determined by the Board. In all cases, the evaluator must possess credentials, expertise, and experience appropriate for conducting the requested evaluation, as determined by the Board. The evaluator must be familiar with the duties appropriate to the nursing profession.

*[NOTE: As recommended by the Board's Eligibility and Disciplinary Advisory Committee, advanced practice registered nurses are added to who can conduct evaluations.]*

(2) The evaluation shall be designed to determine whether the suspected impairment prevents the nurse from practicing nursing with reasonable skill and safety to patients. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation shall include objective tests and instruments, with proven validity and reliability, appropriate to the nurse's impairment. The evaluation may include testing of the nurse's psychological stability only if the nurse is suspected of mental impairment, chemical dependency or drug or alcohol abuse. The evaluation may not include testing of professional character or testing of veracity using testing instruments such as a polygraph. If applicable, the evaluation must include information regarding the person's prognosis and medication regime.

*[NOTE: This paragraph has been substantially revised to address TNA's concerns. The language stating that the evaluation must test professional character and veracity has been deleted.]*

(3) The Board reserves the right to request a forensic component for any evaluation. In such cases, the request for the forensic component shall be governed by Subsection (l)(1) of this section.

*[NOTE: TNA's preference would be to delete this paragraph entirely because it could be misconstrued as stating the Board can require a forensic evaluation. If a reference to requesting forensic evaluations is included in (k), TNA believes it should explicitly state that such a request is governed by Subsec. (l).]*

(4) The person 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 should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(5) The provisions of Occupations Code §301.4521 shall apply to evaluations under this subsection including §301.4521(j) relating to confidentiality of evaluations and §301.4521(k) relating to expunging of evaluation results.

## **Attachment “B”**

### **4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Comment:** A commenter representing the Texas Nurses Association (TNA) states that §301.4521 was added to clarify the Board’s authority to utilize physical and psychological evaluations as part of the licensure and disciplinary process. The commenter states that, in addition to recognizing the Board’s current authority to request persons to submit to voluntary evaluations, §301.4521 authorizes the Board to require a physical and psychological evaluation under certain specified circumstances. The commenter states that a crucial difference between a *required* and a *requested* or *voluntary* evaluation was that the required evaluation would be more limited in scope. The commenter states that required evaluations would not include what the Board has historically referred to as “forensic” evaluations, including polygraph examinations. The commenter states that this type of “forensic” evaluation would continue to be an evaluation that the Board could only request, but not require.

The commenter states that TNA does not believe proposed §213.33(k) and (l) adequately reflect the clear distinction that §301.4521 makes between the scope of evaluations the Board can require and those it can only request. More specifically, the commenter states that proposed §213.33(k) does not clearly preclude the Board from using what the Board has historically characterized as “forensic” evaluations, including polygraph examinations, as a component of required evaluations. Further, the commenter states that TNA has particular concerns about the use of the wording “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” in proposed §213.33(k). The commenter states that this language suggests professional character and veracity (for example, requiring a polygraph) are testing the Board can require a person to submit to. Further, the commenter states that TNA believes that testing of professional character and veracity by requiring a polygraph are not appropriate components of a required evaluation. The commenter states that the testing of these two items should be limited to requested or voluntary evaluations. The commenter further states that TNA believes that it is not appropriate to require testing of psychological stability when evaluating fitness to practice solely because of a physical impairment.

The commenter states that TNA wishes to make clear that it does not object to adequate evaluations. For example, the commenter states that TNA believes that the Board should require that any testing utilized be verified as valid and reliable, based upon acceptable standards for determining validity and reliability. The commenter states that TNA also believes that the Board should require an evaluation under §213.33(k) be sufficiently comprehensive to adequately test the extent of the suspected impairment (for example, requiring an evaluation for chemical dependency to include more than a client interview). The commenter provided proposed language to address these concerns and requests that the proposed language be adopted by the Board.

**Agency Response:** The Board agrees and has made the suggested changes to §213.33(k) as adopted. Further, the Board has eliminated all references to “forensic components” and “forensic evaluations” in §213.33(k) as adopted.

**Comment:** The commenter representing TNA states that proposed §213.33(l)(4) states that the provisions of §301.4521 apply to evaluations requested under subsection (l). The commenter states that there is no similar language in proposed §213.33(k) stating that the

provisions of §301.4521 apply to evaluations required under subsection (k). The commenter states that omitting this language from §213.33(k) could be construed as suggesting that the provisions of §301.4521 do not apply to evaluations under subsection (k). The commenter states that this could create ambiguity as to whether §301.4521 provisions not set out in §213.33(k) apply. The commenter states that these include provisions relating to costs, confidentiality of evaluations, and expunging of evaluations under certain circumstances. The commenter requests that a statement be added to §213.33(k) as adopted to reflect that the provisions of §301.4521 apply to an evaluation required under §213.33(k).

**Agency Response:** The Board agrees and has deleted the language in proposed §213.33(l)(4). Proposed §213.33(k) generally prescribes the requirements and conditions related to an evaluation required by the Board under §301.4521(b). In contrast, proposed §213.33(l) generally prescribes the requirements and conditions related to an evaluation requested by the Board under §301.4521(f). Section 301.4521(b) specifically prescribes the reasons for which the Board is authorized to require an individual to submit to an evaluation. This statutory language is duplicated in §213.33(k). However, §301.4521(f) does not prescribe the reasons for which the Board is authorized to request an individual to submit to an evaluation. Because §301.4521(f) does not prescribe the specific reasons for which the Board is authorized to request an individual to submit to an evaluation under that section, proposed §213.33(l) was intended to provide examples of circumstances in which the Board would request an individual to submit to an evaluation. It is not necessary to include similar clarification in §213.33(k). Although the language in proposed §213.33(l)(4) was intended to clarify the provisions of §213.33(l), the Board is aware that such language may cause unintended ambiguity. As such, the Board has deleted the language in proposed

§213.33(l)(4) from the adopted rule in order to remove any ambiguity. Further, the Board emphasizes that the provisions of §301.4521 will apply to any evaluation required or voluntary when requested pursuant to §213.33(k) or (l).

**Comment:** The commenter representing TNA states that §301.4521 provides significant protections for the nurse being evaluated that are not identified in proposed §213.33(k) or (l). The commenter states that these include protections relating to confidentiality and expunging of evaluations. The commenter states that, while these protections would apply by virtue of the fact that they are set out in §301.4521, TNA believes it is preferable that the statutory protections be reiterated in the rule as adopted. The commenter requests that language be added to §213.33(k) and (l) as adopted to reflect that the provisions of §301.4521 will apply to evaluations under §213.33(k) and (l) as adopted, including §301.4521(j), relating to confidentiality of evaluations, and §301.4521(k), relating to expunging of evaluation results.

**Agency Response:** The Board declines to make the change. The Board feels that adding language to the adopted rule that references only §301.4521(j) and (k) may introduce unintended ambiguity into the adopted rule. The Board agrees with the commenter that the protections specified in §301.4521 will apply to all evaluations required or requested under §213.33(k) and (l) as adopted.

**Comment:** The commenter representing TNA states that the use of the wording “or pursuant to the Occupations Code §301.4521” in proposed §213.33(e)(2)(B), (e)(3)(B), and (e)(4)(B) suggests that evaluations outlined in proposed §213.33(k) and (l) differ from evaluations described in §301.4521. The commenter requests that this wording be deleted or reworded. Further, the commenter states that TNA is not sure of the purpose of

proposed §213.33(e)(2)(B), (e)(3)(B), and (e)(4)(B). The commenter states that, while TNA understands the imposition of treatment as a condition of probation, it is not sure it understands how submitting to an evaluation would work as a condition of probation. Further, the commenter states that it would seem that the evaluation would normally occur before probation is imposed and be used to determine the appropriate probationary stipulations.

**Agency Response:** The Board declines to make the change. While the Board may only require an individual to submit to an evaluation for one of the specific reasons prescribed in §301.4521(b), the Board is not similarly limited in its ability to request an individual to submit to an evaluation under proposed §301.4521(f). Proposed §213.33(e)(2)(B), (e)(3)(B), and (e)(4)(B) clarify that the Board may require, as a probationary stipulation, that an individual submit to an evaluation for any of the reasons prescribed in §213.33(k) and (l), as well as for any other reason permitted by §301.4521. This clarification is consistent with the provisions of §301.4521. Further, an evaluation may be necessary at various stages of a disciplinary action, depending upon the specific circumstances of each disciplinary matter. Proposed §213.33(e)(2)(B), (e)(3)(B), and (e)(4)(B) enumerate probationary stipulations that may be imposed by the Board in a disciplinary action. However, these stipulations are not required to be imposed in each disciplinary action taken by the Board. In some disciplinary actions, it will be appropriate to include subsequent or continuing evaluation as part of the probationary stipulations. As such, the Board believes that if it adopts the recommended change that this may limit its ability to fashion appropriate probationary monitoring in its disciplinary matters.

**Comment:** The commenter representing TNA states that proposed §213.33(c)(1) relates

to factors the Board considers in determining the appropriate penalty/sanction to impose in a disciplinary and eligibility matter. The commenter states that, while TNA understands that actual harm cannot be ignored, TNA does not believe that the presence or absence of harm should be the focal point. Rather, the commenter states that TNA believes the focus should be on the extent of risk of harm the nurse exposed the patient to and whether the nurse knowingly or recklessly exposed the patient to that risk. The commenter states that whether actual harm resulted or not does not necessarily make the nurse an unsafe or safe practitioner. Further, the commenter points out that proposed §213.33(c)(1) appears to be somewhat redundant of proposed §213.33(c)(8).

**Agency Response:** The Board declines to make the change. Proposed §213.33(c) enumerates various factors that must be considered by the Board when determining the appropriate penalty/sanction in eligibility and disciplinary matters. While any evidence of actual harm to patients, clients, and the public is considered by the Board in a disciplinary matter, it may not necessarily be the focal point of the Board's investigation or ultimate determination. Rather, each of the factors enumerated in proposed §213.33(c), which would include the extent of risk of harm and whether a nurse knowingly or recklessly exposed a patient to a risk, should be considered by the Board before determining the appropriate penalty/sanction is an eligibility or disciplinary matter. Further, while evidence of harm may sometimes be related to evidence of damages, the two are not necessarily synonymous.

#### The Eligibility and Disciplinary Advisory Committee

The Eligibility and Disciplinary Advisory Committee (Committee) convened on December 7, 2009 and considered the proposed amendments to 22 Tex. Admin. Code §213.33, Pertaining to *Factors Considered for Imposition of Penalties/Sanctions and/or*

*Fines.* Following a thorough discussion of the proposal, the Committee voted to recommend its adoption to the Board, with a few minor changes. The Committee first recommended that the terms “neuropsychology” and “neuropsychologist” be added to the proposal for additional clarity. The Board agrees and has made this suggested change. The Committee also recommended that the Board add advanced practice registered nurses (APRN) to the types of health care providers that the Board may approve to conduct evaluations of a nurse’s competency to safely practice. The Committee further commented that the Board should review an APRN’s credentials, experience, and expertise, however, before approving a specific APRN to conduct an evaluation. The Board agrees and has made this suggested change. Finally, the Committee recommended adding the phrase “and/or” to proposed §213.33(k) to clarify that an evaluation must be designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation. Based upon the Committee’s recommendations and the comments received from the representative of TNA, the Board has made changes to §213.33(k) as adopted to address this concern.

## **Attachment “C”**

(k) 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, the Board may require an evaluation that meets the following standards:

(1) The evaluation must be conducted by a Board-approved addictionologist, addictionist, medical doctor, neurologist, doctor of osteopathy, psychologist, neuropsychologist, advanced practice registered nurse, or psychiatrist, with credentials appropriate for the specific evaluation, as determined by the Board. In all cases, the evaluator must possess credentials, expertise, and experience appropriate for conducting the evaluation, as determined by the Board. The evaluator must be familiar with the duties appropriate to the nursing profession.

(2) The evaluation must be designed to determine whether the suspected impairment prevents the person from practicing nursing with reasonable skill and safety to patients. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments with valid and reliable validity scales designed to test the person’s fitness to practice. The evaluation may include testing of the person’s psychological or neuropsychological stability only if the person is suspected of mental impairment, chemical dependency, or drug or alcohol abuse. If applicable, the evaluation must include information regarding the person's prognosis and medication regime.

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

(l) When determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history:

(1) The Board may request an evaluation conducted by a Board-approved forensic psychologist, forensic psychiatrist, or advanced practice registered nurse who:

(A) evaluates the behavior in question or the prior criminal history of the person;

(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 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, as determined and requested by the Board, that are designed to test the psychological or neuropsychological stability, fitness to practice, professional character, and/or veracity of the person subject to

evaluation.

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

(3) The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.