

**Consideration of Proposed Amendments to 22 Texas Administrative Code §213.33, relating to Factors Considered for Imposition of Penalties/Sanctions, including the Texas Board of Nursing Disciplinary Matrix**

**Background:** House Bill (HB) 1434, effective September 1, 2021, creates a new disciplinary cause of action for practitioners conducting pelvic examinations on unconscious or anesthetized patients without proper patient consent or where the procedure is not within the standard of care. The new disciplinary cause of action is styled as §301.452(b)(13). The proposed amendments are necessary to implement this statutory change by including a new section in the Board's Disciplinary Matrix related to this new violation. The proposed amendments also make editorial and conforming changes and include clarifying language based upon the use of the Matrix in contested case proceedings and proposals for decision.

**Board Action:** Move to approve the proposed amendments to 22 Texas Administrative Code §213.33, relating to *Factors Considered for imposition of Penalties/Sanctions*, including the Disciplinary Matrix, as set out in Attachment "A", 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 Texas Administrative Code §213.33, relating to *Factors Considered for imposition of Penalties/Sanctions*, including the Disciplinary Matrix, as proposed.

## Attachment “A”

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

(a) (No change.)

(b) The Disciplinary Matrix is as follows:

[Attached Graphic](#)

(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 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 Nursing Practice Act (NPA) ~~[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. 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 NPA ~~[Nursing Practice Act (NPA)]~~ and Board rules:

(1) – (9) (No change).

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

(11) – (18) (No change.)

(d) – (m) (No change.)

Figure: 22 TAC §213.33(b)

## **Texas Board of Nursing Disciplinary Matrix**

In determining the appropriate disciplinary action, including the amount of any administrative fine/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 additional aggravating or mitigating factors that should 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. Further, the Board and SOAH must consider the requirements of Tex. Occ. Code §301.4531 in matters involving multiple violations or individuals with prior discipline.

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

Further, although also 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 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 §213.33.

This Matrix also applies to the determination of an individual's eligibility for licensure.

**§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;

First Tier Offense:

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\*.

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 without evidence of fraud or falsification.

Sanction Level I:

Remedial Education, with or without a fine of \$250.00 or more for each additional violation.

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.

Sanction Level II:

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, periodic board review; and/or a fine of \$500 or more for each additional violation.

Second Tier Offense:

Failure to comply with a substantive requirement in a prior Board order or stipulation or failure to comply with a technical requirement in a prior Board order or stipulation with evidence of fraud or falsification. 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.

Sanction Level I:

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 alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order or a probated suspension 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).

Sanction Level II:

Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.

<p><u>Third Tier Offense:</u></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><u>Sanction Level I:</u></p> <p>Revocation or Voluntary Surrender.</p>	<p><u>Sanction Level II:</u></p> <p><del>Temporary-[Emergency]</del>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><b><i>Aggravating Circumstances</i></b> 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.</p>		
<p><b><i>Mitigating Circumstances</i></b> for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period.</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><b>§301.452(b)(2)</b> fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;</p>		
<p><u>First Tier Offense:</u></p> <p>Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license. *</p>	<p><u>Sanction Level I:</u></p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation.</p>	<p><u>Sanction Level II:</u></p> <p>Denial of Licensure or Revocation of nursing license.</p>

<p><u>Second Tier Offense:</u></p> <p>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.</p>	<p><u>Sanction Level I:</u></p> <p>Denial of Licensure or Revocation of nursing license.</p>	<p><u>Sanction Level II:</u></p> <p><del>Temporary-[Emergency]</del>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>
<p><b><i>Aggravating Circumstances</i></b> 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.</p>		
<p><b><i>Mitigating Circumstances</i></b> 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.</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>		

**§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.texas.gov/disciplinaryaction/discp-guide.html>. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, [the Code of Criminal Procedure 42A.111](#), 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 the Board's Disciplinary Guidelines for Criminal Conduct published at

[https://www.bon.texas.gov/pdfs/disciplinaryaction\\_pdfs/Guidelines-CriminalConduct.pdf](https://www.bon.texas.gov/pdfs/disciplinaryaction_pdfs/Guidelines-CriminalConduct.pdf)

[[http://www.bon.texas.gov/disciplinaryaction/discp\\_guide.html](http://www.bon.texas.gov/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; 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.

Second Tier Offense:

Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.

Sanction Level I:

Denial of Licensure, Revocation or Voluntary Surrender

Sanction Level II:

~~Temporary-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** 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><u>First Tier Offense:</u></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>Practice violation or unprofessional conduct in another jurisdiction that could result in sanction in Texas.</u></p> <p>Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board’s rules and alcohol or substance misuse policy.</p> <p><a href="https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp">https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp</a></p> <p><a href="http://www.bon.texas.gov/disciplinaryaction/disepp_guide.html">[http://www.bon.texas.gov/disciplinaryaction/disepp_guide.html.]</a></p>	<p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with Stipulations, 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; and/or periodic board review.</p> <p>Order to participate in Board approved peer assistance program.</p> <p>Action should be at least consistent with action from other jurisdiction.</p>	<p><u>Sanction Level II:</u></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><u>Sanction Level I:</u></p> <p>Revocation, denial of licensure, or voluntary surrender</p>	<p><u>Sanction Level II:</u></p> <p><del>Temporary-[Emergency]</del>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</p>

		result in revocation.
<p><b>Aggravating Circumstances</b> 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><b>Mitigating Circumstances</b> 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><b>§301.452(b)(9)</b> intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; <u>*</u></p>		
<p><u>First Tier Offense:</u></p> <p><del>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.</del></p>	<p><u>Sanction Level I:</u></p> <p><del>Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse.</del></p> <p><del><a href="http://www.bon.texas.gov/disciplinaryaction/di_sep_guide.html">http://www.bon.texas.gov/disciplinaryaction/di_sep_guide.html</a>.</del></p>	<p><u>Sanction Level II:</u></p> <p><del>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, 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 and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.</del></p>
<p><u>First Tier Offense:</u></p> <p><u>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.</u></p>	<p><u>Sanction:</u></p> <p><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 and/or periodic board review. Appropriate when individual declines participation in peer assistance program or is otherwise ineligible for the program.</u></p> <p><u><a href="https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp">https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp</a></u></p>	

<p><u>Second Tier Offense:</u></p> <p>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><u>Sanction Level I:</u></p> <p>Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. Includes individuals with non-disciplinary history of peer assistance participation.</p> <p><a href="https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp">https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp</a></p> <p><a href="http://www.bon.texas.gov/disciplinaryaction/disepp-guide.html">[http://www.bon.texas.gov/disciplinaryaction/disepp-guide.html.]</a></p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance 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, and/or periodic board review.</p>	<p><u>Sanction Level II:</u></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, 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 and/or no 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, and/or periodic board review.</p> <p><del>Temporary-Emergency</del> 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>
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<p><u>Third Tier Offense:</u></p> <p>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><u>Sanction Level I:</u></p> <p><del>[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.]</del></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 and/or no 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, 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><u>Sanction Level II:</u></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; and/or periodic board review.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no 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, and/or periodic board review.</p> <p><del>Temporary-[Emergency]</del> 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>
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<p><u>Fourth Tier Offense:</u></p> <p>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><u>Sanction Level I:</u></p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p><u>Sanction Level II:</u></p> <p><del>Temporary-[Emergency]</del> 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><b>Aggravating Circumstances for §301.452(b)(9):</b> 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><b>Mitigating Circumstances for §301.452(b)(9):</b> 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><u>*Denotes a violation that is subject to disciplinary action, but may be eligible for a Board approved peer assistance program for nurses pursuant to Board rules and policy on substance use disorders and other alcohol and drug related conduct. A Board approved peer assistance program for nurses is only by agreed disposition and is not available as a sanction in a contested case hearing.</u></p>		

<p><b>§301.452(b)(10)</b> unprofessional or dishonorable conduct that, in the board’s opinion, is likely to deceive, defraud, or injure a patient or the public;</p>		
<p><u>First Tier Offense:</u></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</p>	<p><u>Sanction Level I:</u></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><u>Sanction Level II:</u></p> <p>Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities; 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</p>

or answer questions relevant to employment or licensure.*		no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.
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<p><u>Second Tier Offense:</u></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><u>Sanction Level I:</u></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, and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to drug or alcohol misuse in analyzing facts.</p> <p><a href="https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp">https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines.asp</a></p> <p>[<a href="http://www.bon.texas.gov/disciplinaryaction/discip_guide.html">http://www.bon.texas.gov/disciplinaryaction/discip_guide.html</a>.]</p>	<p><u>Sanction Level II:</u></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 and/or periodic Board review.</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>
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<p><u>Third Tier Offense:</u></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 <u>or</u> <del>of</del> public in excess of \$4,999.99.</p>	<p><u>Sanction Level I:</u></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><u>Sanction Level II:</u></p> <p><del>Temporary-Emergency</del> 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><b>Aggravating Circumstances</b> for <b>§301.452(b)(10)</b>: 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><b>Mitigating Circumstances</b> for <b>§301.452(b)(10)</b>: 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><b>§301.452(b)(11)</b> adjudication of mental incompetency;</p>		
	<p><u>Sanction Level I:</u></p>	<p><u>Sanction Level II:</u></p>

	Denial of licensure or revocation of nursing license.	<del>Temporary-[Emergency]</del> 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.
<b>§301.452(b)(12)</b> lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; <del>*</del> [Ø]		
<p><u>First Tier Violation:</u></p> <p>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.</p>	<p><u>Sanction Level I:</u></p> <p>Referral to 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 and/or periodic Board review.</p>	<p><u>Sanction Level II:</u></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 and/or periodic Board review.</p>
<p><u>Second Tier Violation:</u></p> <p>Lack of fitness based on any mental health 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><u>Sanction Level I:</u></p> <p>With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9).</p> <p>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</p>	<p><u>Sanction Level II:</u></p> <p>With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9).</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</p>

	activities and/or periodic Board review.	and/or periodic Board review.
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<p><u>Third Tier Violation:</u></p> <p>Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.</p>	<p><u>Sanction Level I:</u></p> <p>Denial of licensure or revocation of nursing license.</p>	<p><u>Sanction Level II:</u></p> <p><b>Emergency Temporary</b> 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>
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**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.

**Mitigating Circumstances of §301.452(b)(12):** Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependency [~~dependency~~] evaluation from a board approved evaluator who has opportunity to review the Board’s file.

\*Denotes a violation that is subject to disciplinary action, but may be eligible for a Board approved peer assistance program for nurses pursuant to Board rules and policy. A Board approved peer assistance program for nurses is by agreed disposition only and is not available as a sanction in a contested case hearing.

§301.452(b)(13) performing or delegating to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Health & Safety Code §167A.002; or

	<p style="text-align: center;"><u>Sanction</u></p> <p><u>Suspension, Revocation, or Denial.</u></p> <p><u>Temporary 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.</u></p>	
<p><u>Aggravating Circumstances for §301.452(b)(13): Actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability.</u></p>		
<p><u>Mitigating Circumstances for §301.452(b)(13): Mistaken consent; good faith belief that statutory exception applies.</u></p>		

<p><b>§301.452(b)(14)[(13)]</b> 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>		
<p><u>First Tier Offense:</u></p> <p>Practice below standard with a low risk of patient harm.</p>	<p><u>Sanction Level I:</u></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><u>Sanction Level II:</u></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 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><u>Sanction Level I:</u></p> <p>Warning* or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review and/or a fine of \$500 or more for each additional violation.</p>	<p><u>Sanction Level II:</u></p> <p>Denial, suspension of license, revocation of license, or request for voluntary surrender.</p>
<p><u>Third Tier Offense:</u></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><u>Sanction Level I:</u></p> <p>Denial, suspension of license; revocation of license or request for voluntary surrender.</p>	<p><u>Sanction Level II:</u></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><b><i>Aggravating Circumstances</i></b> for §301.452(b)(14)(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.</p>		
<p><b><i>Mitigating Circumstances</i></b> for §301.452(b)(14)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.</p>		
<p><u>*Denotes a violation that could be subject to sanction at the Warning level and eligible for the Board’s targeted assessment and remediation pilot program pursuant to Board Rule 213.35. However, a targeted assessment and remediation pilot program is not available as a sanction in a contested case hearing.</u></p>		