

**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.33,
Pertaining to *Factors Considered for Imposition of Penalties/Sanctions***

Background: The Eligibility & Disciplinary Advisory Committee (Committee) is one of the Board's standing advisory committees and was created to advise the Board on regulatory matters, either as specifically charged by the Board or on a continuous basis¹. Attachment "A" contains proposed amendments to Rule 213.33, as recommended by the Committee after review and discussion at meetings in August 2014 and January, May, and June 2015².

The proposed amendments:

- clarify and update the existing text for consistency with other changes to Board rules and policies; and
- includes language that is consistent with the recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM-V).

Staff recommends adopting the proposed amendments, as set out in Attachment "A" (rule text) and Attachment "B" (Matrix).

Board Action: Move to approve the proposed amendments to 22 Tex. Admin. Code §213.33, pertaining to *Factors Considered for Imposition of Penalties/Sanctions*, 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 §213.33, pertaining to *Factors Considered for Imposition of Penalties/Sanctions*, as proposed.

¹ See 22 Tex. Admin. Code §211.6.

² The Board issued a charge to the Committee at its April 2012 meeting to review its Criminal Guidelines and Sanction policies. The Committee also reviewed related rules.

Attachment "A"

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) The Board and the State Office of Administrative Hearings (SOAH) shall utilize the Disciplinary Matrix set forth in subsection (b) of this section in all disciplinary and eligibility matters.

(b) The Disciplinary Matrix is as follows:

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

- (1) evidence of actual or potential harm to patients, clients, or the public;
- (2) evidence of a lack of truthfulness or trustworthiness;
- (3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- (4) evidence of practice history;
- (5) evidence of present fitness to practice;
- (6) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;
- (7) the length of time the person has practiced;

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

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances, including those specified in the Disciplinary Matrix;

(12) the extent to which system dynamics in the practice setting contributed to the problem;

(13) whether the person is being disciplined for multiple violations of the NPA or its derivative rules and orders;

(14) the seriousness of the violation;

(15) the threat to public safety;

(16) evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character);

(17) participation in a continuing education course described in §216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and

(18) any other matter that justice may require.

The mitigating and aggravating factors specified in the Matrix are in addition to the factors listed in this subsection. Further, the presence of mitigating factors in a particular case does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules. If multiple violations of the NPA and/or Board rules are present in a single case, the most

severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531.

(d) Each specific act or instance of conduct may be treated as a separate violation.

(e) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:

(1) Denial of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license); [~~the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit~~];

(2) Approval of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license) [~~Approval of the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit~~], with one or more reasonable probationary stipulations as a condition of issuance, renewal, or reinstatement/reactivation [~~of the license or temporary permit~~]. Additionally, the Board may determine, in accordance with §301.468 of the NPA, that an order denying a license application/petition, license renewal, license reinstatement/reactivation, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance, renewal, or reinstatement/reactivation of the license or temporary permit or the return to direct patient care from a limited license;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this

section and/or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;

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

(G) perform public service which the Board considers appropriate;

(3) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

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

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;

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

(G) perform public service which the Board considers appropriate;

(4) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

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

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;

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

(G) perform public service which the Board considers appropriate;

(5) Limitation or restriction of the person's license or permit, including limits on specific nursing activities and/or practice settings and/or periodic Board review;

(6) Suspension of the person's license or permit. The Board may determine that the order of suspension be enforced and active for a specific period and/or probated

with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

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

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;

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

(G) perform public service which the Board considers appropriate;

(7) Remit payment of an ~~[the]~~ administrative penalty or fine~~[-or assessment of hearing costs]~~;

(8) Acceptance of a Voluntary Surrender of a nurse's license(s) or permit;

(9) Revocation of the person's license or permit;

(10) Require participation in a remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;

(11) Assessment of a fine as set forth in §213.32 of this chapter (relating to Corrective Action Proceedings and Schedule of Administrative Fines);

(12) Assessment of costs as authorized by the Occupations Code §301.461 and the Government Code §2001.177; and/or

(13) Require successful completion of a Board approved peer assistance program.

(f) Every [~~disciplinary~~] order issued by the Board shall require the person subject to the order to participate in a program of education or counseling prescribed by the Board, which at a minimum, will include a review course in nursing jurisprudence and ethics.

(g) The following disciplinary and eligibility sanction policies, as applicable, [~~and guidelines~~] shall be used by the Executive Director, Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(3) Sanctions for Sexual Misconduct approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on XXXXX in the Texas Register

(XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

~~[(1) Disciplinary Sanctions for Fraud, Theft, and Deception approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

~~[(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

~~[(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

~~[(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the Texas Register (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

~~[(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the May 17, 2013, issue of the Texas Register and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.]~~

(h) To the extent that a conflict exists between the Disciplinary Matrix and a disciplinary and eligibility sanction policy described in subsection (g) of this section, the Disciplinary Matrix controls.

(i) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(j) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(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/substance use disorder, or abuse/misuse 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.

(m) Notwithstanding any other provision herein, a person's failure to appear in person or by attorney on the day and at the time set for hearing in a contested case shall entitle the Board to revoke the person's license.

Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33(c), published at 22 Tex. Admin. Code §213.33. The Matrix lists ~~may list~~ additional aggravating or mitigating factors ~~that [which] should [may]~~ be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301. If multiple violations of the Nursing Practice Act (NPA) and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation.~~[, and]~~

If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

The Board may assess administrative penalties as outlined in 22 Tex. Admin. Code §213.32.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.

Further, although also ~~Although~~ not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or ~~of~~ alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code [~~§213.29, §213.30, and~~] §213.33.

This Matrix [is] also applies [~~applicable~~] to the determination of an individual's eligibility for licensure [~~under the Occupations Code §301.257~~].

§301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301;

<p>First Tier Offense:</p> <p>Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*.</p> <p>Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms.</p>	<p>Sanction Level I:</p> <p>Remedial Education, with or without a fine of \$250.00 or more for each additional violation.</p> <p>If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of \$250 or more for each additional violation.</p>	<p>Sanction Level II:</p> <p>Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>, periodic board review; and/or a fine of \$500 or more for each additional violation.</p>
<p>Second Tier Offense:</p> <p>Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.</p>	<p>Sanction Level I:</p> <p>Requirement to complete conditions of original Board order and a fine of \$500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to a <u>substance use disorder and/or</u> alcohol or drug <u>abuse/misuse</u> will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years).</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.</p>

<p>Third Tier Offense:</p> <p>Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.</p>	<p>Sanction Level I:</p> <p>Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or 301.4551, which may ultimately result in revocation.</p>
---	--	--

Aggravating Circumstances for §301.452(b)(1): Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.

Mitigating Circumstances for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period.

*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.

<p>§301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;</p>		
<p>First Tier Offense:</p> <p>Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license.*</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation.</p>	<p>Sanction Level II:</p> <p>Denial of Licensure or Revocation of nursing license.</p>

Second Tier Offense:	Sanction Level I:	Sanction Level II:
Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.	Denial of Licensure or Revocation of nursing license.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.

Aggravating Circumstances for §301.452(b)(2): Multiple offenses; the relevance or seriousness of the hidden information, whether the hidden information, if known, would have prevented licensure.

Mitigating Circumstances for §301.452(b)(2): Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.

*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.

§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

Sanction:

Issuance of Cease and Desist Order with referral of all information to local law enforcement.

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

Sanction:

Revocation of license for this offense.

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

First Tier Offense:

Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse* or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.

Sanction Level I:

Remedial Education and/or a fine of \$250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities/practice settings; periodic board review; and/or a fine of \$250 or more for each additional violation.

Sanction Level II:

Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.

<p>Second Tier Offense:</p> <p>Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>
---	---	--

Aggravating Circumstances of §301.452(b)(7): Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.

Mitigating Circumstances of §301.452(b)(7): The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.

*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.

§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person’s license or privilege to practice nursing in another jurisdiction;

<p>First Tier Offense:</p> <p>Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond.</p> <p><u>Action in another jurisdiction based on practice violations or unprofessional conduct and the violations are not those that would result in license revocation in Texas.</u></p> <p>Action in another jurisdiction is based on <u>mental health condition, diminished capacity, and/or a substance use disorder and/or alcohol or drug [substance] abuse/misuse</u> and the nurse is otherwise eligible for <u>licensure, subject to probationary conditions or participation in a Board approved peer assistance program [a stipulation of the license based on Board's rules and alcohol or substance misuse policy]</u>.</p> <p>[http://www.bon.state.tx.us/disciplinaryaction/dsp.html]</p>	<p>Sanction Level I:</p> <p><u>Remedial Education and/or a fine, Warning, or Reprimand with Stipulations</u>, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities/<u>practice settings</u>; and/or periodic board review.</p> <p>Action should be at least consistent with action from other jurisdiction.</p> <p>Order to participate in Board approved peer assistance program.</p>	<p>Sanction Level II:</p> <p>Revocation, Suspension, or Denial of Licensure [when the individual doesn't respond or is not eligible for stipulated license.]</p> <p>Action should be at least consistent with action from other jurisdiction.</p>
---	--	--

<p><u>Second Tier Offense:</u></p> <p>Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.</p>	<p>Sanction Level I:</p> <p>Revocation, denial of licensure, or voluntary surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(8): Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.</p>		
<p>Mitigating Circumstances for §301.452(b)(8): Nurse’s failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.</p>		

<p>§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;</p>		
<p>First Tier Offense:</p> <p><u>A substance use disorder and/ or abuse/misuse</u> [Misuse] of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of <u>substance use disorder and/ or abuse/misuse of drugs or alcohol</u> and no other aggravating circumstances.</p>	<p>Sanction Level I:</p> <p>Referral to a Board approved peer assistance program for nurses pursuant to Board <u>rules and policy on substance use disorders and other alcohol and drug related conduct</u> [alcohol or substance abuse or misuse].</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p>	<p>Sanction Level II:</p> <p>For individuals receiving a diagnosis of no chemical dependency/<u>substance use disorder</u> and/or no <u>alcohol or substance abuse/misuse</u>, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u> and/or periodic board review. Appropriate when individual declines participation in peer assistance program or <u>is</u> [are] otherwise ineligible for the program.</p>

<p>Second Tier Offense:</p> <p><u>A substance use disorder and/or abuse/misuse</u> [Misuse] of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.</p>	<p>Sanction Level I:</p> <p>Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on <u>substance use disorders and other alcohol and drug related conduct</u> [alcohol or substance abuse or misuse]. Includes individuals with non disciplinary history of peer assistance participation.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p> <p>For individuals receiving a diagnosis of no chemical dependency/<u>substance use disorder</u> and/or no <u>alcohol or substance</u> abuse/misuse, Reprimand with Stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>, and/or periodic board review.</p>	<p>Sanction Level II:</p> <p>Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation.</p> <p>For individuals receiving a diagnosis of no chemical dependency/<u>substance use disorder</u> and/or no <u>alcohol or substance</u> abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
---	--	--

<p>Third Tier Offense:</p> <p><u>A substance use disorder and/or abuse/misuse</u> [Misuse] of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.</p>	<p>Sanction Level I:</p> <p>Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances.</p> <p>Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances.</p> <p>For individuals receiving a diagnosis of no chemical dependency/<u>substance use disorder</u> and/or no <u>alcohol or</u> substance abuse/misuse, Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>, and/or periodic board review.</p> <p>Denial of Licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing through urinalysis.</p>	<p>Sanction Level II:</p> <p>Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>; and/or periodic board review.</p> <p>For individuals receiving a diagnosis of no chemical dependency/<u>substance use disorder</u> and/or no <u>alcohol or</u> substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u>, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
--	--	--

<p>Fourth Tier Offense:</p> <p><u>A substance use disorder and/or abuse/misuse</u> [Misuse] of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(9): Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.</p>		
<p>Mitigating Circumstances for §301.452(b)(9): Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.</p>		

<p>§301.452(b)(10) unprofessional or dishonorable conduct that, in the board’s opinion, is likely to deceive, defraud, or injure a patient or the public;</p>		
<p>First Tier Offense:</p> <p>Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects.</p> <p>Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.</p>	<p>Sanction Level II:</p> <p>Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities/<u>practice settings</u>; and/or periodic Board review; and/or a fine of \$500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.</p>

<p>Second Tier Offense:</p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand with Stipulations, which may include remedial education, supervised practice, and/or perform public service. Fine of \$250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities/<u>practice settings</u>, and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to <u>substance use disorders and other alcohol and drug related conduct</u> [drug or alcohol misuse] in analyzing facts.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p>	<p>Sanction Level II:</p> <p>Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u> and/or periodic Board review. <u>Board will use its rules and disciplinary sanction polices related to substance use disorders and other alcohol and drug related conduct in analyzing facts.</u></p> <p>Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.</p>
---	---	--

<p>Third Tier Offense:</p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99.</p>	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p> <p>Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.</p>		
<p>Mitigating Circumstances for §301.452(b)(10): Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.</p>		
<p>*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		

<p>§301.452(b)(11) adjudication of mental incompetency;</p>		
	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>

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

First Tier Violation:

Any mental health condition, diminished capacity, or physical health condition that may impair an individual's behavior, judgment, or ability to function in school or work.

~~[A physical condition or diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder, without patient involvement or harm, but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.]~~

Sanction Level I:

If, after an individualized assessment, it is determined that the individual's practice poses a potential risk of harm to patients/public, referral [Referral] to a [the] Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic Board review.

If [With] evidence of substance use disorder and/or drug or alcohol abuse/misuse also present,[:] refer [Refer] to Sanctions in 301.452(b)(9).

Sanction Level II:

Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic Board review.

If evidence of substance use disorder and/or drug or alcohol abuse/misuse also present, refer to Sanctions in 301.452(b)(9).

<p>Second Tier Violation:</p> <p>Lack of fitness based on any mental health condition, <u>diminished capacity,</u> or physical health condition with potential harm or adverse patient effects or other serious practice violations.</p> <p>“Lack of fitness” includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.</p>	<p>Sanction Level I:</p> <p><u>Referral to a Board approved Peer Assistance Program</u> or Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/<u>practice settings</u> and/or periodic Board review.</p> <p><u>If [With] evidence of substance use disorder and/or drug or alcohol abuse/misuse also present,[-] refer [Refer] to Sanctions in 301.452(b)(9).</u></p>	<p>Sanction Level II:</p> <p>Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/<u>practice settings</u> and/or periodic Board review.</p> <p><u>If [With] evidence of substance use disorder and/or drug or alcohol abuse/misuse also present,[-] refer [Refer] to Sanctions in 301.452(b)(9).</u></p>
<p>Third Tier Violation:</p> <p>Lack of fitness based on any mental health condition, <u>diminished capacity,</u> or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.</p> <p><u>“Lack of fitness” includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.</u></p>	<p>Sanction Level I:</p> <p>Denial of licensure or revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances of §301.452(b)(12): Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.</p>		
<p>Mitigating Circumstances of §301.452(b)(12): Self report, length of time since condition was relevant, successful response to treatment, positive [psychological/chemical dependancy] evaluation from a board approved evaluator who has opportunity to review the Board’s file.</p>		

§301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board’s opinion, exposes a patient or other person unnecessarily to risk of harm.

<p><u>First Tier Offense:</u></p> <p>Practice below standard with a low risk of patient harm.</p>	<p>Sanction Level I:</p> <p>Remedial Education and/or fine of \$250 when there is isolated incident or a fine of more than \$250 for each additional violation.</p>	<p>Sanction Level II:</p> <p>Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/<u>practice settings</u> and/or periodic board review and/or fine of \$500 or more for each additional violation.</p>
<p><u>Second Tier Offense:</u></p> <p>Practice below standard with patient harm or risk of patient harm.</p>	<p>Sanction Level I:</p> <p>Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities/<u>practice settings</u> and/or periodic board review and/or a fine of \$500 or more for each additional violation.</p>	<p>Sanction Level II:</p> <p>Denial, suspension of license, revocation of license, or request for voluntary surrender.</p>
<p>Third Tier Offense:</p> <p>Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.</p> <p>In addition, any intentional act or omission that risks or results in serious harm.</p>	<p>Sanction Level I:</p> <p>Denial, suspension of license; revocation of license or request for voluntary surrender.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>

Aggravating Circumstances for §301.452(b)(13): Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.

Mitigating Circumstances for §301.452(b)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.