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Chamberlain College of Nursing Texas Board of Nursing Required Disclosure Declaratory Order of Eligibility

Successful completion of the nursing education program at Chamberlain College of Nursing is only one step in a student's eligibility to take the NCLEX-RN® exam. Applicants for licensure as a professional nurse must be of good professional character, without criminal offenses, sober, and fit. State Boards of Nursing have varying processes for determination of the applicant's eligibility for licensure. The purpose of this document is to provide Chamberlain College of Nursing students information about eligibility for licensure in Texas and the option to petition for the Texas Board of Nursing (Board) for a Declaratory Order of Eligibility.

The Declaratory Order of Eligibility allows a person enrolled or planning to enroll in a nursing education program who has reason to believe that he or she may not be eligible for licensure as a professional nurse in Texas to petition the Board for a declaratory order as to his or her eligibility.

Your admissions advisor will review the information in this document with you and you will have the opportunity to ask questions and consider the information prior to signing the acknowledgement.

This document and the discussion with your admissions advisor about the document and the rule are being provided in response to Rule 215.8(b) of the Texas Administrative Code (TAC)

ADDITIONAL INFORMATION

Additional information about the requirements for licensure as a registered nurse in Texas may be accessed on the Board website. The following weblinks provide specific information about licensure:

- Texas Board of Nursing Home Page: <http://www.bon.state.tx.us/index.html>
- Students/Prospective Students Frequently Asked Questions: http://www.bon.state.tx.us/nursingeducation/faq_students.html
- Texas Licensee and Other Forms: <http://www.bon.state.tx.us/olv/forms.html#License>
- Declaratory Order Form: <http://www.bon.state.tx.us/olv/pdfs/DOapp.pdf>
- Texas Nursing Practice Act and Board Rules: <http://www.bon.state.tx.us/nursinglaw/>

Rule 215.8(b) of the Texas Administrative Code (TAC) provides the following:

- (b) Individuals enrolled in approved professional nursing educational programs preparing students for initial licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:
- (1) Texas Occupations Code §§301.252, 301.257 and 301.452 - 301.469; and
 - (2) Sections 213.27 - 213.30 of this title (relating to Good Professional Character, Licensure of Persons with Criminal Offenses, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters, Declaratory Order of Eligibility for Licensure).

Section 301.252 of the Texas Occupations Code (TOC), provides the following:

Sec. 301.252. LICENSE APPLICATION.

- (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:
- (1) has good professional character;
 - (2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and
 - (3) has passed the jurisprudence examination approved by the board as provided by Subsection (a-1).
- (a-1) The jurisprudence examination shall be conducted on the licensing requirements under this chapter and board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The board shall adopt rules for the jurisprudence examination under Subsection (a)(3) regarding:
- (1) the development of the examination;
 - (2) applicable fees;
 - (3) administration of the examination;
 - (4) reexamination procedures;
 - (5) grading procedures; and
 - (6) notice of results.
- (b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:
- (1) a professional nursing school approved under Section 301.157(d); or
 - (2) a school of professional nurse education located in another state or a foreign country.
- (c) The board by rule shall determine acceptable levels of education under Subsection (b).

Section 301.257 of the TOC provides the following:

Sec. 301.257. DECLARATORY ORDER OF LICENSE ELIGIBILITY.

- (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and:
 - (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or
 - (2) is an applicant for a license.
- (b) The petition must state the basis for the person's potential ineligibility.
- (c) The board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.
- (d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.
- (e) If the board determines that a ground for ineligibility does not exist, instead of issuing an order, the board shall notify the petitioner in writing of the board's determination on each ground of potential ineligibility. If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.
- (f) The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.
- (g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.
- (h) The information required under Subsection (g) must be submitted in a form approved by the board.
- (i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

Section 301.452 of the TOC provides the following:

Sec. 301.452. GROUNDS FOR DISCIPLINARY ACTION.

- (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.
- (b) A person is subject to denial of a license or to disciplinary action under this subchapter for:
 - (1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;
 - (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;
 - (3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;
 - (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
 - (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;
 - (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
 - (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;
 - (8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;
 - (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
 - (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
 - (11) adjudication of mental incompetency;
 - (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
 - (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.
- (c) The board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).
- (d) The board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the board under this section is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521 of the TOC provides the following:

Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION.

- (a) In this section:
 - (1) "Applicant" means:
 - (A) a petitioner for a declaratory order of eligibility for a license; or
 - (B) an applicant for an initial license or renewal of a license.
 - (2) "Evaluation" means a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.
- (b) The board may require a nurse or applicant to submit to an evaluation only if the board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of:
 - (1) physical impairment;
 - (2) mental impairment; or
 - (3) chemical dependency or abuse of drugs or alcohol.
- (c) A demand for an evaluation under Subsection (b) must be in writing and state:
 - (1) the reasons probable cause exists to require the evaluation; and
 - (2) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.
- (d) If the nurse or applicant refuses to submit to the evaluation, the board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or

certified mail. The hearing is limited to the issue of whether the board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the board's demand for an evaluation. The order may not be vacated or modified under Section 2001.058, Government Code.

- (e) If a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under Subsection (d), the board may:
 - (1) refuse to issue or renew a license;
 - (2) suspend a license; or
 - (3) issue an order limiting the license.
- (f) The board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than a reason listed in Subsection (b). A request for an evaluation under this subsection must be in writing and state:
 - (1) the reasons for the request;
 - (2) the type of evaluation requested;
 - (3) how the board may use the evaluation;
 - (4) that the nurse or applicant may refuse to submit to an evaluation; and
 - (5) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.
- (g) If a nurse or applicant refuses to consent to an evaluation under Subsection (f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant:
 - (1) not later than the 30th day before the date of the hearing, notifies the board that an evaluation will be introduced into evidence at the hearing;
 - (2) provides the board the results of that evaluation;
 - (3) informs the board of any other evaluations by any other practitioners; and
 - (4) consents to an evaluation by a practitioner that meets board standards established under Subsection (h).
- (h) The board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under this section. The board shall maintain a list of qualified practitioners. The board may solicit qualified practitioners located throughout the state to be on the list.
- (i) A nurse or applicant shall pay the costs of an evaluation conducted under this section.
- (j) The results of an evaluation under this section are:
 - (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
 - (2) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be:
 - (A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under this chapter; or
 - (B) included in the findings of fact and conclusions of law in a final board order.
- (k) If the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the board's records.
- (l) The board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under this section.
- (m) The authority granted to the board under this section is in addition to the board's authority to make licensing decisions under this chapter.

Section 301.453 of the TOC provides the following:

Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE.

- (a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:
 - (1) denial of the person's application for a license, license renewal, or temporary permit;
 - (2) issuance of a written warning;
 - (3) administration of a public reprimand;
 - (4) limitation or restriction of the person's license, including:
 - (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or
 - (B) stipulating periodic board review;
 - (5) suspension of the person's license;
 - (6) revocation of the person's license; or
 - (7) assessment of a fine.
- (b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:
 - (1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;
 - (2) participate in a program of education or counseling prescribed by the board, including a program of remedial education;
 - (3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board; or
 - (4) perform public service the board considers appropriate.
- (c) The board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.
- (d) If the board suspends, revokes, or accepts surrender of a license, the board may impose conditions for reinstatement that the person must satisfy before the board may issue an unrestricted license.

Section 301.4531 of the TOC provides the following:

Sec. 301.4531. SCHEDULE OF SANCTIONS.

- (a) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this chapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.
- (b) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider:
 - (1) whether the person:
 - (A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or
 - (B) has previously been the subject of disciplinary action by the board and has previously complied with board rules and this chapter;

- (2) the seriousness of the violation;
 - (3) the threat to public safety; and
 - (4) any mitigating factors.
- (c) In the case of a person described by:
- (1) Subsection (b)(1)(A), 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
 - (2) Subsection (b)(1)(B), 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.

Section 301.4535 of the TOC provides the following:

Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES.

- (a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:
- (1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;
 - (2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;
 - (3) sexual assault under Section 22.011, Penal Code;
 - (4) aggravated sexual assault under Section 22.021, Penal Code;
 - (5) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code;
 - (6) aggravated assault under Section 22.02, Penal Code;
 - (7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;
 - (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code;
 - (9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;
 - (10) an offense under Section 25.07, Penal Code, punished as a felony;
 - (11) an offense under Section 25.071, Penal Code, punished as a felony;
 - (12) an agreement to abduct a child from custody under Section 25.031, Penal Code;
 - (13) the sale or purchase of a child under Section 25.08, Penal Code;
 - (14) robbery under Section 29.02, Penal Code;
 - (15) aggravated robbery under Section 29.03, Penal Code;
 - (16) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
 - (17) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.
- (a-1) An applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the board establishes by rule criteria that would permit the issuance or renewal of the license.
- (b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.
- (c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

Section 301.454 of the TOC provides the following:

Sec. 301.454. NOTICE AND HEARING.

- (a) Except in the case of a temporary suspension authorized under Section 301.455 or an action taken in accordance with an agreement between the board and a license holder, the board may not initiate a disciplinary action relating to a license unless:
- (1) the board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and
 - (2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.
- (b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.
- (c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the board proposes to:
- (1) refuse to admit the person to examination;
 - (2) refuse to issue a license or temporary permit;
 - (3) refuse to renew a license; or
 - (4) suspend or revoke the person's license or permit.
- (d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board for any sanction imposed as the result of a hearing conducted by that office.
- (e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:
- (1) fails to submit a renewal application; or
 - (2) submits an application that:
 - (A) is incomplete;
 - (B) shows on its face that the person does not meet the renewal requirements; or
 - (C) is not accompanied by the correct fee.

Section 301.455 of the TOC provides the following:

Sec. 301.455. TEMPORARY LICENSE SUSPENSION OR RESTRICTION.

- (a) The license of a nurse shall be temporarily suspended or restricted on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.
- (b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:
- (1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension or determination to restrict; and
 - (2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.

- (c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists. The probable cause hearing shall be conducted as a de novo hearing.
- (d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension or restriction.

Section 301.4551 of the TOC provides the following:

Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR ALCOHOL USE. The board shall temporarily suspend the license of a nurse as provided by Section 301.455 if the nurse is under a board order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse:

- (1) tests positive for alcohol or a prohibited drug;
- (2) refuses to comply with a board order to submit to a drug or alcohol test; or
- (3) fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to the board for noncompliance.

Section 301.456 of the TOC provides the following:

Sec. 301.456. EVIDENCE. A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

Section 301.457 of the TOC provides the following:

Sec. 301.457. COMPLAINT AND INVESTIGATION.

- (a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a nurse. The complaint must be in writing and signed by the complainant.
- (b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a nurse that requires a determination of nursing competency shall be reviewed by a board member, consultant, or employee with a nursing background the board considers sufficient.
- (c) On the filing of a complaint, the board:
 - (1) may conduct a preliminary investigation into the identity of the nurse named or described in the complaint;
 - (2) shall make a timely and appropriate preliminary investigation of the complaint; and
 - (3) may issue a warning or reprimand to the nurse.
- (d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.
- (e) The board shall conduct an investigation of the complaint to determine:
 - (1) whether the nurse's continued practice of nursing poses a risk of harm to clients or other persons; and
 - (2) whether probable cause exists that a nurse committed an act listed in Section 301.452(b) or that violates other law.
- (f) In making a determination under Subsection (e), the board shall review the evidence to determine the extent to which a deficiency in care by the registered nurse was the result of deficiencies in the registered nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a registered nurse must be based on the extent to which the registered nurse's conduct was the result of a deficiency in the registered nurse's judgment, knowledge, training, or skill.
- (g) If the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control, the board shall report that determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

Section 301.458 of the TOC provides the following:

Sec. 301.458. INITIATION OF FORMAL CHARGES; DISCOVERY.

- (a) Unless there is an agreed disposition of the complaint under Section 301.463, and if probable cause is found under Section 301.457(e) (2), the board or the board's authorized representative shall initiate proceedings by filing formal charges against the nurse.
- (b) A formal charge must:
 - (1) be written;
 - (2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and
 - (3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.
- (c) A copy of the formal charge shall be served on the nurse or the nurse's counsel of record.
- (d) The board shall adopt reasonable rules to promote discovery by each party to a contested case.

Section 301.459 of the TOC provides the following:

Sec. 301.459. FORMAL HEARING.

- (a) The board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. The State Office of Administrative Hearings shall conduct a formal hearing.
- (b) In any hearing under this section, a nurse is entitled to appear in person or by counsel.

Section 301.460 of the TOC provides the following:

Sec. 301.460. ACCESS TO INFORMATION.

- (a) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:
 - (1) all known exculpatory information in the board's possession; and
 - (2) information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

- (b) The board is not required to provide:
 - (1) board investigative reports or investigative memoranda;
 - (2) the identity of nontestifying complainants;
 - (3) attorney-client communications;
 - (4) attorney work product; or
 - (5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.
- (c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

Section 301.461 of the TOC provides the following:

Sec. 301.461. ASSESSMENT OF COSTS. The board may assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

Section 301.462 of the TOC provides the following:

Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE. The board may revoke a nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

Section 301.463 of the TOC provides the following:

Sec. 301.463. AGREED DISPOSITION.

- (a) Unless precluded by this chapter or other law, the board may dispose of a complaint by:
 - (1) stipulation;
 - (2) agreed settlement;
 - (3) agreed order; or
 - (4) dismissal.
- (b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.
- (c) An agreed order is a public record.
- (d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

Section 301.464 of the TOC provides the following:

Sec. 301.464. INFORMAL PROCEEDINGS.

- (a) The board by rule shall adopt procedures governing:
 - (1) informal disposition of a contested case under Section 2001.056, Government Code; and
 - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) Rules adopted under this section must:
 - (1) provide the complainant and the license holder an opportunity to be heard; and
 - (2) require the presence of a representative of the board's legal staff or of the attorney general to advise the board or the board's employees.

Section 301.465 of the TOC provides the following:

Sec. 301.465. SUBPOENAS; REQUEST FOR INFORMATION.

- (a) The board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator and service by certified mail.
- (b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the board. A request or subpoena may not be refused, denied, or resisted unless the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.
- (c) The board may pay a reasonable fee for photocopies subpoenaed at the board's request. The amount paid may not exceed the amount the board charges for copies of its records.
- (d) The board shall protect, to the extent possible, the identity of each patient named in information received by the board.

Section 301.466 of the TOC provides the following:

Sec. 301.466. CONFIDENTIALITY.

- (a) A complaint and investigation concerning a nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation are:
 - (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
 - (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.
- (b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:
 - (1) a person involved with the board in a disciplinary action against the nurse;
 - (2) a nursing licensing or disciplinary board in another jurisdiction;
 - (3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
 - (4) a law enforcement agency; or
 - (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.
- (c) The filing of formal charges against a nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Section 301.467 of the TOC provides the following:

Sec. 301.467. REINSTATEMENT.

- (a) On application, the board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.
- (b) An application to reinstate a revoked license:
 - (1) may not be made before the first anniversary of the date of the revocation; and
 - (2) must be made in the manner and form the board requires.
- (c) If the board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

Section 301.468 of the TOC provides the following:

Sec. 301.468. PROBATION.

- (a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:
 - (1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing;
 - (2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board; or
 - (3) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the board.
- (b) At the time the probation is granted, the board shall establish the term of the probationary period.
- (c) At any time while the person remains subject to the probation order, the board may hold a hearing and rescind the probation and enforce the board's original action in denying or suspending the license. The hearing shall be called by the presiding officer of the board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:
 - (1) sets the time and place for the hearing; and
 - (2) contains the charges or complaints against the probationer.
- (d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the board's records.
- (e) A hearing under this section is limited to a determination of whether the person violated the terms of the probation order under Subsection (a) and whether the board should:
 - (1) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or
 - (2) enter an order denying, suspending, or revoking the person's license.
- (f) If one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by:
 - (1) a positive drug or alcohol test result;
 - (2) refusal to submit to a drug or alcohol test as required by the board; or
 - (3) a letter of noncompliance from the peer assistance program.

Section 301.469 of the TOC provides the following:

Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a final disciplinary action, including a warning or reprimand, against a nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

Rule 213.27 of the TAC defines Good Professional Character, and provides the following:

- (a) Good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.
- (b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:
 - (1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education, and experience necessarily affect the nature and extent of behavioral history and, therefore, shall be considered in each evaluation.
 - (2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that the person:
 - (A) is able to distinguish right from wrong;
 - (B) is able to think and act rationally;
 - (C) is able to keep promises and honor obligations;
 - (D) is accountable for his or her own behavior;
 - (E) is able to practice nursing in an autonomous role with patients/clients, their families, significant others, and members of the public who are or who may become physically, emotionally, or financially vulnerable;
 - (F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
 - (G) is able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.
 - (3) Any conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.
 - (4) Any revocation, suspension, or denial of, or any other adverse action relating to, the person's license or privilege to practice nursing in another jurisdiction.
- (c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

- (1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.
- (2) In addition to the disciplinary remedies available to the Board pursuant to Tex. Occ. Code Ann. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and §213.28, a licensee guilty of a felony under this rule is conclusively deemed to have violated Tex. Occ. Code Ann. §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.
- (d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.
 - (1) A certified copy of the order, judgment of discipline, or order of adverse licensure action from the jurisdiction is prima facie evidence of the matters contained in such order, judgment, or adverse action and is conclusive evidence that the individual in question has committed professional misconduct as alleged in such order of judgment.
 - (2) An individual disciplined for professional misconduct in the course of practicing nursing in any jurisdiction or an or an individual who resigned in lieu of disciplinary action (disciplined individual) is deemed not to have present good professional character and fitness and is, therefore, ineligible to file an Application for Endorsement to the Texas Board of Nursing during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the disciplined individual has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.
 - (3) The only defenses available to a Petitioner, Applicant, or Licensee under section are outlined below and must be proved by clear and convincing evidence:
 - (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
 - (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.
 - (C) The deeming of lack of present good professional character and fitness by the Board during the period required under the provisions of section (d) would result in grave injustice.
 - (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.
 - (4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.
- (e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in subsection (f) of this section, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) of this section shall be required to prove, by a preponderance of the evidence:
 - (1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice nursing; and
 - (2) that (s)he is of present good professional character and fitness.
- (f) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after a negative determination based on a felony conviction, felony probation with or without an adjudication of guilt, or professional misconduct, or voluntary surrender in lieu of disciplinary action and whose application or petition is denied and not appealed is not eligible to file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the preceding petition for licensure.
- (g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating good professional character in eligibility and disciplinary matters:
 - (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 on March 9, 2007 in the Texas Register (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

Rule 213.28 TAC Licensure of Persons with Criminal Offenses provides the following:

- (a) This section sets out the considerations and criteria in determining the effect of criminal offenses on the eligibility of a person to obtain a license and the consequences that criminal offenses may have on a person's ability to retain or renew a license as a registered nurse or licensed vocational nurse. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of or received a deferred disposition for a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation.
- (b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:
 - (1) Offenses against the person similar to those outlined in Title 5 of the Texas Penal Code.
 - (A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:
 - (i) Abandonment/Endangerment of a Child {TPC §22.041}
 - (ii) Agree to Abduct Child for Remuneration: Younger than Eighteen {TPC §25.031}
 - (iii) Aiding Suicide: Serious Bodily Injury/Death {TPC §22.08}
 - (iv) Assault, Aggravated {TPC §22.02}
 - (v) Capital Murder {TPC §19.03}
 - (vi) Child Pornography, Possession or Promotion {TPC §43.26(a), (e) (Texas Rules of Criminal Procedure Ch. 62)}

- (vii) Indecency with a Child {TPC §21.11 (TRCP Ch. 62)}
- (viii) Indecent exposure (2 or more counts and/or required to register as sex offender) {TPC §21.08 (TRCP Ch. 62)}
- (ix) Injury to Child, Elderly, Disabled {TPC §22.04}
- (x) Kidnapping {TPC §20.03, §20.04 (TRCP Ch. 62)}
- (xi) Manslaughter {TPC §19.04}
- (xii) Murder {TPC §19.02}
- (xiii) Online Solicitation of a Minor {TPC §33.021(b), (c), (f); (TRCP Ch. 62)}
- (xiv) Prostitution, Compelling {TPC §43.05 (TRCP Ch. 62)}
- (xv) Protective Order, Violation {TPC §25.07, §25.071}
- (xvi) Sale or Purchase of a Child {TPC §25.08}
- (xvii) Sexual Assault {TPC §22.011 (TRCP Ch. 62)}
- (xviii) Sexual Conduct, Prohibited {TPC §25.02 (TRCP Ch. 62)}
- (xix) Sexual Assault, Aggravated {TPC §22.021 (TRCP Ch. 62)}
- (xx) Sexual Performance by Child {TPC §43.24 (d), §43.25(b) (TRCP Ch. 62)}
- (xxi) Unlawful Restraint {TPC §0.02}
- (xxii) Assault {TPC §22.01(a)(1), (b), (c)}
- (xxiii) Criminally negligent homicide {TPC §19.05}
- (xxiv) Improper Relationship between Educator and Student {TPC §21.12}
- (xxv) Improper photography {TPC §21.15}
- (xxvi) Obscenity, Wholesale promotion {TPC §43.23(a), (h)}
- (xxvii) Prostitution (3 or more counts) or Aggravated Promotion {TPC §43.02, §43.04}
- (xxviii) Resisting Arrest, Use of Deadly Weapon {TPC §38.03(d)}
- (xxix) Stalking {TPC §42.072(b)}
- (xxx) Harassment {TPC §42.07}
- (xxxi) Prostitution or Promotion of {TPC §43.02}
- (xxxii) Protective Order, Violation {TPC §25.07, §38.112}
- (xxxiii) Resisting Arrest {TPC §38.03(a)}
- (xxxiv) Deadly conduct {TPC §22.05(a)}
- (xxxv) Obscenity, Participates {TPC §43.23(c), (h)}
- (xxxvi) Terroristic Threat {TPC §22.07}
- (xxxvii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

- (i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
- (ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may be subject to harm by similar criminal behavior;
- (iii) nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients who are vulnerable to exploitation both physically and emotionally;
- (iv) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability; and
- (v) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and raises concerns regarding the individual's ability to provide safe, competent care to patients.

(2) offenses against property, e.g., robbery, burglary and theft, etc.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

- (i) Burglary (if punishable under Penal Code §30.02(d)) {TRCP Ch. 62 (§62.001(5)(D))}
- (ii) Robbery {TPC §29.02}
- (iii) Robbery, Aggravated {TPC §29.03}
- (iv) Arson {TPC §28.02(d)}
- (v) Burglary {TPC §30.02}
- (vi) Criminal Mischief {TPC §28.03}
- (vii) Money Laundering >= \$1500 {TPC §34.02(e)(1) - (4)}
- (viii) Theft >= \$1500 {TPC §31.03(e)(4) - (7)}
- (ix) Theft < 9 {TPC §31.03(e)(1) - (3)}
- (x) Vehicle, Unauthorized Use {TPC §31.07}
- (xi) Criminal Trespass {TPC §30.05(a),(d)}
- (xii) Cruelty to Animals {TPC §42.091}
- (xiii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

- (i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
- (ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may provide easy opportunity to be victimized;
- (iii) nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility with no security to prevent theft or exploitation;
- (iv) nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse;
- (v) nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and
- (vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and, therefore, place patients' property at risk.
- (vii) certain crimes involving property, such as cruelty to animals and criminal trespass, may also concern the safety of persons and, as such, raise concerns about the propensity of the nurse to repeat similar conduct in the workplace, placing patients at risk.

(3) offenses involving fraud or deception.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

- (i) Attempt, Conspiracy, or Solicitation of Ch. 62 offense {TRCP Ch. 62}
- (ii) Tampering with a Government Record {TPC §37.10}
- (iii) Insurance Fraud: Intent to Defraud {TPC §35.02(a-1), (d)}
- (iv) Insurance Fraud: Claim > \$500 {TPC §35.02(c)}
- (v) Insurance Fraud: Claim < 0 {TPC §35.02 (c)(1) - (3)}
- (vi) Medicaid Fraud > \$1500 {TPC §35A.02(b)(4) - (7)}
- (vii) Medicaid Fraud < \$1500 {TPC §35A.02(b)(2) - (3)}
- (viii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

- (i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
- (ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;
- (iii) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability;
- (iv) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;
- (v) the nurse-patient relationship is of a dependent nature; and
- (vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and, therefore, place patients at risk.

(4) offenses involving lying and falsification.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

- (i) False Report or Statement {TPC §32.32, §42.06}
- (ii) Forgery {TPC §32.21(c), (d), (e)}
- (iii) Tampering with a Governmental Record {TPC §37.10}

(B) These crimes are related to nursing because:

- (i) nurses have access to persons who are vulnerable by virtue of illness or injury;
- (ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;
- (iii) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;
- (iv) honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;
- (v) falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future;
- (vi) falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;
- (vii) falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and
- (viii) a crime of lying or falsification raises concerns about the nurse's propensity to engage in similar conduct while practicing nursing and place patients at risk.

(5) offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

- (i) Drug Violations under Health and Safety Code Chs. 481, 482, 483; or
- (ii) Driving While Intoxicated (2 or more counts) {TPC §49.09}

(B) These crimes relate to the practice of nursing because:

- (i) nurses have access to persons who are vulnerable by virtue of illness or injury;
- (ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;
- (iii) nurses provide care to critical care, geriatric, and pediatric patients who are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition;
- (iv) nurses are able to provide care in private homes and home-like setting without supervision;
- (v) nurses who are chemically dependent or who abuse drugs or alcohol may have impaired judgment while caring for patients and are at risk for harming patients; and
- (vi) an offense regarding delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug or mood altering drug raises concern about the nurse's propensity to repeat that same misconduct in the workplace.
- (vii) DWI offenses involve the use and/or abuse of mood altering drugs while performing a state licensed activity affecting public safety; repeated violations suggest a willingness to continue in reckless and dangerous conduct, or an unwillingness to take appropriate corrective measures, despite previous disciplinary action by the state.

(c) In considering whether a criminal offense renders the individual ineligible for licensure or renewal of licensure as a registered or vocational nurse, the Board shall consider:

- (1) the knowing or intentional practice of nursing without a license issued under the NPA;
- (2) any felony or misdemeanor involving moral turpitude;
- (3) the nature and seriousness of the crime;
- (4) the relationship of the crime to the purposes for requiring a license to engage in nursing practice;

- (5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
 - (7) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision; and
 - (8) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude.
- (d) Crimes listed under subsections (b)(1)(A)(i) - (xxi), (b)(2)(A)(i) - (iii), and (b)(3)(A)(i) of this section are offenses identified under §301.4535 of the NPA. As such, these offenses require the board to suspend a nurse's license, revoke a license, or deny issuing a license to an applicant upon proof of initial conviction.
- (e) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of or received a deferred order for a crime, shall consider:
- (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.
- (f) It shall be the responsibility of the applicant, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order.
- (g) If requested by staff, it shall be the responsibility of the individual seeking licensure to ensure that staff is provided with legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional. Failure to provide complete, legible and accurate documentation will result in delays prior to licensure or renewal of licensure and possible grounds for ineligibility.
- (h) The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the Nursing Practice Act or rules of the Board, the board may consider such evidence as a factor in its deliberations regarding any decision to grant a license, restrict a license, or impose licensure discipline.
- (i) Behavior that would otherwise bar or impede licensure may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior using the factors set out in §213.27 of this title (relating to Good Professional Character), subsections (a) - (f) of this section and at least the following criteria:
- (1) age of 22 years or less at the time of the behavior;
 - (2) absence of criminal plan or premeditation;
 - (3) presence of peer pressure or other contributing influences;
 - (4) absence of adult supervision or guidance;
 - (5) evidence of immature thought process/judgment at the time of the activity;
 - (6) evidence of remorse;
 - (7) evidence of restitution to both victim and community;
 - (8) evidence of current maturity and personal accountability;
 - (9) absence of subsequent undesirable conduct;
 - (10) evidence of having learned from past mistakes;
 - (11) evidence of current support structures that will prevent future criminal activity; and
 - (12) evidence of current ability to practice nursing in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing.
- (j) With respect to a request to obtain a license from a person who has a criminal history, the executive director is authorized to close an eligibility file when the applicant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof.
- (k) The board shall revoke a license or authorization to practice as an advanced practice nurse upon the imprisonment of the licensee following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.
- (l) The board shall revoke or deny a license or authorization to practice as an advanced practice nurse for the crimes listed in Texas Occupations Code §301.4535.
- (m) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:
- (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 on March 9, 2007 in the Texas Register (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

Rule §213.29 TAC Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters provides the following:

- (a) A person desiring to obtain or retain a license to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule.

- (b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he/she has not:
 - (1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or
 - (2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.
- (c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:
 - (1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines);
 - (2) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain a license to practice as a nurse unless such person can demonstrate sobriety and abstinence for the preceding twelve consecutive months through verifiable and reliable evidence, or can establish eligibility to participate in a peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;
 - (3) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain an unencumbered license to practice nursing until the individual has attained a five-year term of sobriety and abstinence or until such person has successfully completed participation in a board-approved peer assistance program created pursuant to Chapter 467 of the Health and Safety Code.
 - (4) Those persons who have been diagnosed with, treated, or hospitalized for the disorders mentioned in subsection (b) of this section shall execute an authorization for release of medical, psychiatric, and treatment records.
- (d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this chapter.
- (e) Prior intemperate use, mental illness, or diminished mental capacity is relevant only so far as it may indicate current intemperate use or lack of fitness.
- (f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:
 - (1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;
 - (2) close any eligibility file in which the movant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof;
 - (3) approve eligibility, enter eligibility orders and approve renewals, without Board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and
 - (4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:
 - (A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for the previous twelve consecutive months; and
 - (B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.
- (f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:
- (g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:
 - (1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least the previous twelve consecutive months; and
 - (2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.
- (g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:
- (h) In renewal matters involving chemical dependency use, mental illness, or diminished mental capacity, the executive director shall consider the following information from the preceding renewal period:
 - (1) evidence of the licensee's safe practice;
 - (2) compliance with the NPA and Board rules; and
 - (3) written verification of compliance with any treatment.
- (i) Upon receipt of items (h)(1) - (3) of this section, the executive director may renew the license.
- (j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:
 - (1) 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 web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.
 - (2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the Texas Register (32 TexReg 1409) and available on the Board's website <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

Rule 213.30 TAC Declaratory Order of Eligibility for Licensure provides that:

- (a) A person enrolled or planning to enroll in an educational nursing program that prepares a person for an initial license as a registered or vocational nurse or an applicant who seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement) who has reason to believe that he or she may be ineligible for licensure, may petition the Board for a declaratory order or apply for a license by endorsement as to his or her eligibility.
- (b) The person must submit a petition or application on forms provided by the Board which includes:
 - (1) a statement by the petitioner or applicant indicating the reason(s) and basis of potential ineligibility;
 - (2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation, if applicable;
 - (3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines) and evidence of treatment;

- (4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care and support group attendance; and
 - (5) the required fee which is not refundable.
- (c) An investigation of the petition/application and the petitioner's/applicant's eligibility shall be conducted.
- (d) The petitioner/applicant or the Board may amend the petition/application to include additional grounds for potential ineligibility at any time before a final determination is made.
- (e) If an applicant under §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined, or allowed to surrender in lieu of discipline, in that jurisdiction, the following provisions shall govern the eligibility of the applicant under §213.27 of this title (relating to Good Professional Character).
- (1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the applicant has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.
 - (2) An applicant disciplined for professional misconduct in the course of nursing in any jurisdiction or an applicant who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title and is therefore ineligible to file an application under §217.5 of this title during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the applicant has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.
- (f) If a petitioner's/applicant's potential ineligibility is due to criminal conduct and/or conviction, the following provisions shall govern the eligibility of the applicant under §213.28 of this title (relating to Licensure of Persons with Criminal Convictions):
- (1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.
 - (2) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the petitioner or applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner or applicant possesses present good professional character and fitness.
- (g) If the executive director proposes to find the petitioner or applicant ineligible for licensure, the petitioner or applicant may obtain a hearing before the State Office of Administrative Hearings. The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner or applicant. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).
- (h) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the person's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the petition or application for licensure. If the applicant or petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the E&D Committee or the executive director, the applicant or petitioner may re-petition after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this rule and §301.257, Texas Occupations Code.
- (i) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), when recommending a declaratory order of eligibility; and the Board in determining the appropriate declaratory order in eligibility matters:
- (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 on March 9, 2007 in the Texas Register at (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.