

**ELIGIBILITY AND DISCIPLINARY COMMITTEE REPORT FOR  
FEBRUARY 8, 2011, AND MARCH 8, 2011**

The Eligibility and Disciplinary Committee (Committee) convened on February 8, 2011, and March 8, 2011. This report collectively summarizes the matters and decisions made at the time of the meeting<sup>1</sup>.

**Petitioners for Licensure**

The Committee considered three (3) petitions for licensure:

1. Petitioner filed a petition based on the following criminal history: On or about October 20, 2004, Petitioner plead guilty to a 1<sup>st</sup> and 2<sup>nd</sup> degree felony offense of possession of a controlled substance with an intent to deliver. As a result of the pleas, the proceedings against Petitioner were deferred without entering an adjudication of guilt and Petitioner was placed on probation for a period of ten (10) years. Petitioner was discharged from probation on December 9, 2010.

Petitioner appeared in person. The Committee voted to grant the petition for licensure with the following conditions: 1b, \$500 fine, 4, 5, 6, 6a, 10, 11, 12 and 14 for two (2) years.

2. Petitioner filed a petition based on the following criminal history: On or about October 16, 2007, Petitioner was charged with two felony offenses of obtaining or attempting to obtain a controlled substance by forgery or fraud. As a result, the proceedings were deferred, with the requirement that Petitioner complete a drug court program. The sentences of each charge were to run concurrent with one another and the Petitioner successfully completed the terms and conditions of the drug court program on March 26, 2009.

Petitioner appeared in person and was represented by counsel. The Committee voted to grant the petition for licensure with the following conditions: 1b, \$350 fine, 4, 5, 6, 6a, 10, 11, 12 and 14 for three (3) years.

3. Petitioner filed a petition based on the following criminal and mental health history: On or about June 12, 2008, Petitioner plead guilty to a felony offense of bomb/hijack threat - hoax device/substance, possess/transport/use. As a result of the plea, Petitioner was placed on probation for a period of two (2) years and completed probation on or about February 27, 2009.

---

<sup>1</sup> This report should be reviewed in order to keep apprised of issues and decisions so that the Board may remain consistent with precedent.

Petitioner also had a history of mental health issues and was seen by a clinical psychologist on two separate occasions to undergo a mental health evaluation and a polygraph examination. At the time of the initial interview, it was the psychologist's opinion that Petitioner was not capable of conducting herself in accordance with the Board's rules. However, after participation in weekly psychotherapy sessions and compliance with her medication regimen, the psychologist stated in her follow-up evaluation that the Petitioner was more likely to be capable of conducting herself in accordance with the Board's rules and could consistently avoid unprofessional conduct according to Rule 217.12 under certain circumstances.

Petitioner appeared in person and was represented by counsel. The Committee voted to grant the petition for licensure, provided that the Petitioner apply to and be accepted into TPAPN for a contract period of two (2) years.

### **Petitioners for Reinstatement**

The Committee considered one (1) petition for reinstatement:

1. Petitioner appeared in person and was represented by counsel. The Board originally revoked the Petitioner's license because the Petitioner received a deferred adjudication for the felony offense of endangering a child. The Committee denied the petition for reinstatement because the petition was untimely filed, as the amount of time required by the Occupations Code §301.4535(c)<sup>2</sup> had not yet passed.

### **Petitioners for an Exception to a Previous Board Order**

The Committee considered ten (10) petitions for an exception to a previous board order:

1. Petitioner requested that she be allowed to work in critical care, specifically in telemetry, as she has been unable to find employment under her current board order and she had previous experience in telemetry. The Petitioner had a demonstrated chemical dependency and was unable to successfully complete either of her two prior board orders. Further, Petitioner provided no evidence of her prior telemetry practice and provided no meritorious reason to lift the restrictions that have been placed on her license to protect patients and the public. It was the Committee's decision to Deny Petitioner's request.
2. Petitioner requested that she be issued an unencumbered license and be allowed to provide nursing and clinical services to a home health agency owned and operated by her husband.. Petitioner signed an agreed order as a result of submitting 95 inaccurate nurse's notes for home health visits for patients assigned to her care. Petitioner was represented by counsel when she signed the agreed order and knew that the order prohibited her from working for a home health agency

---

<sup>2</sup> The Occupations Code §301.4535 prohibits the Board from issuing a license to an individual who received a deferred adjudication for endangering a child until at least the fifth anniversary of the date the person has successfully completed and is dismissed from community supervision or parole.

during the pendency of the order. It was the Committee's decision to Deny Petitioner's request.

3. Petitioner requested that the Board issue her a Limited License, as she cannot endorse into another state with a stipulated license. The Committee pointed out that a limited license is not an unencumbered license; therefore, the endorsing state may or may not accept her endorsement of a limited license. However, it was the Committee's decision to grant the request and issue the Petitioner a Limited License as the public remains protected if the Petitioner is unable to provide direct patient care.
4. Petitioner requested that he be allowed to return to direct patient care. The Petitioner did not provide evidence of treatment or sobriety as required by 22 Tex. Admin. Code §213.29(a). It was the Committee's decision to deny Petitioner's request until he could show proof of twelve (12) months sobriety and completion of inpatient/outpatient treatment.
5. Petitioner requested that she be allowed to return to direct patient care. Petitioner submitted to a chemical dependency evaluation wherein the evaluator stated that Petitioner would be safe to return to direct patient care under the Board's standard drug stipulations for a period of three (3) years. It was the Committee's decision to grant Petitioner's request and with a Suspend/Probate order with the following conditions: 1b, \$350 fine, 4, 5, 6, 6a, 7, 8, 9, 10, 11, 12 and 14 for three (3) years.
6. Petitioner requested that she be allowed to work in the office of a home health agency, as she has been unable to find employment under her current board order. The Petitioner had a lengthy disciplinary history with the Board and additional theft convictions and allegations of falsifying home health records. Further, the Petitioner failed to provide any evidence from which the Board could be assured that she would not engage in similar conduct if placed back in a home health environment. It was the Committee's decision to deny Petitioner's request.
7. Petitioner requested that she be allowed to practice without supervision, as her employer was no longer able to accommodate the supervision requirement of the order. Petitioner previously appeared before the Committee in November, 2010, also citing employment issues, and the Committee altered the terms of her order to accommodate her request at that time. The Petitioner had a history of chemical dependency and supervised practice was necessary to monitor her transition back into nursing and to ensure her continued sobriety. It was the Committee's decision to deny Petitioner's request.
8. Petitioner requested that her fine of \$100 be waived, citing financial hardships. The Committee noted that many nurses under orders must pay fines that cause financial hardships, and that this, in and of itself, is not a reason to alter the terms of the order. It was the Committee's decision to deny Petitioner's request.

9. Petitioner requested that a portion of the stipulations be vacated, as he has been unable to obtain employment since becoming licensed. Petitioner had a lengthy criminal history involving drug use and distribution. The Committee noted that the conditions of the order were reasonable given the Petitioner's past criminal conduct and drug/alcohol use and the conditions were consistent with the Board's Disciplinary Matrix. It was the Committee's decision to deny the Petitioner's request.
10. Petitioner requested that she be allowed to work as an agency nurse, as she had been unable to obtain employment under her current order. The Petitioner had been out of nursing for two years and the order appropriately contained work restrictions designed to monitor her transition back into nursing practice. It was the Committee's decision to deny Petitioner's request.

### **Motions for Rehearing**

The Committee considered seven (7) motions for rehearing:

1. Movant filed a Motion for Rehearing within 20 days of the date she learned of her license revocation (revoked by default). The Movant stated that she was moving around on traveling assignments and she failed to change her address and was unaware of formal charges having been filed against her and any scheduled proceedings. Although the Movant admitted to all of the allegations in the formal charges, the violations would not normally result in the revocation of the Movant's license. It was the Committee's decision to grant the motion.
2. Movant filed a Motion for Rehearing within 20 days of the date she learned of her license revocation (revoked by default). The Movant did not provide an explanation for failing to change her address with the Board, nor a meritorious defense to the formal charges. It was the Committee's decision to deny the motion.
3. Movant filed a Motion for Rehearing within 20 days of the date she learned of her license revocation (revoked by default). The Movant stated that she changed her address with the Board with her online renewal; however, Movant's licensure file did not reflect the new address. The allegations in the formal charges were of a serious nature (that could result in revocation) and indicated a mental or physical impairment that could place patients and the public in danger. It was the Committee's decision to deny the motion.
4. Movant filed a Motion for Rehearing in this matter, but could not recall the exact date that she learned of the revocation. As a result, the Committee could not determine whether the motion was timely filed. The movant admitted to the allegations contained in the formal charges and stated in response to the charges that she had attended inpatient treatment, one year of aftercare with TPAPN, 90 meetings in 90 days and attended 12-step meetings. Further, the Respondent's violations would not typically result in revocation of one's license. It was the Committee's decision to grant the motion.

5. Movant filed a Motion for Rehearing within 20 days of the date she learned of her license revocation (revoked by default). The Movant stated that she did not receive notices from the Board because the postal system did not forward her mail. The Movant did not disclose her criminal history on her renewal document when she first received her felony deferred adjudication, and the Board did not find out about her criminal history until the judicial order was at least five years old. As a result, the current disciplinary action would primarily relate to the Movant's non-disclosure, which was not normally an offense for which a license is revoked. It was the Committee's decision to deny the motion.
6. Movant filed a Motion for Rehearing within 20 days of the date she learned of her license revocation (revoked by default). The Movant stated that she forgot to change her address with the Board when she moved. The Movant did not disclose her criminal history on her initial application for licensure. Movant failed to provide a meritorious defense to the allegations. It was the Committee's decision to deny the motion.
7. Movant filed a Motion for Rehearing in this matter, and according to Movant, her motion was filed within 20 days of the date she learned of the revocation. However, the Board did not actually receive the motion until after the 20 day deadline. The Movant admitted to the allegations contained in the formal charges, which included indictments on two felony offenses that require licensure revocation under the Occupations Code §301.4535. It was the Committee's decision to deny the motion.

**Orders Ratified:**

Eighty-nine (89) disciplinary agreed orders were approved.

Seven (7) reinstatement agreed orders were approved.

Twenty-eight (28) eligibility agreed orders were approved.

Sixty (6) default revocation orders were approved.