

**Consideration of Charge to Committee to Review and Recommend Changes to 22
Tex. Admin. Code §217.12 and §213.28, Including the Board's Guidelines for
Criminal Conduct**

Background: In December 2016, the Sunset Commission adopted Recommendation 2.1 and 2.2, (attached as Attachment "A"), which concern the definitions of unprofessional conduct and good professional character and the Board's Guidelines for Criminal Conduct. (Guidelines). Specifically, Recommendation 2.1 requires the application of the definitions of unprofessional conduct and good professional character to be limited to the practice of nursing. Further, Recommendation 2.2 directs the Board to review its Guidelines for Criminal Conduct to include only those crimes directly related to the practice of nursing.

As a result, Staff is recommending that the Board charge its Advisory Committee on Licensure, Eligibility and Discipline to begin reviewing the Board's rules regarding unprofessional conduct and criminal conduct, including its Guidelines, and make recommendations for amendments, if necessary. The Committee's review should include, but is not limited to: (i) whether the offenses currently included in the Guidelines have an appropriate nexus to the practice of nursing; (ii) whether the recommended sanctions in the Guidelines are appropriate and fair; and (iii) what type and/or amount of mitigating evidence is necessary to support a more lenient sanction under the Guidelines, if any. The Committee's review should also include a review of the Board's unprofessional conduct rule, specifically as it relates to criminal conduct.

Board Action: Move to issue a charge to the Advisory Committee on Licensure, Eligibility and Discipline to review and make recommendations regarding the Board's rules regarding unprofessional conduct and criminal conduct, including its Guidelines.

TEXAS BOARD OF NURSING

Issue 1

Absent Conclusive Evidence Regarding Excelsior's Nursing Program, the Board Is the Most Appropriate Entity to Determine Qualifications for Initial Nurse Licensure.

Change in Statute

Rec. 1.1, Modified

In lieu of staff Recommendation 1.1, the Commission decided to remove the December 31, 2017 expiration date for Excelsior's exception. Create a process, similar to steps for an in-state program, for program improvement or expiration of the exception if Excelsior's national exam passage rate falls below the board's standard (80%) for consecutive years. *(See Adopted Language)*

Rec. 1.2, Adopted

Require the board to develop a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Texas programs.

Issue 2

Broad and Subjective Standards Extending Beyond the Practice of Nursing Could Lead to Harsher Sanctions for Nurses.

Change in Statute

Rec. 2.1, Adopted

Clarify the definitions of unprofessional conduct and good professional character to limit their application to the practice of nursing.

Management Action

Rec. 2.2, Adopted

Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing.

Issue 3

The Board's Peer Assistance Program Needs Improved Flexibility and Oversight to Most Effectively Rehabilitate Nurses.

Change in Statute

- Rec. 3.1, Adopted** Require the board's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnoses.
- Rec. 3.2, Adopted** Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.
- Rec. 3.3, Adopted** Require the board to adequately measure the effectiveness of its peer assistance program.

Management Action

- Rec. 3.4, Adopted** Direct the board to designate a contract manager assigned to the peer assistance program.
- Rec. 3.5, Adopted** Direct the board to require its peer assistance program to publicly post information about the various program tracks and requirements.

Issue 4

Texas Must Adopt the New Nurse Licensure Compact to Ensure Continued Mobility Within the Profession.

Change in Statute

- Rec. 4.1, Adopted** Adopt the new Nurse Licensure Compact.

Issue 5

Clear Statutory Authority Could Help the Board Better Monitor Improper Prescribing of Controlled Substances.

Change in Statute

- Rec. 5.1, Adopted** Clarify statute and provide direction for the board to monitor advanced practice registered nurses' improper prescribing of controlled substances.

Issue 6

The Board's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Change in Statute

- Rec 6.1, Adopted** Update the standard across-the-board requirement related to board member training.
- Rec 6.2, Adopted** Discontinue the board's two reporting requirements and eliminate the specific statutory authority for nurse competency pilot programs.

Issue 7

The State Has a Continuing Need to Regulate Nurses.

Change in Statute

- Rec 7.1, Adopted** Continue the Texas Board of Nursing for 12 years.

Adopted New Issue

Prescription Monitoring Program

Require advanced practice registered nurses to search the Prescription Monitoring Program database and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. An advanced practice registered nurse who does not check the database before prescribing these drugs would be subject to disciplinary action by the Nurse Board.

Adopted Language

Recommendation 1.1 – Modification Language

In lieu of staff Recommendation 1.1, remove the December 31, 2017 expiration date for Excelsior's exception and provide the following.

If Excelsior's national exam passage rates fall below the board's standard (80%), the program must take the following steps to maintain the exception.

- **Year One.** If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80%) for one year, Excelsior would complete a self-study of its program and submit the study to the board. The self-study should be in compliance with the board's self-study guidelines to evaluate factors that may have contributed to the graduates' performance and describe corrective measures to be implemented. The board would review and provide comment on the self-study.
- **Year Two.** If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80%) for two consecutive years, Excelsior would allow the board to evaluate and make recommendations to improve the program through a desk review. The desk review would evaluate the same criteria the board typically evaluates in an onsite visit.
- **Year Three.** If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80%) for three consecutive years, Excelsior would provide notice on its website that future students may need to meet additional requirements for initial licensure in Texas because the program's pass rates failed to meet Texas requirements.
- **Year Four.** If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80%) for four consecutive years, Excelsior's exception would expire. Students enrolled on or before December 31 of the year in which Excelsior's pass rates fall below the standard for the fourth consecutive year would be grandfathered under the exception and eligible to apply for initial licensure. Excelsior would provide notice to students enrolling in Excelsior after that date that they would be ineligible for licensure under the exception, but would be eligible for licensure by meeting any additional requirements developed through implementation of staff Recommendation 1.2.

If, in years one through three, Excelsior does not complete these steps by May 31 (roughly six months after determination of its pass rates) of the year following a year of low pass rates, Excelsior would no longer meet the exception. Students enrolled on or before December 31 of the year in which Excelsior fails to meet these requirements

would be grandfathered under the exception and eligible to apply for initial licensure. Excelsior would provide notice to students enrolling in Excelsior after that date that they would be ineligible for licensure under the exception, but would be eligible for licensure by meeting any additional requirements developed through implementation of staff Recommendation 1.2.

This modification also eliminates the statutory provision restricting the exception to the board's licensure requirements to out-of-state nursing programs whose graduates were approved by the Texas Board of Nursing during a 10-year period preceding January 1, 2007.