

Consideration of Proposed Amendments to the Board's adopted Disciplinary Sanctions for Fraud, Theft, and Deception

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

The proposed new policy:

- is re-organized for clarity;
- amends the term "the mentally ill" to "persons with mental disorders" throughout the policy; and
- includes additional information regarding disciplinary action, consistent with the Board's rules, including the Board's Disciplinary Matrix.

Staff recommends adopting the amended disciplinary policy regarding *Behavior Involving Fraud, Theft, and Deception*, as set out in Attachment "A".

Board Action: Move to approve the amended disciplinary policy regarding *Behavior Involving Fraud, Theft, and Deception*, as set out in Attachment "A".

¹ See 22 Tex. Admin. Code §211.6.

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

Behavior Involving Fraud, Theft, and Deception

Purpose

The Texas Board of Nursing (Board) is committed to its mission to protect the public health, safety, and welfare. In keeping with this mission, the Board is concerned about the fraudulent or dishonest conduct of an individual, whether occurring in the workplace or outside the workplace, that may place patients/clients or the public at risk.

All individuals wishing to practice nursing in Texas must possess good professional character. Nurses hold the highest position of trust to the most vulnerable of our society. Conduct involving the misappropriation of property, money, or other possessions; fraudulent behavior towards patients, governmental programs or funds, (e.g., Medicare and/or Medicaid), or other private reimbursement programs; and criminal behavior involving fraud, theft, or deception raises questions about an individual's fitness to practice and professional character.

This policy is intended to explain the Board's position regarding fraudulent and deceptive behaviors and inform licensees, petitioners, applicants and the public about the Board's process for reviewing such conduct. This policy is also consistent with, and supports, the Governor's Executive Order RP36, July 12, 2004, relating to preventing, detecting, and eliminating fraud, waste, and abuse. The Governor's Executive Order RP36 may be found at: <http://governor.state.tx.us/news/executive-order/10997/>.

Effect on Practice

Nurses, by virtue of the license issued to them by the Board, have a duty to their patients to provide safe, effective nursing care and to demonstrate honesty, integrity, and good professional character at all times. The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is especially true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized. Patient care settings are intimate ones and patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbooks, credit cards) with them to health care facilities. Further, nurses frequently provide care in private homes and home-like settings where all of a patient's property and valuables are accessible to the nurse. In autonomous settings, like home health, other healthcare providers are not present, and there is no direct supervision of the nurse. Patients in these types of healthcare settings may be particularly vulnerable to the unethical, deceitful, or illegal conduct of the nurse. Further, although some nurses may not work in these settings, an individual with an unencumbered license is not restricted from them. When a nurse has exhibited fraudulent or deceitful conduct in the past, the Board is mindful that similar misconduct may be repeated in the workplace, thereby placing patients at a heightened risk.

Theft is an intentional act. Theft from a patient or fraudulent or deceitful behavior involving a patient is never acceptable. Theft of patient money, property, medicine, valuables, or items of sentimental value is extremely serious and constitutes grounds for disciplinary action, including the suspension or revocation of licensure or licensure denial. Fraud, theft, or deception toward an employer in a healthcare setting is also concerning to the Board, as such behavior may be repeated or involve patients.

Crimes involving fraudulent and/or deceitful behavior are concerning to the Board, as they may indicate a lack of good professional character. The Board may rely solely on the disposition of a crime (with or without an adjudication of guilt) to initiate disciplinary action against a nurse's license, which may include licensure denial, suspension, revocation, or other limitation.

The Board is also concerned with fraudulent behaviors involving government funds or programs, such as Medicare or Medicaid, or other private reimbursement programs. This type of fraud increases the price employers pay for worker's compensation, drains the unemployment insurance fund, and steals from those in need of vital Medicaid and/or Medicare services.

Disciplinary Action

In all situations involving an individual's fraudulent or deceitful conduct, the Board's primary objective is to ensure the protection of the public. However, not all matters involving a nurse's fraudulent or deceptive behavior will require the same amount of Board intervention or will necessarily result in disciplinary action. The Board will consider each case on its own merit. Factors that may be particularly relevant to fraudulent or deceitful conduct include: the nature and seriousness of the conduct, the actual harm resulting from the conduct, the individual's history, premeditation, lack of remorse, and/or restitution, and the risk the individual's practice poses to patients and the public. Depending on the particular circumstances, an individual may be able to obtain or retain licensure under an encumbered license, with conditions/restrictions determined by the Board, for a specified period of time. Because patients in autonomous healthcare settings are particularly vulnerable to acts involving fraud, theft, and deception, an individual who has previously exhibited such conduct will likely be precluded from working in a home health or independent practice setting for a period of time. Further, if the individual circumstances do not necessarily warrant removal of an individual from practice or from an independent practice setting, supervision and/or additional restrictions applicable to the setting will likely be required to ensure adequate protection of patients and the public. A fine and/or restitution as authorized by the Nursing Practice Act and Board rules may also be required.

For additional information, please review the Nursing Practice Act (NPA), [Tex. Occ. Code Chapter 301](#); the Board's rules, located at [22 Texas Administrative Code](#) Chapters 211 - 227, including §§213.27 - 213.33; and the Board's [adopted policies](#) located on the Board's web site, at www.bon.texas.gov. [Tex. Occ. Code Chapter 53, 22 Tex. Admin. Code §213.28](#), and the [Board's Guidelines for Criminal Conduct](#) contain additional provisions that specifically apply to criminal behavior. The Board will also consider its adopted [Disciplinary](#)

[Matrix](#), which contains recommended sanctions for violations of the Nursing Practice Act and/or Board rules and an individual's good professional character under [22 Tex. Admin. Code §213.27](#).



Disciplinary Sanctions for Fraud, Theft, and Deception

The Texas Board of Nursing (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who have engaged in dishonest behaviors that may place the public or patients at risk. The Board is concerned with individuals who have stolen or misappropriated property, money, or other possessions from patients, who have engaged in fraudulent behavior towards patients, who have engaged in fraud towards government programs or funds, e.g., Medicare and/or Medicaid, or who have been convicted or received a judicial order involving a crime or criminal behavior of theft or deception to an extent that such conduct may be repeated in connection with the individual's practice of nursing with patients who are vulnerable, thereby affecting the nurse's ability to safely care for patients. Furthermore, the Board's policy is consistent with and supports the Governor's Executive Order RP36 dated July 12, 2004, relating to preventing, detecting, and eliminating fraud, waste, and abuse that can be found at: www.governor.state.tx.us/divisions/press/exorders/rp36.

The Board's position applies to all nurse license holders and applicants for licensure.

The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.
2. Persons who are especially vulnerable include 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.
3. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility.
4. 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.
5. Nurses frequently provide care in settings without direct supervision.

The Board considers the following behaviors important in evaluating whether an individual possesses the integrity and honesty to practice nursing:

1. Theft from a patient raises serious concerns whether the nurse can be trusted to respect a patient's property/possessions in the future.

2. Theft or deception that occurs outside of the workplace, including conviction or a judicial order involving criminal behavior, may raise concerns as to whether the same misconduct will be repeated in the workplace and, therefore, place patients at risk for theft and deception.

* The terms “resident” or “client” are often substituted for the term “patient” in health care facilities. For the purposes of this document “patient” includes all of these terms.

Crimes Related to Fraud, Theft, and Deception

Fraudulent behavior is a crime of moral turpitude. The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, limit, or revoke a license. Criminal conduct involving fraud, theft, and/or deception may also reflect a lack of good professional character (Section 213.27 of 22 Texas Administrative Code). In addition, the Board is also concerned with fraud involving government funds or programs, such as Medicare or Medicaid. This type of fraud increases the price employers pay for worker’s compensation, drains the unemployment insurance fund, and steals from those in need of vital Medicaid and/or Medicare services. A conviction or a judicial order involving the criminal behaviors of fraud, theft, falsification or deception is a concern to the Board but may not in and of itself disqualify a person from licensure.

The magnitude of the behavior is not necessarily a major factor the Board will consider. Factors related to the crime that would concern the Board the most are evidence of premeditation, lack of remorse, and failure to pay restitution. The presence of these factors is evidence to the Board that the likelihood of the same behavior being repeated is great enough that patients may be at risk for the same conduct. Acts of an impulsive nature where there is insight/remorse regarding the conduct may be mitigating factors for the Board to consider. The criminal behavior of fraud, theft, or deception will be evaluated on an individual basis considering the foregoing factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving fraud, theft, or deception, the Board shall revoke the nurse’s license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code Section 213.28 governs the consequences of criminal convictions and requires revocation of a nurse’s license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct. Acts of fraud, theft, or deception will preclude a nurse from working in a home health or independent setting during the stipulation period. If circumstances do not warrant removal from that practice setting, supervision in the home health or independent setting will be required. Discipline by the Board will likely require the nurse to pay a civil penalty or fine and restitution as authorized by the Nursing Practice Act and Board rules. The Board will take under consideration any conviction or conduct that falls within the “youthful indiscretion” factors as stated in Board rules (Section 213.28 of 22 Texas

Administrative Code), factors stated in Texas Occupations Code chapter 53 regarding criminal conviction consequences, and other factors in Sections 213.27 and 213.28 of 22 Texas Administrative Code (Good Professional Character and Licensure of Persons with Criminal Convictions).

Theft from a Patient

Theft from a patient or engaging in fraudulent or deceitful behavior or conduct with or involving a patient is never acceptable. Theft of patient money, property, medicine, valuables, or items of sentimental value is ground for suspension or revocation of licensure.

A license may be denied if the applicant engaged in theft while functioning in the role of a care giver. Other fraudulent conduct or deception towards a patient is unacceptable, but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at a level less than revocation or may be reprimanded or warned and limited from independent settings following a thorough investigation. Factors such as insight, remorse and premeditation will be considered as to whether a disciplinary sanction is imposed. The Board believes that employers of nurses have the responsibility to have safeguards in place to ensure that patients are not subjected to acts of fraud, theft, or deception.

Theft from the Workplace

Theft is an intentional act regardless who is the victim of the theft. The Board's position on theft from an employer is not as strong as its position on theft from a patient. However, if a nurse engages in fraud, theft, or deception toward his/her employer, there is the possibility that the nurse will also engage in the same behavior towards patients. The Board will consider the factors of premeditation, remorse and restitution as well as the steps taken by the employer toward the nurse in deciding whether or not discipline should be imposed.

Petition for Reinstatement

A person who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration or reinstatement after one year has elapsed. The burden of proof that the person does not pose a danger for fraud, theft, or deception toward patients remains with the petitioner or applicant.

Recommended Sanctions

The minimum allowed sanction for fraud, deceit, intentional, and/or willful misconduct that results in harm or the potential for harm to another person will be removal from practice in an independent setting, including but not limited to home health and agency nurse, practice under the supervision of another registered nurse, if practicing as a RN, or under the supervision of a licensed vocational nurse or registered nurse, if practicing

as a LVN, employer reports, and a punitive fine. The recommended sanction may be revocation.

Approved and adopted on July 26, 2002, modified on April 23, 2004, October 22, 2004 (included Medicare/Medicaid fraud), and January 18, 2008 (based on recommendations adopted by the Eligibility and Disciplinary Task Force on November 30, 2007).