

**Consideration of Proposed Amendments to 22 Tex. Admin. Code Chapter 216,
Pertaining to *Continuing Competency***

Background: Senate Bill (SB) 1058, which was passed during the 83rd Legislative Session and effective on September 1, 2013, prescribes new continuing education requirements for nurses. First, SB 1058 requires nurses to complete at least 2, but no more than 4, hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period. Additionally, SB 1058 requires nurses whose practice includes older adult or geriatric populations to complete at least 2, but no more than 6, hours of continuing education relating to older adult or geriatric populations or maintain certification in the area of practice relating to older adult or geriatric populations. The bill requires the Board to adopt rules to implement these requirements.

Additionally, SB 1191, which was also passed during the 83rd Legislative Session and effective on September 1, 2013, prescribes new training and/or continuing education requirements for nurses. SB 1191 requires all individuals who perform a forensic examination on a sexual assault survivor to have at least basic forensic evidence collection training or the equivalent education. SB 1191 permits the completion of continuing medical or nursing education courses in forensic evidence collection that are approved by the appropriate licensing board to satisfy the requirements of the bill.

The Board's Nursing Practice Advisory Committee (Committee) met on September 18, 2013 to discuss amendments to Chapter 216 and the provisions of SBs 1058 and 1191. After its discussions, the Committee voted to recommended the proposed amendments that are attached hereto as Attachment A to the Board. In addition to updating outdated references and making grammatical changes, the proposed amendments also implement the provisions of SBs 1058 and 1191.

Board Action: Move to approve the proposed amendments to 22 Tex. Admin. Code Chapter 216 pertaining to *Continuing Competency*, with authority for the 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 Chapter 216, Pertaining to *Continuing Competency*, as proposed.

Attachment “A”

§216.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) (No change.)

(2) Advanced Practice Registered Nurse (APRN)--A registered nurse

who:

(A) has completed a graduate-level advanced practice nursing education program that prepares him/her for one of the four APRN roles;

(B) has passed a national certification examination recognized by the Board that measures APRN role and population focused competencies;

(C) maintains continued competence as evidenced by re-certification/certification maintenance in the role and population focus through the national certification program;

(D) practices by building on the competencies of registered nurses by demonstrating a greater depth and breadth of knowledge, a greater synthesis of data, and greater role autonomy, as permitted by state law;

(E) is educationally prepared to assume responsibility and accountability for health promotion and/or maintenance, as well as the assessment, diagnosis, and management of patient problems, including the use and prescription of pharmacologic and non-pharmacologic interventions in compliance with state law;

(F) has clinical experience of sufficient depth and breadth to reflect the intended practice; and

(G) has been granted a license to practice as an APRN in one of the four APRN roles and at least one population focus area recognized by the Board.

~~[A nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist approved by the board to practice as an advanced practice registered nurse based on completion of an advanced educational program acceptable to the board.]~~

(3) Approved--Recognized as having met established standards and predetermined criteria of the:

(A) credentialing agencies recognized by the Board [~~board~~]
(applies to providers and programs); and

(B) certifying bodies accredited by a national certification accreditation body recognized by the Board [~~board~~].

(4) (No change.)

(5) Audit--A random sample of licensees taken to verify satisfactory completion of the Board's [~~board's~~] requirements for continuing competency during a biennial license renewal period.

(6) (No change.)

(7) Certification--Nursing certification from an approved certifying body accredited by a national accreditation body recognized by the Board [~~board~~].

(8) - (11) (No change.)

(12) Continuing Nursing Education (CNE) [~~(CE)~~]-Programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of nursing practice, thus improving health care to the public.

(13) Continuing education program--An organized educational activity, e.g, self-paced [~~self-paced~~] (online), classroom, approved through an external review process based on a predetermined set of criteria. The review is conducted by an organization(s) recognized by the Board [~~board~~] to approve programs and providers.

(14) Credentialing agency--An organization recognized by the Board [~~board~~] as having met nationally predetermined criteria to approve programs and providers of CNE [~~CE~~].

(15) Prescriptive authority [~~Authority~~]--Authorization granted to an APRN [~~advanced practice registered nurse~~] who meets the requirements to prescribe or order a drug or device, as set forth in Chapter 222 of this title (relating to Advanced Practice Registered Nurses with Prescriptive Authority) [~~carry out or sign a prescription drug order~~].

(16) (No change.)

(17) Provider--An individual, partnership, organization, agency or institution approved by an organization recognized by the Board [~~board~~] which offers continuing education programs.

(18) (No change.)

§216.2. Purpose. The purpose of continuing competency is to ensure that nurses stay abreast of current industry practices, enhance their professional competence, learn about new technology and treatment regimens, and update their clinical skills. Continuing education in nursing includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public. Nursing

certification is another method of demonstrating continuing competence. Pursuant to authority set forth in the Occupations Code §§301.152, 301.303, 301.304, 301.305, 301.306, 301.307 the Board [~~board~~] requires participation in continuing competency activities for license renewal. The procedures set forth in these rules provide guidance to fulfilling the continuing competency requirement. The Board [~~board~~] encourages nurses to choose continuing education courses that relate to their work setting and area of practice or to attain, maintain, or renew an approved national nursing certification in their practice area, which benefits the public welfare.

§216.3. Requirements.

(a) A nurse must meet either the requirements of this subsection or subsection (b) of this section. A nurse may choose to complete 20 contact hours of continuing nursing education (CNE) within the two years immediately preceding renewal of registration in his or her area of practice. These hours shall be obtained by participation in programs approved by a credentialing agency recognized by the Board [~~board~~]. A list of these agencies/organizations may be obtained from the Board's [~~board's~~] office or web site.

(b) A nurse must meet either the requirements of this subsection or subsection (a) of this section. A nurse may choose to demonstrate the achievement, maintenance, or renewal of an approved national nursing certification in the nurse's area of practice. A list of approved national nursing certification criteria may be obtained from the Board's [~~board's~~] office or web site.

(c) Requirements for the APRN [~~Advanced Practice Registered Nurse~~]. The licensee authorized by the Board [~~board~~] as an APRN [~~advanced practice registered~~

~~nurse (APRN)]~~ is required to obtain 20 contact hours of continuing education or attain, maintain or renew the national certification recognized by the Board [~~board~~] as meeting the certification requirement for the APRN's [~~advanced practice registered nurse's~~] role and population focus area of licensure within the previous two years of licensure. National certification as discussed in this section will only meet the requirement for licensure renewal.

(1) (No change.)

(2) The 20 contact hours of continuing education must be appropriate to the advanced specialty area and role recognized by the Board [~~board~~].

(3) - (4) (No change.)

(d) Forensic Evidence Collection.

(1) Pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of this subsection. This is a one-time requirement. An APRN may use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.

~~[(1) Each nurse licensed in Texas and employed in an emergency room (ER) setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by the Occupations Code §301.306 and this subsection:]~~

~~[(A) by September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006; or]~~

~~[(B) within two years of the initial date of employment in an ER setting. This requirement may be met through completion of approved continuing education activities, as set forth in §216.4 of this chapter (relating to Criteria for Acceptable Continuing Education Activity).]~~

(2) A nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two hours of CNE relating to forensic evidence collection that meets the requirements of this subsection within two years of the initial date of the nurse's employment in an ER setting. This is a one-time requirement.

(A) This requirement applies to nurses who work in an ER setting that is:

(i) the nurse's home unit;

(ii) an ER unit to which the nurse "floats" or schedules shifts;

or

(iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(B) A nurse shall be considered to have met the requirements of paragraphs (1) and (2) of this subsection if the nurse:

(i) completed CNE during the time period of February 19, 2006, through September 1, 2013; and

(ii) the CNE met the requirements of the Board's rules related to forensic evidence collection that were in effect from February 19, 2006, through September 1, 2013.

(C) Completion of at least two hours of CNE that meets the requirements of this subsection may simultaneously satisfy the requirements of paragraphs (1) and (2) of this subsection.

~~[(2) This requirement shall apply to nurses who work in an ER setting that is:]~~

~~[(A) the nurse's home unit;]~~

~~[(B) an ER unit to which the nurse "floats" or schedules shifts; or]~~

~~[(C) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.]~~

(3) A [licensed] nurse [in Texas] who would otherwise be exempt from CNE [CE] requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. ~~[This is a one-time requirement for each nurse employed in an ER setting.]~~ In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining

records of CNE [CE] attendance. Validation of course completion in forensic [Forensic] evidence [Evidence] collection [Collection] should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) ~~[The minimum 2 hours of]~~ Continuing [continuing] education completed under this subsection [requirement] shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(5) The ~~[required]~~ hours of continuing education completed under this subsection will count towards completion of the 20 contact hours of ~~[are included in the]~~ CNE ~~[continuing education]~~ required in subsection (a) of this section ~~[requirements for nurses]~~. Certification related to forensic evidence collection that is approved by the Board may be used to fulfill the requirements of this subsection.

(e) A nurse ~~[who is 65 years old or older and]~~ who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization in compliance with the Occupations Code §112.051 and §301.261 (e) and §217.9(d) of this title (relating to Inactive Status):

(1) Must have completed at least 10 hours of CNE ~~[continuing education]~~ as defined in this chapter during the previous biennium, unless the nurse also holds

valid recognition as an APRN [~~advanced practice registered nurse~~] or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas.

(2) Must have completed at least 20 hours of CE as defined in this chapter if authorized by the Board [~~board~~] in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APRN CE defined under subsection (c) of this section. An APRN authorized as a VR-RN with APRN authorization may not hold prescriptive authority. This does not preclude a registered nurse from placing his/her APRN authorization on inactive status and applying for authorization only as a VR-RN.

(3) Is exempt from fulfilling targeted CE requirements except as required for volunteer retired APRNs [~~advanced practice registered nurses~~].

(f) (no change.)

(g) Nursing Jurisprudence and Nursing Ethics. Each nurse, including an APRN, is required to complete at least two hours of CNE, as defined in this chapter, relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. The CNE course(s) shall contain information related to the Texas Nursing Practice Act, the Board's rules, including Board Rule 217.11 (relating to Standards of Nursing Practice), the Board's position statements, principles of nursing ethics, and professional boundaries. The hours of continuing education required under this subsection shall count towards completion of the 20 contact hours of CNE required

in subsection (a) of this section. Certification may not be used to fulfill the CNE requirements of this subsection.

(h) Older Adult or Geriatric Care. A nurse, including an APRN, whose practice includes older adult or geriatric populations shall complete at least two contact hours of CE, as defined in this chapter, in every licensure cycle after January 1, 2014.

(1) The minimum two contact hours of CE required by subsection (h) of this section shall include information relating to elder abuse, age related memory changes and disease processes, including chronic conditions, and end of life issues. The minimum two contact hours of CE may include information related to health maintenance and health promotion of the older adult or geriatric populations.

(2) Certification related to the older adult or geriatric populations that is approved by the Board may also be used to fulfill the CE requirements of this subsection. Further, the hours of continuing education completed under this subsection shall count towards completion of the 20 contact hours of CE required in subsection (a) of this section.

§216.5. Additional Criteria for Specific Continuing Education Programs.

(a) In addition to those programs reviewed by a Board [~~board~~] approved entity, a licensee may attend an academic course that meets the following criteria:

(1) The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course directly relevant to the licensee's area of nursing practice.

(2) Participants, upon audit by the Board [~~board~~], shall be able to present an official transcript indicating completion of the course with a grade of "C" or better, or a "Pass" on a Pass/Fail grading system.

(b) Program Development and Presentation. Development and presentation of a CNE program of at least two hours in length that meets the requirements of §216.3(d) for CNE related to basic forensic evidence collection, §216.3(g) for CNE related to nursing jurisprudence and nursing ethics, or §216.3(h) for CNE related to older adult or geriatric care may count towards satisfaction of the continuing education requirements of this chapter.

(1) Upon audit by the Board, the licensee must submit to the Board the title of the program, program objectives, brief outline of content, credentialing agency, provider number assigned to the program, dates and locations of the presentation, and number of contact hours not to exceed one page.

(2) Two contact hours shall only be awarded to the nurse(s) who developed and presented the qualifying program:

(A) once within three, two-year licensure renewal cycles for nursing jurisprudence and nursing ethics, regardless of the number of times the program was presented;

(B) once within a two-year licensure renewal cycle for older adult or geriatric care, regardless of the number of times the program was presented; and

(C) once within a two-year licensure renewal cycle for basic forensic evidence collection, regardless of the number of times the program was presented.

§216.6. Activities That [Which] are not Acceptable as Continuing Education. The following activities do not meet continuing education requirements for licensure renewal.

(1) (No change.)

(2) In service programs. Programs sponsored by the employing agency to provide specific information about the work setting and orientation or other programs which address the institution's philosophy;~~;~~ policies and procedures; on-the-job training; and basic CPR; and equipment demonstration are not acceptable for CNE [~~CE~~] credit.

(3) Nursing refresher courses. Programs designed to update knowledge or current nursing theory and clinical practice, which consist of a didactic and clinical component to ensure entry level competencies into nursing practice are not accepted for CNE [~~CE~~] credit.

(4) Orientation programs. A program designed to introduce employees to the philosophy, goals, policies, procedures, role expectations and physical facilities of a specific work place are not acceptable for CNE [~~CE~~] credit.

(5) Courses which focus upon self-improvement, changes in attitude, self-therapy [~~self therapy~~], self-awareness, weight loss, and yoga.

(6) (No change.)

~~[(7) Certification--Nursing certification from an approved certifying body accredited by a national accreditation body recognized by the board.]~~

(7)[(8)] Classroom instruction--Workshops, seminars, institutes, conferences or short term courses which the individual attends which may be acceptable for continuing education credit.

(8)[(9)] Clinical learning experiences--Faculty-planned and guided learning experiences designed to assist students to meet the course objectives and to apply nursing knowledge and skills in the direct care of patients/clients. This includes laboratories, acute care facilities, extended care facilities, and other community resources.

(9)[(10)] Self-directed study--An educational activity wherein the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity including, but not limited to:

(A) academic courses that are audited, or that are not directly relevant to a licensee's area of nursing practice ~~[healthcare-related courses but not part of a nursing degree program]~~, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses are not acceptable;

(B) (No change.)

(C) program development and presentation, unless the development and/or presentation meets the requirements of §216.5 of this chapter .

(10) Continuing Medical Education (CME), unless completed by an APRN in the APRN's role and population focus area of licensure.

§216.7. Responsibilities of Individual Licensee.

(a) (No change.)

(b) The licensee shall be responsible for maintaining a record of CNE [CE] activities. These records shall document attendance as evidenced by original certificates of attendance, contact hour certificates, or academic transcripts, [~~or grade slips~~] and copies of these shall be submitted to the Board [~~board~~] upon audit.

(c) These records shall be maintained by the licensee for a minimum of three [~~two~~] consecutive renewal periods or six [~~four~~] years.

§216.8. Relicensure Process.

(a) Renewal of license.

(1) Upon renewal of the license, the licensee shall sign a statement attesting that the CNE [CE] or approved national nursing certification requirements have been met.

(2) The contact hours must have been completed in the biennium immediately preceding the license renewal. CNE [CE] contact hours from a previous renewal period will not be accepted. Additional contact hours earned may not be used for subsequent renewal periods.

(b) Persons licensed by examination. A candidate licensed by examination shall be exempt from the CNE [CE] or approved national nursing certification requirement for issuance of the initial license and for the immediate renewal period following licensure.

(c) Persons licensed by endorsement. An applicant licensed by endorsement shall be exempt from the CNE [CE] or approved national nursing certification

requirement for the issuance of the initial Texas license and for the immediate renewal period following initial Texas licensure.

(d) Delinquent license.

(1) A license that has been delinquent for less than four years may be renewed by the licensee showing evidence of having completed 20 contact hours of acceptable CNE [~~continuing education~~] or an approved national nursing certification within two years immediately preceding the application for relicensure and by meeting all other Board [~~board~~] requirements. A licensee shall be exempt from the continuing education requirement for the immediate renewal period following renewal of the delinquent license.

(2) (No change.)

(e) (No change.)

(f) Reinstatement of a license. A licensee whose license has been revoked and subsequently applies for reinstatement must show evidence that the continuing competency requirements [~~requirement~~] and other Board [~~board~~] requirements have been met prior to reinstatement of the license by the Board [~~board~~].

§216.9. Audit Process. The Board [~~board~~] shall select a random sample of licensees 90 days prior to each renewal month. Audit forms shall be sent to selected licensees to substantiate compliance with the continuing competency requirements.

(1) Within 30 days following notification of audit, these selected licensees shall submit an audit form and:

(A) documentation as specified in §216.4 and §216.5 of this chapter (relating to Criteria for Acceptable Continuing Education Activity and Additional

Criteria for Specific Continuing Education Programs) and any additional documentation the Board [board] deems necessary to verify compliance with continuing education requirements for the period of licensure being audited; or

(B) a copy of the current approved national nursing certification and any additional documentation the Board [board] deems necessary to verify compliance with continuing competency requirements for the period of licensure being audited.

(2) Failure to notify the Board [board] of a current mailing address will not absolve the licensee from audit requirements.

(3) - (4) (No change.)

§216.10. Appeals.

(a) (No change.)

(b) The Board [board] or its designee shall conduct a review in which the appellant may appear in person to present reasons why the audit decision should be set aside or modified.

(c) The decision of the Board [board] after the appeal shall be considered final and binding.

§216.11. Consequences of Non-Compliance. Failure to comply with the Board's [board's] continuing competency requirements will result in the denial of renewal.

AN ACT

relating to the regulation of the practice of nursing.

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

SECTION 1. Subsection (a), Section 301.004, Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided by a friend;

(2) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a nurse unless the person is licensed in another state;

(3) nursing care in which treatment is solely by prayer or spiritual means;

(4) an act performed by a person under the delegated authority of a person licensed by the Texas Medical Board;

(5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;

(6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education

1 program approved under Section 301.157(d) leading to an initial
2 license as a nurse; or

3 (7) the practice of nursing by a person licensed in
4 another state who is in this state on a nonroutine basis for a
5 period not to exceed 72 hours to:

6 (A) provide care to a patient being transported
7 into, out of, or through this state;

8 (B) provide nursing consulting services; or

9 (C) attend or present a continuing nursing
10 education program.

11 SECTION 2. Subsection (c), Section 301.2511, Occupations
12 Code, is amended to read as follows:

13 (c) The board by rule shall ~~[may]~~ develop a system for
14 ~~[initiating the process of]~~ obtaining criminal history record
15 information for a person accepted for enrollment in a nursing
16 ~~[applicants for a license under this chapter by requiring persons~~
17 ~~who enroll or plan to enroll in an]~~ educational program that
18 prepares the ~~[a]~~ person for initial licensure ~~[a license]~~ as a
19 registered or vocational nurse by requiring the person to submit to
20 the board a set of fingerprints that meets the requirements of
21 Subsection (a). The board may develop a similar system for an
22 applicant for enrollment in a nursing educational program. The
23 board may require payment of a fee by a person who is required to
24 submit a set of fingerprints under this subsection.

25 SECTION 3. Section 301.257, Occupations Code, is amended by
26 adding Subsections (j) and (k) to read as follows:

27 (j) The board may file a petition under this section based

1 on the results of a criminal history record information check
2 conducted under Section 301.2511. The board by rule shall adopt
3 requirements for the petition and determination under this
4 subsection. The rules must:

5 (1) identify the criminal offenses that constitute
6 grounds for the board to file the petition; and

7 (2) describe the documents required by the board to
8 make a determination of license eligibility.

9 (k) The board shall make a determination of license
10 eligibility under Subsection (j) not later than the 120th day after
11 the date the person submits the required documents to the board
12 under that subsection.

13 SECTION 4. Subchapter G, Chapter 301, Occupations Code, is
14 amended by adding Sections 301.305 and 301.307 to read as follows:

15 Sec. 301.305. CONTINUING EDUCATION IN NURSING
16 JURISPRUDENCE AND NURSING ETHICS. (a) As part of a continuing
17 competency program under Section 301.303, a license holder shall
18 complete at least two hours of continuing education relating to
19 nursing jurisprudence and nursing ethics before the end of every
20 third two-year licensing period.

21 (b) The board shall adopt rules implementing the
22 requirement under Subsection (a) in accordance with the guidelines
23 for targeted continuing education under Section 301.303(g).

24 (c) The board may not require a license holder to complete
25 more than four hours of continuing education under this section.

26 Sec. 301.307. CONTINUING EDUCATION IN OLDER ADULT OR
27 GERIATRIC CARE. (a) As part of a continuing competency program

1 under Section 301.303, a license holder whose practice includes
2 older adult or geriatric populations shall complete at least two
3 hours of continuing education relating to older adult or geriatric
4 populations or maintain certification in an area of practice
5 relating to older adult or geriatric populations.

6 (b) The board shall adopt rules implementing the
7 requirement under Subsection (a) in accordance with the guidelines
8 for targeted continuing education under Section 301.303(g).

9 (c) The board may not require a license holder to complete
10 more than six hours of continuing education under this section.

11 SECTION 5. Subsection (b), Section 301.452, Occupations
12 Code, is amended to read as follows:

13 (b) A person is subject to denial of a license or to
14 disciplinary action under this subchapter for:

15 (1) a violation of this chapter, a rule or regulation
16 not inconsistent with this chapter, or an order issued under this
17 chapter;

18 (2) fraud or deceit in procuring or attempting to
19 procure a license to practice professional nursing or vocational
20 nursing;

21 (3) a conviction for, or placement on deferred
22 adjudication community supervision or deferred disposition for, a
23 felony or for a misdemeanor involving moral turpitude;

24 (4) conduct that results in the revocation of
25 probation imposed because of conviction for a felony or for a
26 misdemeanor involving moral turpitude;

27 (5) use of a nursing license, diploma, or permit, or

1 the transcript of such a document, that has been fraudulently
2 purchased, issued, counterfeited, or materially altered;

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

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

9 (8) revocation, suspension, or denial of, or any other
10 action relating to, the person's license or privilege to practice
11 nursing in another jurisdiction or under federal law;

12 (9) intemperate use of alcohol or drugs that the board
13 determines endangers or could endanger a patient;

14 (10) unprofessional or dishonorable conduct that, in
15 the board's opinion, is likely to deceive, defraud, or injure a
16 patient or the public;

17 (11) adjudication of mental incompetency;

18 (12) lack of fitness to practice because of a mental or
19 physical health condition that could result in injury to a patient
20 or the public; or

21 (13) failure to care adequately for a patient or to
22 conform to the minimum standards of acceptable nursing practice in
23 a manner that, in the board's opinion, exposes a patient or other
24 person unnecessarily to risk of harm.

25 SECTION 6. Subsection (b), Section 301.453, Occupations
26 Code, is amended to read as follows:

27 (b) In addition to or instead of an action under Subsection

1 (a), the board, by order, may require the person to:

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

5 (2) participate in a program of education or
6 counseling prescribed by the board, including a program of remedial
7 education;

8 (3) practice for a specified period under the
9 direction of a registered nurse or vocational nurse designated by
10 the board; ~~[or]~~

11 (4) perform public service the board considers
12 appropriate; or

13 (5) abstain from the consumption of alcohol or the use
14 of drugs and submit to random periodic screening for alcohol or drug
15 use.

16 SECTION 7. Subsection (a), Section 301.454, Occupations
17 Code, is amended to read as follows:

18 (a) Except in the case of a temporary suspension authorized
19 under Section 301.455 or 301.4551 or an action taken in accordance
20 with an agreement between the board and a license holder, the board
21 may not take any ~~[initiate a]~~ disciplinary action relating to a
22 license unless:

23 (1) the board has served notice to the license holder
24 of the facts or conduct alleged to warrant the intended action; and

25 (2) the license holder has been given an opportunity,
26 in writing or through an informal meeting, to show compliance with
27 all requirements of law for the retention of the license.

1 SECTION 8. Subsection (a), Section 301.458, Occupations
2 Code, is amended to read as follows:

3 (a) Unless there is an agreed disposition of the complaint
4 under Section 301.463, ~~[and]~~ if probable cause is found under
5 Section 301.457(e)(2), the board or the board's authorized
6 representative shall file ~~[initiate proceedings by filing]~~ formal
7 charges against the nurse.

8 SECTION 9. Subsection (a), Section 301.465, Occupations
9 Code, is amended to read as follows:

10 (a) Notwithstanding Section 2001.089, Government Code, the
11 ~~[The]~~ board may request issuance of a subpoena to be served in any
12 manner authorized by law, including personal service by a board
13 investigator or ~~[and service]~~ by certified mail.

14 SECTION 10. Section 301.466, Occupations Code, is amended
15 by amending Subsection (a) and adding Subsection (d) to read as
16 follows:

17 (a) A complaint and investigation concerning a nurse under
18 this subchapter, ~~[and]~~ all information and material compiled by the
19 board in connection with the complaint and investigation, and the
20 information described by Subsection (d) are:

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

23 (2) not subject to disclosure, discovery, subpoena, or
24 other means of legal compulsion for release to anyone other than the
25 board or a board employee or agent involved in license holder
26 discipline.

27 (d) Notwithstanding Subsection (c), if the board orders a

1 nurse to participate in a peer assistance program approved by the
2 board under Section 467.003, Health and Safety Code, the complaint,
3 filing of formal charges, nature of those charges, final board
4 order, and disciplinary proceedings are subject to disclosure:

5 (1) only to the same extent as information regarding a
6 complaint is subject to disclosure under Subsection (b); or

7 (2) in a subsequent matter relating to the board order
8 or a subsequent violation of this chapter or a board rule.

9 SECTION 11. The heading to Subchapter N, Chapter 301,
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

12 SECTION 12. Section 301.651, Occupations Code, is amended
13 to read as follows:

14 Sec. 301.651. DEFINITIONS [~~DEFINITION~~]. In this
15 subchapter:

16 (1) "Corrective [~~, "corrective]~~ action" means a fine or
17 remedial education imposed under Section 301.652.

18 (2) "Deferred action" means an action against a person
19 licensed or regulated under this chapter that is deferred by the
20 board as provided by this subchapter.

21 SECTION 13. Subsection (b), Section 301.655, Occupations
22 Code, is amended to read as follows:

23 (b) If the person does not accept the executive director's
24 determination and recommended corrective action as originally
25 proposed or as modified by the board or fails to respond in a timely
26 manner to the executive director's notice as provided by Section
27 301.654, the executive director shall:

1 (1) terminate corrective action proceedings [~~under~~
2 ~~this subchapter~~]; and

3 (2) dispose of the matter as a complaint under
4 Subchapter J.

5 SECTION 14. Subchapter N, Chapter 301, Occupations Code, is
6 amended by adding Section 301.6555 to read as follows:

7 Sec. 301.6555. DEFERRED ACTION. (a) For any action or
8 complaint for which the board proposes to impose on a person a
9 sanction other than a reprimand or a denial, suspension, or
10 revocation of a license, the board may:

11 (1) defer the final action the board has proposed if
12 the person conforms to conditions imposed by the board, including
13 any condition the board could impose as a condition of probation
14 under Section 301.468; and

15 (2) if the person successfully meets the imposed
16 conditions, dismiss the complaint.

17 (b) Except as provided by this subsection, a deferred action
18 by the board is not confidential and is subject to disclosure in
19 accordance with Chapter 552, Government Code. If the person
20 successfully meets the conditions imposed by the board in deferring
21 final action and the board dismisses the action or complaint, the
22 deferred action of the board is confidential to the same extent as a
23 complaint is confidential under Section 301.466.

24 SECTION 15. Section 301.656, Occupations Code, is amended
25 to read as follows:

26 Sec. 301.656. REPORT TO BOARD. The executive director
27 shall report periodically to the board on the corrective or

1 deferred actions imposed under this subchapter, including:

- 2 (1) the number of [~~corrective~~] actions imposed; and
- 3 (2) the types of violations for which [~~corrective~~]
- 4 actions were imposed [~~, and~~
- 5 [~~(3) whether affected nurses accepted the corrective~~
- 6 ~~actions~~].

7 SECTION 16. Section 301.657, Occupations Code, is amended
8 to read as follows:

9 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR
10 DEFERRED ACTION. (a) Except to the extent provided by this
11 section, a person's acceptance of a corrective or deferred action
12 under this subchapter does not constitute an admission of a
13 violation but does constitute a plea of nolo contendere.

14 (b) The board may treat a person's acceptance of corrective
15 or deferred action as an admission of a violation if the board
16 imposes a sanction on the person for a subsequent violation of this
17 chapter or a rule or order adopted under this chapter.

18 (c) The board may consider a corrective or deferred action
19 taken against a person to be a prior disciplinary action under this
20 chapter when imposing a sanction on the person for a subsequent
21 violation of this chapter or a rule or order adopted under this
22 chapter.

23 SECTION 17. Section 301.1607, Occupations Code, is
24 repealed.

25 SECTION 18. (a) Except as provided by Subsection (b) of
26 this section, the changes in law made by this Act to Chapter 301,
27 Occupations Code, apply only to a violation that occurs on or after

1 the effective date of this Act. A violation that occurs before that
2 date is governed by the law in effect on the date the violation
3 occurred, and the former law is continued in effect for that
4 purpose.

5 (b) The changes in law made by this Act to Subchapter N,
6 Chapter 301, Occupations Code, apply to a violation that occurs
7 before, on, or after the effective date of this Act.

8 (c) Sections 301.305 and 301.307, Occupations Code, as
9 added by this Act, apply only to a licensing period that begins on
10 or after January 1, 2014.

11 SECTION 19. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1058 passed the Senate on March 27, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1058 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 145, Nays 3, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to the duties of health care facilities, health care providers, and the Department of State Health Services with respect to care provided to a sexual assault survivor in an emergency department of a health care facility.

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

SECTION 1. Subsection (a), Section 323.002, Health and Safety Code, is amended to read as follows:

(a) Each health care facility that has an emergency department shall comply with Section 323.004. At the request of the department, a health care facility that has an emergency department shall submit to the department for approval a plan for providing the services required by Section 323.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

SECTION 2. Section 323.004, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), (b-1), and (d) to read as follows:

(a) Except as otherwise provided by Subsection (a-2), after ~~After~~ a sexual assault survivor arrives at a health care facility following an alleged sexual assault, the facility shall~~+~~

~~(1)~~ provide care to the survivor in accordance with Subsection (b).

(a-1) A facility that is not a health care facility

1 designated in a community-wide plan as the primary health care
2 facility in the community for treating sexual assault survivors
3 shall inform the survivor that:

4 (1) the facility is not the designated facility and
5 provide to the survivor the name and location of the designated
6 facility; and

7 (2) the survivor is entitled, at the survivor's
8 option:

9 (A) to receive the care described by Subsection
10 (b) at that facility, subject to Subsection (b-1); or

11 (B) to be stabilized and to be transferred to and
12 receive the care described by Subsection (b) at a health care
13 facility designated in a community-wide plan as the primary health
14 care facility in the community for treating sexual assault
15 survivors.

16 (a-2) If a sexual assault survivor chooses to be transferred
17 under Subsection (a-1)(2)(B), after obtaining the survivor's
18 written, signed consent to the transfer, the facility shall~~[, or~~

19 ~~[(2)]~~ stabilize and transfer the survivor to a health
20 care facility in the community designated in a community-wide plan
21 as the primary health care facility in the community for treating
22 sexual assault survivors, which shall provide care to the survivor
23 in accordance with Subsection (b).

24 (b) A health care facility providing care to a sexual
25 assault survivor shall provide the survivor with:

26 (1) subject to Subsection (b-1), a forensic medical
27 examination in accordance with Subchapter B, Chapter 420,

1 Government Code, if the examination has been requested by a law
2 enforcement agency under Article 56.06, Code of Criminal Procedure,
3 or is conducted under Article 56.065, Code of Criminal Procedure;

4 (2) a private area, if available, to wait or speak with
5 the appropriate medical, legal, or sexual assault crisis center
6 staff or volunteer until a physician, nurse, or physician assistant
7 is able to treat the survivor;

8 (3) access to a sexual assault program advocate, if
9 available, as provided by Article 56.045, Code of Criminal
10 Procedure;

11 (4) the information form required by Section 323.005;

12 (5) a private treatment room, if available;

13 (6) if indicated by the history of contact, access to
14 appropriate prophylaxis for exposure to sexually transmitted
15 infections; and

16 (7) the name and telephone number of the nearest
17 sexual assault crisis center.

18 (b-1) A person may not perform a forensic examination on a
19 sexual assault survivor unless the person has the basic training
20 described by Section 323.0045 or the equivalent education and
21 training.

22 (d) This section does not affect the duty of a health care
23 facility to comply with the requirements of the federal Emergency
24 Medical Treatment and Active Labor Act of 1986 (42 U.S.C. Section
25 1395dd) that are applicable to the facility.

26 SECTION 3. Chapter 323, Health and Safety Code, is amended
27 by adding Section 323.0045 to read as follows:

1 Sec. 323.0045. BASIC SEXUAL ASSAULT FORENSIC EVIDENCE
2 COLLECTION TRAINING. (a) A person who performs a forensic
3 examination on a sexual assault survivor must have at least basic
4 forensic evidence collection training or the equivalent education.

5 (b) A person who completes a continuing medical or nursing
6 education course in forensic evidence collection that is approved
7 or recognized by the appropriate licensing board is considered to
8 have basic sexual assault forensic evidence training for purposes
9 of this chapter.

10 (c) Each health care facility that has an emergency
11 department and that is not a health care facility designated in a
12 community-wide plan as the primary health care facility in the
13 community for treating sexual assault survivors shall develop a
14 plan to train personnel on sexual assault forensic evidence
15 collection.

16 SECTION 4. Chapter 323, Health and Safety Code, is amended
17 by adding Sections 323.007 and 323.008 to read as follows:

18 Sec. 323.007. SEXUAL ASSAULT SURVIVORS WHO ARE MINORS.
19 This chapter does not affect participating entities of children's
20 advocacy centers under Subchapter E, Chapter 264, Family Code, or
21 the working protocols set forth by their multidisciplinary teams to
22 ensure access to specialized medical assessments for sexual assault
23 survivors who are minors. To the extent of a conflict with
24 Subchapter E, Chapter 264, Family Code, that subchapter controls.

25 Sec. 323.008. DATA PUBLICATION. The department shall post
26 on the department's Internet website a list of all hospitals that
27 are designated in a community-wide plan as the primary health care

1 facility in the community for treating sexual assault survivors.

2 SECTION 5. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1191 passed the Senate on May 1, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1191 passed the House on May 8, 2013, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor