

**Informational Report Regarding
the Advisory Committee on Licensure, Eligibility, and Discipline**

In 2016-2017, during the 85th Legislative cycle, the Board underwent review by the Texas Sunset Advisory Commission (Commission). At its January 2017 meeting, the Board charged its Advisory Committee on Licensure, Eligibility and Discipline (Committee) to review the Commission's recommendations and provide proposed changes to the Board. The Commission's recommendations were later codified in House Bill (HB) 2950, which became effective September 1, 2017.

The Committee was charged with reviewing two of the Commission's recommendations relating to discipline. The Committee met on May 12, 2017; June 9, 2017; and August 11, 2017; to discuss the Commission's recommendations related to the Board's Disciplinary Guidelines for Criminal Conduct and Board Rule 213.28. The Commission's recommendations included an instruction that the Board review its Guidelines to limit disciplinary action to crimes that are directly related to the practice of nursing. Under this recommendation, the Board was instructed to review its Guidelines to ensure that they do not expand beyond crimes that affect actual nursing practice, such as crimes that indicate subjective traits like honesty, trustworthiness, or good professional character, if those crimes have not occurred in relation to, or reasonably correlate to, a nurse's job. The Commission instructed the Board to seek stakeholder input to revise its rules and adopt new rules by March 1, 2018.

The Committee began its discussions by reviewing the Board's charge and the Commission's recommendations. The Committee also reviewed the statutory requirements under the Nursing Practice Act and Texas Occupations Code Chapter 53 concerning the effect of criminal history on occupational licensure. The Committee discussed crimes of moral turpitude under Texas law and considered representative samples of Board cases. The Committee also compared the Board's rules to those of the Texas Medical Board, the Texas Pharmacy Board, and the Texas Department of Licensing and Regulation. The Committee also considered the survey results of 40 other state boards of nursing regarding their review and/or use of criminal history in licensing decisions. The Committee spent the majority of its time, however, discussing each crime in the Board's Guidelines and its relationship to the practice of nursing. Committee members were dedicated to identifying the crimes that would most likely have an effect on an individual's ability to practice nursing safely or that would most likely pose a risk of harm to patients, employers, or the public. A copy of the Committee's final recommendations regarding the Board's Guidelines are attached hereto as Attachment "A". The Committee also provided general comments regarding proposed changes to Board Rule 213.28.

The Committee also met on September 15, 2017, to discuss the Commission's

second recommendation related to the Board's definition and application of *good professional character* and *unprofessional conduct*. The Commission found that the Board's definitions of *unprofessional conduct* and *good professional character* were too subjective and that its application of these terms should be limited to the practice of nursing. The Commission also found that the Board's broad standards for unprofessional conduct and good professional character were not consistent with the Legislature's policy to limit enforcement actions to the practice of nursing, potentially resulting in harsher sanctions. The Commission recommended that the Board revise its rules regarding *unprofessional conduct* and *good professional character* to remove any subjective language or requirements not specifically related to the practice of nursing. Further, the Commission recommended that the Board seek stakeholder input to revise its rules and adopt new rules by March 1, 2018.

Unfortunately, the Committee was unable to attain a quorum at its September 15, 2017, meeting. However, the members that were present at that meeting provided informal comments to Staff regarding the Board's good professional character and unprofessional conduct rules. Committee members stated that good professional character is judged by a person's behaviors and conduct, which is objective. Committee members also stated that conduct is easier to measure objectively, and that an individual's conduct determines character.

The proposed amendments to Board Rules 213.27, 217,12, and 213.28, including the Board's Guidelines for Criminal Conduct, are addressed more specifically in Agenda Items 7.6, 7.9, and 7.7.

Crimes Recommended to Remain on List	Crimes Recommended for Removal from List	Unable to Reach Consensus
***if conduct constituting a crime occurs at work, it will be considered by the Board. The remaining list focuses on conduct that occurs outside the workplace.		
Aggravated Perjury (felony)	Bail Jumping (felony and misdemeanor)	Assault (misdemeanor)
Aiding Suicide (misdemeanor)	Burglary of vehicle (misdemeanor)	Bribery (felony)
Arson (felony)	Criminal Trespass (misdemeanor)	Criminal mischief (felony)
Assault (felony)	Deadly Conduct (misdemeanor)	Criminal non support (felony)
Burglary (felony)	Evading Arrest (misdemeanor)	Hindering Apprehension or Prosecution (felony)
Burglary of vehicle (felony)	Failure to Identify (misdemeanor)	Interference with Child Custody (felony)
Credit Card or Debit Card Abuse (felony)	Harassment (misdemeanor)	Money Laundering (felony)
Criminal Attempt (if underlying crime is on list)	Harboring Runaway Child (misdemeanor)	Violation of Protective Order (misdemeanor)
Criminal Conspiracy (if underlying crime is on list)	Hindering Apprehension or Prosecution (misdemeanor)	Resisting Arrest (misdemeanor)
Criminally Negligent Homicide (felony)	Hindering Secured Creditors (felony and misdemeanor)	
Cruelty to Animals (felony and misdemeanor)	Unlawful Carrying a Weapon (misdemeanor and felony)	
Deadly Conduct ** add to grid		
DWI (felony)		
DWI (misdemeanor) ** if more than one and to determine underlying issue (SUDS)		
DWI with child Passenger (felony)		
Drug violations (felony)		
Drug violations (misdemeanor) ** to determine underlying issue (SUDS)		
Evading Arrest (felony)		
False Report or Statement (felony and misdemeanor)		

Forgery (felony and misdemeanor)		
Fraudulent Destruction, Removal, or Concealment of Writing (felony and misdemeanor)		
Fraudulent Use of Possession of Identifying Information (felony)		
Improper Photography or Visual Recording (felony)		
Improper Relationship Between Educator and Student (felony)		
Indecent Exposure (misdemeanor)		
Insurance Fraud (felony and misdemeanor)/ Intent to Defraud		
Interference with Emergency Request for Assistance (felony and misdemeanor)		
Intoxication Assault (felony) (to determine if underlying SUDS)		
Intoxication Manslaughter (felony) (to determine if underlying SUDS)		
Medicaid Fraud (felony and misdemeanor)		
Misapplication of Fiduciary Property (felony and misdemeanor)		
Obscenity Participates/Wholesale Promotion (felony and misdemeanor)		
Obstruction or Retaliation (felony)		
Perjury (misdemeanor)		
Prohibited Substances and Items in Correctional Facility (felony)		
Prohibited Weapon (felony and misdemeanor)		
Prostitution, Promotion of Prostitution, and Aggravated Promotion of Prostitution (felony and misdemeanor)		
Public Lewdness (misdemeanor)		
Resisting Arrest (felony)		
Securing Execution of Document by Deception (misdemeanor and felony)		

Smuggling of Persons (felony)		
Stalking (felony)		
Tampering with Government Record (misdemeanor and felony)		
Tampering with or Fabricating Physical Evidence (misdemeanor and felony)		
Tampering with Witness (felony)		
Terroristic Threat (felony and misdemeanor)		
Theft (felony and misdemeanor)		
Theft of Service (felony and misdemeanor)		
Trafficking of Persons (felony)		
Unlawful Possession of a Firearm (felony and misdemeanor)		
Unlawful Restraint (felony and misdemeanor)		
Unauthorized Use of Vehicle (felony)		
Violation of Civil Rights of Person in Custody (felony and misdemeanor)		