

Consideration of Proposed Recommendations for a Policy for Board Member Excused Absences at Board Meetings under Texas Occupations Code, Sec. 301.055(a)(5)

Background

Occasionally, a board member may need to be removed from the board. The Nursing Practice Act, section 301.055, specifically outlines those grounds which will subject a board member to removal. Included in those enumerated grounds is removal based on absenteeism. Unexcused absences may become so obstructive as to prevent the board from functioning effectively. This agenda item is to propose a policy for evaluating board member absences consistent with section 301.055.

Discussion

Grounds for removal from the Board of Nursing is controlled by section 301.055 of the Texas Occupations Code, which specifically states:

- (a) It is a ground for removal from the Board that a member:
 - (1) does not have at the time of taking office the qualifications required by Section 301.051(a);
 - (2) does not maintain during service on the board the qualifications required by Section 301.051(a);
 - (3) is ineligible for membership under Section 301.053;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
 - (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the Board.
- (b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the Board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall

then notify the governor and the attorney general that a potential ground for removal exists.

Tex. Occ. Code, section 301.055 (emphasis added).

There are countless reasons why a board member may be absent from a meeting. Some of those reasons may seem justified, while others may not. There may be reasons of a very personal and private nature. Staff, therefore, would propose a policy that is consistent with 301.055(a)(5) but is not overly complicated, burdensome, or intrusive.

The absences must be from a “regularly scheduled board meeting[s] that the member is eligible to attend.” The proposed policy, therefore, should count only the current, four regularly scheduled full board meetings. The policy would exclude Eligibility and Disciplinary Committee meetings.

The Eligibility and Disciplinary Committee (Committee) is a regularly scheduled board meeting. However, including Committee meetings in the sum of eligible meetings for purposes of section 301.055 is inappropriate. The Committee has delegated authority and does not consider many matters which are reserved to the full board. The Committee requires at least one member be a nurse, and, therefore is weighted toward requiring nurse rather than consumer members. Some members may serve multiple times on the Committee in a given year while other members will not serve at all. The Committee requires an orientation period for new board members. Theoretically, if Committee attendance were included in the policy, a board member may never attend a full board meeting, yet never miss half the total meetings in a calendar year.

The absences are to be considered “during a calendar year.” The proposed policy, therefore, would only count a member’s absences between January and December of any given year. The board must consider whether a partial absence is to be counted as an absence for purposes of section 301.055. To simplify the policy, staff proposes that partial absences will be counted as an absence.

The full board must vote on eligible absences. Only those absences that are not “excused by majority vote” may be counted. The proposed policy, therefore, would schedule these votes to be taken at the regularly scheduled January board meeting to consider members’ absences from the prior calendar year. To simplify the policy, consideration of whether to excuse absences will be scheduled only with regard to those members who were absent more than half of the regularly scheduled board meetings from the prior calendar year. Members who were absent less than half of the meetings from the prior calendar year will not be considered, and a board member may not vote on whether to excuse his/her own absence(s).

Because the NPA suggests an absence may be excused, the proposed policy will permit submission of a reason for absence and deliberation by the full board on whether it should be

excused by majority vote. Section 551.074 of the Texas Open Meetings Act permits deliberation of “appointment, employment, evaluation, reassignment, duties, discipline. . .” or “complaint or charge against an officer. . . “ in a closed meeting. The board member who is the subject of the deliberation, however, may require such deliberation be in open meeting. *See* Tex. Gov’t Code sec. 551.074.¹

Recommendation:

Move to adopt the attached proposed Policy for Board Member Excused Absences at Board Meetings under Texas Occupations Code, Sec. 301.055(a)(5).

¹Sec. 551.074. PERSONNEL MATTERS; CLOSED MEETING.

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

Policy for Board Member Excused Absences at Board Meetings
under Texas Occupations Code, Sec. 301.055(a)(5)

Absence from any part of a regularly scheduled board meeting will be considered an absence for purposes of section 301.055(a)(5) and this policy. The Executive Director will notify the presiding officer when a board member has been absent more than half of the regularly scheduled board meetings during the calendar year. Attendance at Eligibility and Disciplinary Committee Meetings will not be considered for purposes of application of section 301.055(a)(5).

At its first regularly scheduled meeting of the year, the board will consider each absence of those board members who were absent from more than half of the regularly scheduled board meetings during the prior calendar year.

The board member whose absences are subject to review may provide a written or verbal explanation of the reason for each absence to be considered by the board. Unless there is an objection from the board member under consideration, the board may deliberate in closed meeting concerning the reason for the member's absence(s).

The board will not vote on whether any absence is excused in closed meeting, but will convene in open meeting and vote on whether to excuse each absence under consideration. The board member under consideration will not be permitted to vote on whether his/her absence(s) is excused.

If, based on unexcused absences, it is determined that a member has been absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year, the presiding officer shall then notify the governor and the attorney general that a potential ground for removal of that board member exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal of the presiding officer exists.