

## **Consideration of Approving Board Policy Establishing Evaluator Qualifications and Required Testing for Evaluations under HB 3961**

**Summary of Request:** Consider approving proposed guidelines that outline the Board's requirements and procedures for physical and psychological evaluations under HB 3961.

**Background:** HB 3961, which was enacted by the 81<sup>st</sup> Legislature, effective June 19, 2009, added §301.4521 to the Nursing Practice Act. New §301.4521 authorizes the Board to require an individual to submit to a physical or psychological 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. The new section also authorizes the Board to request an evaluation from an individual for other reasons, such as criminal history or unprofessional conduct.

HB 3961 required the Board to adopt rules regarding the qualifications for a licensed practitioner to conduct an evaluation under new §301.4521. At its October, 2009, meeting, the Board approved the proposal of rule amendments that prescribed general credentials that an evaluator must possess in order to conduct an evaluation under HB 3961. The proposed amendments were published in the *Texas Register* on December 4, 2009, and the comment period ended on January 3, 2010. The Board considered public comments at its January 21-22, 2010, meeting, and voted to adopt the proposed amendments with changes. The adoption of the proposed amendments was published in the *Texas Register* on February 12, 2010, and became effective on February 16, 2010.

HB 3961 also required the Board to adopt guidelines for requiring or requesting an individual to submit to an evaluation under new §301.4521. The Eligibility and Disciplinary Advisory Committee (Committee) convened on July 7, 2010, to consider proposed guidelines to implement this statutory requirement. The proposed guidelines build upon the rules that were adopted by the Board in February, 2010, and are intended to inform licensees, applicants, petitioners, and the public of the Board's comprehensive requirements and procedures regarding "required" and "requested" evaluations under new §301.4521. The proposed guidelines provide a brief explanation of the Board's authority to "require" and "request" evaluations under §301.4521; identify the types of evaluations that the Board will "require" and "request"; describe the Board's process for requiring/requesting an individual to submit to an evaluation; detail the specific criteria that each type of evaluation must meet; and specify the additional qualifications that a provider must possess in order to perform each type of required/requested evaluation.

The Committee discussed the proposed guidelines at length. In general, members felt that the guidelines provided necessary information to licensees about the Board's process for requiring and requesting evaluations. Members also agreed that it was important for the Board to specify the types of objective testing that should be utilized in

each type of evaluation. In general, members felt that it was also important to specify the credentials that an evaluator must possess in order to perform a certain evaluation for the Board. Some members felt the proposed guidelines should limit the performance of certain evaluations to psychologists. Initially, some members also commented that certain types of evaluations, such as pain management evaluations, might be able to be competently performed by an advanced practice registered nurse and that the proposed guidelines should be amended to allow for that. However, upon further discussion, the Committee generally agreed that no current evidence exists that supports the inclusion of an advanced practice registered nurse in the proposed guidelines at this time. Further, the Committee agreed that it was generally premature to assume that an advanced practice registered nurse would have the necessary training and experience to perform more complex evaluations, such as psychological evaluations or neuropsychological evaluations. The Committee agreed that it was important to move forward with the proposed guidelines at this time without the inclusion of advanced practice registered nurses in the guidelines. However, the Committee also agreed that it should gather data from various sources regarding the ability of advanced practice registered nurses to perform certain types of Board evaluations and should consider amending the guidelines, if appropriate, to address that issue at a later date. The Committee also recommended several editorial changes to the proposed guidelines. Following its discussions, the Committee unanimously voted to recommend the adoption of the proposed guidelines to the Board. A copy of the proposed guidelines, including the Committee's recommended changes, is attached hereto as Attachment "A".

**Board Action:** Move to approve the proposed guidelines outlining the Board's requirements and procedures for physical and psychological evaluations under HB 3961, as provided in Attachment "A".

## **Attachment “A”**

### Guidelines for Physical and Psychological Evaluations

This document informs licensees, applicants, petitioners, and the public about the Board’s requirements and procedures regarding physical and psychological evaluations under the Nursing Practice Act (the Occupations Code Chapter 301). These guidelines are not exhaustive and may not apply in a specific case or in all situations. For further information, please review the Nursing Practice Act, the Board’s rules, 22 Tex. Admin. Code Chapters 213 and 217, and the Board’s disciplinary policies, located on the Board’s website.

### Authority to Require and Request Evaluations

The Board is authorized under the Occupations Code §301.4521 to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely because of a physical or mental impairment or due to chemical dependency or the abuse of drugs or alcohol. In this context, “probable cause” means that the Board has a reasonable, objective basis to believe that an individual is unable to safely or effectively practice nursing due to a psychological or medical condition or impairment. Further, an “objective basis” is one that is not merely speculative on the Board’s part, but derives from direct observation, credible third party report, or other reliable evidence. The overall purpose of a required evaluation is to determine if an individual is able to safely and effectively perform his or her essential job functions, given the individual’s suspected condition or impairment. The Board may initiate action against an individual’s nursing license if the individual refuses to submit to a required evaluation under §301.4521.<sup>1</sup>

The Board may also request that an individual submit to an evaluation under the Occupations Code §301.4521 if an individual’s prior criminal history, unprofessional conduct, or lack of good professional character is relevant to the determination of the individual’s present fitness to practice nursing. An individual may refuse a requested evaluation. However, an individual who refuses a requested evaluation may be subject to certain restrictions imposed by law.<sup>2</sup>

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<sup>1</sup> If an individual refuses to submit to an evaluation, the Board is required to schedule a hearing on the matter at the State Office of Administrative Hearings, pursuant to the Occupations Code §301.4521(d). A hearing officer will issue an order at the end of the hearing either requiring the individual to submit to the evaluation or rescinding the Board’s demand for the evaluation. If an individual refuses to submit to an evaluation after the hearing officer has issued an order requiring the evaluation, the Board may suspend, limit, or refuse to issue or renew the individual’s license.

<sup>2</sup> If an individual refuses to submit to an evaluation, the individual will be prohibited from introducing another evaluation into evidence at a hearing at the State Office of Administrative Hearings, unless the individual meets the prescribed requirements of the Occupations Code §301.4521(g).

## Types of Evaluations

Listed below are examples of the various types of evaluations that the Board can require of an individual.

### Required Evaluations

Medical Evaluation  
Pain Management Evaluation  
Mental health/psychological evaluation  
Neuropsychological Evaluation  
Anger Management Evaluation  
Sex Offender Evaluation  
Chemical Dependency Evaluation

Listed below are examples of the various types of evaluations that the Board may request of an individual.

### Requested Evaluations

Forensic Psychological Evaluation  
Forensic Psychological Evaluation with a Polygraph Examination

All evaluators must be approved by the Board. An evaluator must possess the appropriate education, training, and experience required for the specified evaluation, as determined by the Board. An evaluator must also be familiar with the standards and duties appropriate to the nursing profession.

The Board will provide an evaluator with information regarding the individual subject to the evaluation prior to the date of the evaluation. This information might include performance evaluations, medical and personnel records, witness statements, prior physical or psychological evaluations, or other relevant documentation related to the individual's fitness to practice. Should an individual wish to submit additional material to the evaluator, that material must be provided in advance to the Board for review.

An evaluator's findings must be based upon the data available to the evaluator at the time of the evaluation. If additional, relevant information is obtained after the completion of the evaluation, or if it is determined that the original evaluation was based on inaccurate information, the Board may request that the evaluator reconsider his or her conclusions in light of the additional information.

Typically, an individual will be given forty-five days in which to complete an evaluation. Once an evaluation has been completed, the evaluator is required to send a copy of the written findings directly to the Board within thirty days of the completion of the

evaluation. The purpose of this requirement is to avoid any attempt to improperly influence or modify the results of the evaluation before the Board has been provided the original copy of the evaluation. Any evaluation that has been modified after its original completion will not be considered by the Board until it is provided with the original results and an explanation by the evaluator as to the basis of any subsequent amendment or modification.

Pursuant to the Occupations Code §301.4521(i), an individual is responsible for paying for the costs of an evaluation.

### Requirements for Evaluations

The Board has established the following guidelines for physical and psychological evaluations under the Occupations Code §301.4521.

1. An evaluator must hold a current, non-encumbered license in good standing from the appropriate licensing authority in Texas.
2. An evaluator must be able to demonstrate training or experience in the evaluation of an individual's fitness to practice.
3. An evaluator must be able to administer and interpret the results of the testing required by the Board for the specified evaluation.
4. An evaluator must have at least 10 years of clinical experience in a field of practice relevant to the specified evaluation.
5. An evaluation must include ultimate findings regarding an individual's ability to safely and effectively practice nursing based upon a review of the Board's rules of professional conduct and minimum standards of nursing practice.
6. For a neuropsychological evaluation, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. A neuropsychological evaluation must include the administration of scientifically validated, objective tests designed to evaluate an individual's brain function, including simple motor performance to complex reasoning and problem solving. While the exact tests chosen for administration are within the discretion of the evaluator, the selection of tests should sample a wide range of functional domains<sup>3</sup>. Further, an evaluator should utilize the combination of objective scores, behavioral process observations,

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<sup>3</sup> Two commonly used batteries are the Halstead-Reitan Neuropsychological Battery and the Luria-Nebraska Neuropsychological Battery.

and consistency in emerging patterns of results, along with a comprehensive clinical history, in reaching his or her evaluation findings.

7. For a chemical dependency evaluation, an evaluator must be a licensed psychiatrist who is certified in a relevant field of practice by the American Society of Addiction Medicine or the American Board of Psychiatry and Neurology, a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology, or an individual who is doctorally prepared and specializes in diagnosing and treating chemical dependency. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a chemical dependency evaluation must include a comprehensive assessment of the individual along with the administration of the Substance Abuse Subtle Screening Inventory (SASSI) and the Minnesota Multiphasic Personality Inventory (MMPI2) or the Personality Assessment Inventory (PAI).
8. For a sex offender evaluation, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice or licensure as a sex offender treatment provider may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a sex offender evaluation must include a review of the individual's history, including the review of relevant court documents, police reports, child welfare investigations and reports, prior criminal history records, prior mental health evaluations, collateral interviews, a comprehensive interview of the individual, psychometric testing, risk assessment, and actuarial assessment.<sup>4</sup>
9. For a medical evaluation, an evaluator must be a medical doctor or a doctor of osteopathy who is certified in a relevant field of practice. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a medical evaluation must include a comprehensive assessment of an individual's underlying disease process, including information relating to the identification, stabilization, management, and treatment of the disease process, and information relating to the individual's prognosis and medication regime. It is not unusual, however, for a

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<sup>4</sup> Commonly used tests include the plethysmograph, polygraph, MMPI2, Wechsler, Multiphasic Sex Inventory, Abel & Becker Cognitions Scale, Bumby Sexual Attitudes Scales, Wilson Sexual Fantasy Questionnaire, the Sex Offender Incomplete Sentence Blank, RRASOR, Static-99, VRAG & SORAG, and the LSI-Revised.

The Board will likely decline to accept a sex offender evaluation wherein the evaluator has recommended the use of a polygraph, but the individual subject to evaluation declines submission to one.

medical evaluation to be coupled with another type of evaluation, and in those instances, each evaluation must meet these guidelines.

10. For a pain management evaluation, an evaluator must be a medical doctor or a doctor of osteopathy who is certified in a relevant field of practice by the American Board of Pain Medicine. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a pain management evaluation must include a comprehensive assessment of an individual's underlying disease process and of any substance use or abuse by the individual. Further, the evaluation must address the individual's prognosis, medication regime, the individual's ability to safely practice nursing while taking prescription pain medications, and the regular re-assessment of the individual to ensure compliance with the prescribed medication regime. It is not unusual, however, for a pain management evaluation to be coupled with another type of evaluation, and in those instances, each evaluation must meet these guidelines.
11. For a mental health/psychological evaluation, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a mental health/psychological evaluation must include a comprehensive interview of the individual and the use of rating scales, neuropsychological testing, and personality tests.<sup>5</sup>
12. For an anger management evaluation, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, an anger management evaluation should focus on an individual's ability to appropriately manage the

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<sup>5</sup> Commonly used tests include the Beck Anxiety Inventory, Beck Depression Inventory-II, Brief Psychiatric Rating Scale (BPRS), Bums Anxiety Inventory, Bums Depression Inventory, Hamilton Anxiety Rating Scale, Hamilton Depression Rating Scale, Inventory to Diagnose Depression, Profile of Mood States (POMS), State-Trait Anxiety Inventory (STAI), Symptom Checklist-90-Revised, Taylor Manifest Anxiety Scale, Yale-Brown Obsessive-Compulsive Scale, Kaufman Adolescent and Adult Intelligence Test, Rorschach, Wechsler Adult Intelligence Scale-III or IV (WAIS-III or WAIS-IV), Wechsler Memory Scale IV (WMS-IV), Category Test, Continuous Performance Test, Halstead-Reitan Neuropsychological Test Battery, MMPI2, NEO Personality Inventory, PAI, and the Thematic Apperception Test.

triggers, degrees, and effects of an angered emotional state<sup>6</sup>.

13. For a forensic psychological evaluation, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. Forensic psychological evaluations will generally be utilized to determine whether an individual: (i) is capable of conforming to the requirements of the Nursing Practice Act and the Board's rules; (ii) is likely to repeat the unprofessional or criminal conduct at issue; and (iii) is a danger to the public. While the exact tests chosen for administration are within the discretion of the evaluator, full test battery, including objective, job-related, validated psychological instruments, must be administered to the individual to evaluate his or her cognitive, emotional, and personality functioning.<sup>7</sup> Further, if a polygraph examination is requested as a component of a forensic psychological evaluation, the polygraph examination must be administered by a licensed polygrapher. Additionally, if a polygraph examination is requested as a component of a forensic psychological evaluation, consultation between the evaluator and the examiner on the issues to be covered during the examination and the results of the examination is expected. The results of the polygraph should be included in the evaluator's final report.

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<sup>6</sup> Commonly used tests are the Novaco Anger and Provocation Inventory, the Defendant Questionnaire, the Anger Evaluation Survey, the Conditioned Reasoning Test of Aggression, the State-Trait Anger Expression Inventory-2 (STAXI-2), and the Domestic Violence Inventory.

<sup>7</sup> The most frequently used tests in forensic evaluations are the MMPI-II, MCMI-III, WAIS-III, WAIS-IV, WAIS-III-E, Rorschach, TAT, CPI, PAI, HARE (PLC-R), the test of Memory Malingering, the Dot Counting Test, the Wechsler Memory Scale III (WMS-III), and the Wechsler Memory Scale IV (WMS-IV).