

Consideration of Proposed Repeal of 22 Tex. Admin. Code §213.28, relating to Licensure of Individuals with Criminal History and the Board's Disciplinary Guidelines for Criminal Conduct and New 22 Tex. Admin. Code §213.28, relating to Licensure of Individuals with Criminal History and the Board's Disciplinary Guidelines for Criminal Conduct

Background: All state agencies must undergo a legislative review by the Texas Sunset Advisory Commission (Commission) on a regular basis. The Board was last reviewed by the Commission in 2006-2007 (during the 80th Legislative cycle), and underwent its current review in 2016-2017 (during the 85th Legislative cycle). The Board is scheduled to be re-reviewed by the Commission again in 2028-2029 (during the 91st Legislative cycle).

The Commission adopted several recommendations as a result of its review of the Board. Several of these recommendations related to the Board's disciplinary processes and policies. Specifically, the Commission directed the Board to review its Criminal Conduct Guidelines (Guidelines) to limit disciplinary actions to crimes directly related to the practice of nursing. Under this recommendation, the Board was instructed to review its Guidelines defining which crimes relate to the practice of nursing and ensure the Guidelines do not expand beyond crimes that affect actual nursing practice. The Commission further stated that the Board's rules should not relate to crimes indicating 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 also stated that the Board should seek stakeholder input to revise its rules and adopt new rules by March 1, 2018.

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 Committee met on May 12, 2017; June 9, 2017; and August 11, 2017 to review the Commission's recommendations and comply with the Board's charge. The Committee diligently considered each crime in the Board's Guidelines and its relationship to the practice of nursing. The Committee then identified 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 is attached hereto as Attachment "A". The Committee also provided general comments regarding proposed changes to Board Rule 213.28.

In addition to the crimes recommended by the Committee for removal from the Guidelines, Board Staff is recommending several additional crimes be removed from the Guidelines based upon a legal determination regarding the Board's authority under the

Nursing Practice Act and Texas Occupations Code Chapter 53¹. A copy of Staff's recommendations regarding the Board's Guidelines is attached hereto as Attachment "B".

The remainder of the proposed amendments to Board Rule 213.28:

- eliminate redundant or unnecessary portions of the current rule text;
- describe the Board's rationale regarding how the crimes in the Board's Guidelines directly relate to the practice of nursing;
- consolidate the list of factors to be considered in determining a sanction;
- clarify the use of the Board's youthful indiscretion provision;
- clarify how sanctions will be determined; and
- specify how the provisions of Enhanced Nurse Licensure Compact will affect licensure.

Due to the breadth of changes to Board Rule 213.28 and the Guidelines, Board staff is recommending a repeal of current Board Rule 213.28 and the current Guidelines and a proposal of a new section and new Guidelines. Attachment "C" contains the proposed new rule, including the Board's new Guidelines.

Board Action: Move to approve the proposed repeal of 22 Tex. Admin. Code §213.28, relating to *Licensure of Individuals with Criminal History* and the Board's Disciplinary Guidelines for Criminal Conduct, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt the proposed repeal of 22 Tex. Admin. Code §213.28, relating to *Licensure of Individuals with Criminal History* and the Board's Disciplinary Guidelines for Criminal Conduct.

Further, move to approve proposed new 22 Tex. Admin. Code §213.28, relating to *Licensure of Individuals with Criminal History* and the Board's Disciplinary Guidelines for Criminal Conduct, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt proposed new 22 Tex. Admin. Code §213.28, relating to *Licensure of Individuals with Criminal History* and the Board's Disciplinary Guidelines for Criminal Conduct.

¹ The Board has authority to take disciplinary action for a felony or a misdemeanor of moral turpitude, as that term has been defined in Texas law. Crimes of moral turpitude include conduct that is generally considered contrary to community standards of justice, honesty, or good morals. Examples include crimes involving dishonesty, fraud, deceit, misrepresentation, or deliberate violence. Further, each crime must be directly related to the practice of nursing.

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)		

Crimes Recommended to Remain on the List	Crimes Recommended for Removal from the List
Abandonment/Endangerment of a Child (felony)	Bail Jumping (felony and misdemeanor)
Agree to Abduct Child for Remuneration: Younger than 18 (felony)	Burglary of vehicle (misdemeanor)
Aiding Suicide: Serious Bodily Injury/Death (felony)	Criminal Trespass (misdemeanor)
Aggravated Assault (felony)	Deadly Conduct (misdemeanor)
Attempt, Conspiracy, or Solicitation of Ch. 62 offense (felony and misdemeanor)	Evading Arrest (misdemeanor)
Burglary (if punishable under Penal Code §30.02(d) and Ch. 62 offense) (felony)	Failure to Identify (misdemeanor)
Capital Murder (felony)	Harassment (misdemeanor)
Child Pornography, Possession or Promotion (felony)	Harboring Runaway Child (misdemeanor)
Continuous Sexual Abuse of Young Child or Children (felony)	Hindering Apprehension or Prosecution (misdemeanor)
Indecency with Child (felony)	Hindering Secured Creditors (felony and misdemeanor)
Indecent exposure x 2, if meets Ch. 62 requirements (misdemeanor)	Unlawful Carrying a Weapon (misdemeanor and felony)
Injury to Child/Elderly/Disabled (felony)	Assault (misdemeanor)
Kidnapping (felony)	Criminal Mischief (felony)
Manslaughter (felony)	Criminal Non Support (felony)
Murder (felony)	Interference with Child Custody (felony)
Offenses for Which Registration as a Sex Offender is Required Under Ch. 62 (felony and misdemeanor)	Violation of Protective Order (misdemeanor)
Online Solicitation of a Minor (felony)	Resisting Arrest (misdemeanor)
Prostitution, Compelling (felony)	Aiding Suicide (misdemeanor)
Protective Order Violation (felony)	Cruelty to Animals (misdemeanor)
Robbery (felony)	Deadly Conduct
Aggravated Robbery (felony)	DWI (misdemeanor)
Sale or Purchase of a Child (felony)	Drug violations (misdemeanor)
Sexual Assault (felony)	Indecent Exposure (misdemeanor)
Aggravated Sexual Assault (felony)	Interference with Emergency Request for Assistance (misdemeanor)
Prohibited Sexual Conduct (felony)	Obscenity Participates/Wholesale Promotion (misdemeanor)
Sexual Performance by Child (felony)	Prohibited Weapon (misdemeanor)
Unlawful Restraint (felony)	Prostitution, Promotion of Prostitution (misdemeanor)
Aggravated Perjury (felony)	Public Lewdness (misdemeanor)
Bribery (felony)	Smuggling of Persons (felony)
Arson (felony)	Unlawful Possession of a Firearm (felony and misdemeanor)
Assault (felony)	Unlawful Restraint (misdemeanor)
Burglary (felony)	Violation of Civil Rights of Person in Custody (misdemeanor)
Burglary of vehicle (felony)	
Credit Card or Debit Card Abuse (felony)	

Criminal Attempt (if underlying crime is on list)	
Criminal Conspiracy (if underlying crime is on list)	
Criminally Negligent Homicide (felony)	
Cruelty to Animals (felony)	
DWI (felony)	
DWI with child Passenger (felony)	
Drug violations (felony)	
Evading Arrest (felony)	
False Report or Statement (felony)	
False Report or Statement (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)	
Insurance Fraud (felony and misdemeanor)/ Intent to Defraud	
Interference with Emergency Request for Assistance (felony)	
Intoxication Assault (felony)	
Intoxication Manslaughter (felony)	
Medicaid Fraud (felony and misdemeanor)	
Misapplication of Fiduciary Property (felony)	
Misapplication of Fiduciary Property (misdemeanor) not decided to be crime of moral turp, but seems close enough to case law definition to qualify	
Obscenity Participates/Wholesale Promotion (felony)	
Obstruction or Retaliation (felony)	
Perjury (misdemeanor)	
Obstruction or Retaliation (felony)	
Perjury (misdemeanor)	
Prohibited Substances and Items in Correctional Facility (felony)	
Prohibited Weapon (felony)	
Prostitution, Promotion of Prostitution, and Aggravated Promotion of Prostitution (felony)	
Resisting Arrest (felony)	
Securing Execution of Document by Deception (misdemeanor and felony)	
Stalking (felony)	
Tampering with Government Record (misdemeanor and felony)	

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Tampering with or Fabricating Physical Evidence (misdemeanor and felony)	
Tampering with Witness (felony)	
Terroristic Threat (felony)	
Terroristic Threat (misdemeanor)	
Theft (felony and misdemeanor)	
Theft of Service (felony and misdemeanor)	
Trafficking of Persons (felony)	
Unlawful Restraint (felony)	
Unauthorized Use of Vehicle (felony)	
Violation of Civil Rights of Person in Custody (felony)	
Hindering Apprehension or Prosecution (felony)	
Money Laundering (felony)	

Attachment “C”

§213.28. Licensure of Individuals with Criminal History.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure and implements the requirements of Texas Occupations Code §53.025. This section applies to all individuals seeking to obtain or retain a license or multistate licensure privilege to practice nursing in Texas.

(b) An individual is subject to denial of licensure or to disciplinary action for a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony that is directly related to the practice of nursing or for a misdemeanor involving moral turpitude that is directly related to the practice of nursing (collectively referred to as *crimes* hereafter). This section applies to crimes that have been adjudicated through agreement or judicial order by a state or federal criminal justice system, without re-litigation of the underlying factual basis for the agreement or judicial order.

(c) The Board considers the crimes listed in the attached Criminal Guidelines (Guidelines) to be directly related to the practice of nursing.

Attached Graphic

The Guidelines reflect the most common or well known crimes . The vast majority of an individual’s criminal history that is reviewed by the Board will fall within the Guidelines. However, the Guidelines are not intended to be an exhaustive listing, and they do not prohibit the Board from considering an offense not specifically listed in the Guidelines. In

matters involving an offense that is not specifically listed in the Guidelines, such as a violation of another state's law, federal law, or the Uniform Code of Military Justice, a determination shall be made by comparing that offense to the crime listed in the Guidelines that contains substantially similar elements. The offense must meet the requirements of subsection (b) of this section to be actionable.

(d) The Board has determined that the crimes listed in the Guidelines in subsection (c) of this section are directly related to the practice of nursing for the following reasons.

(1) Nursing is a unique profession. Nurses practice autonomously in a wide variety of settings and provide care to individuals who are, by virtue of their illness or injury, physically, emotionally, and financially vulnerable. These individuals include the elderly; children; individuals with mental disorders; sedated and anesthetized patients; individuals with mental or cognitive disorders; and disabled and immobilized individuals. Nurses that engage in criminal conduct potentially place patients, healthcare employers, and the public at future risk of harm.

(2) Crimes involving fraud or theft. Nurses often have unfettered access to individuals' privileged information, financial information, and valuables, including medications, money, jewelry, credit cards/checkbook, and sentimental items. Nurses also provide around the clock care, working night and weekend shifts at hospitals, long term care facilities, nursing homes, assisted living facilities, and in home health and home-like settings, where there is often no direct supervision of the nurse. Patients in these settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a nurse. When a nurse has engaged in criminal behavior involving fraud or theft in the past, the Board is mindful that similar misconduct may be repeated in these nursing settings, thereby placing

patients, healthcare employers, and the public at risk.

(3) Crimes involving sexual misconduct. Nurses also frequently provide care to partially clothed or fully undressed individuals, who are particularly vulnerable to exploitation. Due to the intimate nature of nursing care, professional boundaries in the nurse-patient relationship are extremely important. When a nurse has engaged in criminal behavior involving any type of sexual misconduct in the past, the Board is mindful that similar misconduct may be repeated in nursing settings. Such conduct may involve touching intimate body parts when the touch is not necessary for care, voyeurism, exposure of body parts when not necessary, and surreptitious touching. As such, the Board considers crimes involving any type of sexual misconduct to be highly relevant to an individual's ability to provide safe nursing care..

(4) Crimes involving lying, falsification, and deception. Nurses are expected to accurately and honestly report and record information in a variety of sources, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as report errors in their own nursing practice. When a nurse has engaged in criminal behavior involving lying, falsification, or deceptive conduct, the Board is mindful that similar misconduct may be repeated in nursing settings, thereby placing patients, healthcare employers, and the public at risk.

(5) Crimes involving drugs and alcohol.. Nurses have a duty to their patients to provide safe, effective nursing care and to be fit to practice. Nurses who have a substance use disorder may exhibit impairment in both cognitive and motor functioning. A nurse affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner. This danger

may be heightened when the nurse works in an autonomous setting where other healthcare providers are not present to provide interventions for the patient. As such, the Board considers crimes related to the use or possession of drugs or alcohol to be highly relevant to a nurse's fitness to practice.

(6) Crimes involving violence or threatening behavior. Nurses provide care to the most vulnerable of populations, including individuals who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the nurse-patient relationship for their daily care. When a nurse has engaged in violent or threatening criminal behavior in the past, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, the Board considers crimes involving violence and threatening behavior to be highly relevant to a nurse's fitness to practice.

(e) The Board has considered the nature and seriousness of each of the crimes listed in the Guidelines in subsection (c) of this section, the relationship of the crime to the purposes for requiring a license to engage in nursing; the extent to which a license to practice nursing might offer an opportunity to engage in further criminal activity of the same type as that in which the individual previously was involved; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities associated with the practice of nursing. The Board has determined that each crime listed in the Guidelines in subsection (c) of this section raises concerns about the propensity of the individual to repeat similar misconduct in the workplace, if provided the opportunity. The Board has also determined that similar misconduct in the workplace would place vulnerable individuals at risk of exploitation or victimization. As a result, if an individual has committed a crime listed in the Guidelines in subsection (c) of this section,

the Board will evaluate that conduct to determine if disciplinary action is warranted.

(f) Additionally, a crime will be considered to be directly related to the practice of nursing if the act:

(1) arose out of the practice of vocational, professional, or advanced practice nursing, as those terms are defined by the Nursing Practice Act (NPA);

(2) involves a current or former patient;

(3) arose out of the practice location of the nurse;

(4) involves a healthcare professional with whom the nurse has had a professional relationship; or

(5) constitutes a criminal violation of the NPA or another statute regulating another profession in the healing arts that also applies to the individual.

(g) Sanction. Not all criminal conduct will result in a sanction. The Board recognizes that an individual may make a mistake, learn from it, and not repeat it in the nursing practice setting. As such, each case will be evaluated on its own merits to determine if a sanction is warranted. If multiple crimes are present in a single case, a more severe sanction may be considered by the Board pursuant to Texas Occupations Code §301.4531. If a sanction is warranted, the Board will utilize the schedule of sanctions set forth in §213.33(e) (relating to Factors Considered for Imposition of Penalties//Sanctions) of this chapter. At a minimum, an individual will be required to successfully complete the terms of his/her criminal probation and provide evidence of successful completion to the Board. If an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety, effective clinical

management, and/or appropriate ongoing treatment may be required. Further, if an individual's criminal history implicates his/her current fitness to practice, the individual may also be required to meet the requirements of §213.29 to ensure he/she is safe to practice nursing.

(h) Factors. The following factors will be considered when determining the appropriate sanction, if any, in eligibility and disciplinary matters involving criminal conduct:

(1) the nature, seriousness, and extent of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's last criminal activity;

(4) the conduct and work activity of the individual before and after the criminal activity;

(5) evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) other evidence of the individual's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual; the sheriff or chief of police in the community where the individual resides; and any other individual in contact with the convicted individual;

(7) a record of steady employment;

(8) support of the individual's dependents;

(9) a record of good conduct;

(10) successful completion of probation/community supervision or early release from probation/community supervision;

(11) payment of all outstanding court costs, supervision fees, fines, and restitution ordered;

(12) the actual damages, physical or otherwise, resulting from the criminal activity;

(13) the results of an evaluation performed pursuant to Texas Occupations Code §301.4521 and §213.33(k) and (l) of this chapter;

(14) evidence of remorse and having learned from past mistakes;

(15) evidence of current support structures that will prevent future criminal activity;

(16) evidence of current ability to practice nursing in accordance with the NPA, Board rules, generally accepted standards of nursing; and other laws that affect nursing practice; and

(16) any other matter that justice requires.

(i) Evaluations. Pursuant to Texas Occupations Code §301.4521 and §213.33(k) and (l) of this chapter, the Board may request or require an individual to undergo an evaluation with a Board-approved evaluator to better determine whether the individual is safe to practice nursing and is able to comply with the NPA, Board rules, and generally accepted standards of nursing. If an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety,

effective clinical management, and/or appropriate ongoing treatment may also be required.

(j) Youthful Indiscretions. Some criminal behavior may be deemed a youthful indiscretion under this paragraph. In that event, a sanction will not be imposed. The following criteria will be considered in making such a determination:

- (1) the offense was not classified as a felony;
- (2) absence of criminal plan or premeditation;
- (3) presence of peer pressure or other contributing influences;
- (4) absence of adult supervision or guidance;
- (5) evidence of immature thought process/judgment at the time of the activity;
- (6) evidence of remorse;
- (7) evidence of restitution to both victim and community;
- (8) evidence of current maturity and personal accountability;
- (9) absence of subsequent criminal conduct;
- (10) evidence of having learned from past mistakes;
- (11) evidence of current support structures that will prevent future criminal

activity; and

(12) evidence of current ability to practice nursing in accordance with the NPA, Board rules, generally accepted standards of nursing, and other laws that affect nursing practice.

(k) Bars to Licensure.

- (1) Texas Occupations Code §301.4535. The Board is required under Texas

Occupations Code §301.4535(b) to deny an individual initial licensure or licensure renewal and to revoke an individual's nursing license or privilege to practice nursing in Texas upon a final conviction or a plea of guilty or nolo contendere for a criminal offense specified in §301.4535(a). Further, an individual is not eligible for initial licensure or licensure endorsement in Texas or for licensure reinstatement before the fifth anniversary of the date the individual successfully completed and was dismissed from community supervision or parole for an offense specified in §301.4535(a).

(2) Imprisonment. Pursuant to Texas Occupations Code §53.021(b), an individual's license or multistate licensure privilege to practice nursing in Texas will be revoked by operation of law upon the individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(l) Arrests. The fact that an individual has been arrested will not be used as grounds for sanction. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the NPA or Board rules, the Board may consider such evidence.

(m) The Executive Director is authorized to close an eligibility file when the individual seeking licensure has failed to respond to a request for information, a proposed eligibility order, or denial of licensure within 60 days of the request for information, proposed eligibility order, or denial.

(n) Pursuant to the Nurse Licensure Compact, Texas Occupations Code Chapter 304, Article III, (c)(7), an individual will not be eligible to hold a multistate licensure privilege

if the individual has been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law. Further, pursuant to the Nurse Licensure Compact, Texas Occupations Code Chapter 304, Article III, (c)(8), an individual will not be eligible to hold a multistate licensure privilege if the individual has been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis by the Board.

Disciplinary Guidelines for Criminal Conduct

§213.28(c)

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
*Abandonment/ Endangerment of a Child	F	22.041	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Agree to Abduct Child for Remuneration: Younger than 18	F	25.031	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Aiding Suicide: Serious Bodily Injury/Death	F	22.08	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Assault, Aggravated	F	22.02	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Attempt, Conspiracy, or Solicitation of ch. 62 offense	F, M	ch. 62	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Burglary (if punishable under Penal Code §30.02(d) and ch. 62 offense)	F	ch. 62 (§62.001(5) (D))	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Capital Murder	F	19.03	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Child Pornography, Possession or Promotion	F	43.26(a),(c) (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Continuous Sexual Abuse of Young Child or Children	F	21.02	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Indecency w/Child	F	21.11 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Indecent exposure x 2, if meets ch. 62 requirements	M	21.08 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
*Injury to Child/Elderly/Disabled	F	22.04	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Kidnapping	F	20.03, 20.04 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Manslaughter	F	19.04	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Murder	F	19.02	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Offenses for Which Registration as a Sex Offender is Required Under Ch. 62	F, M	§62.001(5)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Online Solicitation of a Minor	F	33.021(b),(c), (f); (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Prostitution, Compelling	F	43.05 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Protective Order, Violation	F	25.07, 25.071	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Robbery	F	29.02	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Robbery, Aggravated	F	29.03	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sale or Purchase of a Child	F	25.08	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Assault	F	22.011 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Assault, Aggravated	F	22.021 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Conduct, Prohibited	F	25.02 (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
*Sexual Performance by Child	F	43.24(d) , 43.25(b) , (ch. 62)	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Unlawful Restraint	F	20.02	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
Aggravated Perjury: Offense Against Public Administration that involves knowingly engaging in deceptive and dishonest conduct by making a false statement in connection with an official proceeding.	F	37.03	
Arson: Offense Against Property that involves intent to destroy or damage property and involves knowledge that financial or personal harm may result and/or includes the reckless endangerment of a person's life or safety.	<u>F</u>	28.02(d)	
Assault: Offense Against the Person that involves intentionally, knowingly, or recklessly causing bodily injury to another person.	F	22.01	
Bribery: Offense Against Public Administration that involves intentionally or knowingly conferring, agreeing to confer, soliciting, or accepting benefits as consideration for a person's vote,	F	36.02	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
decision, or recommendation.			
Burglary: Offense Against Property that involves entering another's property with intent to commit theft or harm to another person.	F	30.02	
Burglary of Vehicles: Offense Against Property that involves breaking into a vehicle with the intent to commit a felony or theft.	F	30.04	
Credit Card or Debit Card Abuse: Offense Against Property that involves an intent to obtain a benefit fraudulently through the use of a credit or debit card that is expired or revoked, has not been issued to him/her, and/or without the consent of the cardholder.	F	32.31	
Criminal Attempt or Conspiracy: Inchoate (Preparatory) Offense for an offense listed in Guidelines.	F	15.01, 15.02	
Criminally Negligent Homicide: Offense Against the Person that involves behavior where the offender engages in conduct that falls below the standard required of ordinary people and a death results.	F	19.05	
Cruelty to Animals: Offense Against Public Order and Decency that involves the intentional or knowing infliction of torture on, neglect of, or	<u>F</u>	42.09	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
unreasonable abandonment of a domesticated or captured animal.			
Driving While Intoxicated Offenses. Offenses Against Public Health, Safety, and Morals that by the repetitiveness of the conduct indicates a possible issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety.	F	49.09	
Driving While Intoxicated With Child Passenger: Offense Against Public Health, Safety, and Morals that involves operating a motor vehicle while intoxicated when the vehicle is occupied by a passenger under the age of 15.	F	49.045	
Drug Violations: Crimes involving drugs that include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code.	F	Health & Safety Code Chs. 481, 482, 483	
Evading Arrest or Detention: Offense Against Public Administration that involves intentionally fleeing from a known police officer or federal investigator who is lawfully attempting to detain or arrest him/her.	F	38.04	
False Report or Statement: Offense Against Property that involves intentionally or	F, M	32.32, 42.06	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
knowingly making a false material representation to obtain money or property.			
Forgery: Offense Against Property that involves an intent to defraud or harm another .	F, M	32.21	
Fraudulent Destruction, Removal, or Concealment of Writing: Offense Against Property that involves an intent to defraud or harm another through the destruction, removal, concealment, substitution, or alteration of a writing that impairs the use of the writing.	F, M	32.47	
Fraudulent Use of Possession of Identifying Information: Offense Against Property that involves an intent to defraud or harm another through the possession, transfer, or use of another person's identifying information without consent.	F	32.51	
Hindering Apprehension or Prosecution: Offense Against Public Administration that involves intentionally hindering the arrest, prosecution, conviction, or punishment of another person by harboring, concealing, aiding, or warning the other person.	F	38.05	
Improper Photography or Visual Recording: Offense Against the Person that involves engaging in the secret photography of another person for purposes of sexual	F	21.15	

OFFENSE	PENALTY F = Felony M=Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
gratification.			
Improper Relationship between Educator and Student: Offense Against the Person that involves a teacher engaging in sexual contact with a primary or secondary school student.	F	21.12	
Insurance Fraud: Claim > \$500: Offense Against Property that involves the intent to defraud or deceive another of at least \$500 by using information known to contain false or misleading material information.	F	35.02(c)	
Insurance Fraud: Claim ≤ \$500: Offense Against Property that involves an intent to defraud or deceive another by using information known to contain false or misleading material information, which by its own definition is deemed unprofessional or dishonorable conduct as defined in TOC §301.452(b)(10).	M	35.02 (c)(1)-(3)	
Insurance Fraud: Intent to Defraud: Offense Against Property that involves knowingly making a false material representation to an insurance company with the intent of defrauding the insurance company of at least \$1500.00.	F	35.02(a-1), (d)	
Interference with Child Custody:	F	25.03	

OFFENSE	PENALTY F = Felony M=Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
Offense Against the Family that involves taking or retaining a minor child in knowing violation of a judicial judgment or order.			
Interference with Emergency Request for Assistance	F	42.062	
Intoxication Assault: Offense Against Public Health, Safety, and Morals that causes serious bodily injury to another person due to the person's own intoxicated state while operating a vehicle, aircraft, or amusement ride.	F	49.07	
Intoxication Manslaughter: Offense Against Public Health, Safety, and Morals that causes the death of another person due to the person's intoxicated state while operating a vehicle, aircraft, or amusement ride.	F	49.08	
Medicaid Fraud > \$1500: Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of at least \$1500.00. The offense may also involve seeking certification of a hospital, a nursing facility, skilled nursing facility, hospice, an intermediate care facility for the mentally retarded, assisted living facility, or a home health agency.	F	35A.02(b)(4)-(7)	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
See Note At End of Document.			
<p>Medicaid Fraud < \$1500: Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of less than \$1500.00 which would not be authorized but for the misrepresentations. The offense may also involve seeking certification of a hospital; a nursing facility, skilled nursing facility; hospice; an intermediate care facility for the mentally retarded; assisted living facility; or a home health agency.</p> <p>See Note At End of Document.</p>	M	35A.02(b)(2)-(3)	
<p>Misapplication of Fiduciary Property or Property of Financial Institution: Offense Against Property that involves an intentional, knowing, or reckless misapplication of property that he/she holds as a fiduciary for a financial institution.</p>	F,M	32.45	
<p>Money Laundering ≥ \$1500: Offense Against Property that involves knowingly engaging in a criminal enterprise to conceal, invest or possess at least \$1500.00 known to be the proceeds of illegal activity.</p>	F	34.02(c)(1)-(4)	
<p>Obscenity, Participates/Wholesale</p>	F	43.23	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
Promotion: Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material, obscene device, or activity.			
Obstruction or Retaliation: Offense Against Public Administration that involves intentionally or knowingly harming or threatening to harm another in retaliation for that person's lawful report of a crime or status as a witness, informant, or public.	F	36.06	
Perjury: Offense Against Public Administration that involves making a false statement under oath with the intent to deceive.	M	37.02	
Prohibited Substances and Items in Correctional Facility: Offense Against Public Administration that involves possessing and/or providing prohibited substances to a person confined in a correctional facility.	F	38.11	
Prohibited Weapon: Offense Against Public Health, Safety, and Morals that involves the intentional or knowing possession, manufacture, transport, repair, or sale of restricted weapons.	F	46.05	
Prostitution, Prostitution or Promotion of, or Aggravated Promotion: Offense Against Public Order and Decency	F	43.02, 43.04	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
involving offering/repeatedly offering to engage in sexual conduct for a fee or promoting others to engage in sex for a fee.			
Resisting Arrest, Use of Deadly Weapon: Offense Against Public Administration that involves using a deadly weapon against another person.	F	38.03(d)	
Securing Execution of Document by Deception: Offense Against Property that involves an intent to defraud or harm another by deception by causing another person to sign, execute, or file a document that affects the person's property or pecuniary interests.	F, M	32.46	
Stalking: Offense Against Public Order and Decency that involves a person knowingly engaging in repetitive conduct that is intended to be threatening in nature and imposing a fear of bodily injury or death on another person.	F	42.072(b)	
Tampering with Government Record: Offense Against Public Administration that requires an intent to defraud or harm another by destroying or falsifying a government record.	F,M	37.10	
Tampering With or Fabricating Physical Evidence: Offense Against Public Administration that involves altering, destroying,	F, M	37.09	

OFFENSE	PENALTY F = Felony M=Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
concealing, or falsely presenting a record with the intent to impair its use or availability during an investigation or proceeding and/or alter the outcome of the investigation or proceeding.			
Tampering with Witness: Offense Against Public Administration that involves coercing or offering, conferring, or agreeing to confer a benefit on a witness or potential witness with the intent to influence the witness to provide false testimony, to withhold testimony, or to elude the legal process.	F	36.05	
Terroristic Threat: Offense Against Persons that involves threatening violence to persons or property.	F, M	22.07	
Theft ≤ \$1499: Offense Against Property that involves an intent to deprive person of his/her property without his/her consent.	M	31.03(e)(1) - (3)	
Theft ≥ \$1500: Offense Against Property that involves an intent to deprive person of his/her property without his/her consent.	F	31.03(e)(4)-(7)	
Theft of Service: Offense Against Property that involves an intent to avoid payment for services and intentionally or knowingly secures the services by deception, threat, diversion, or false token.	F, M	31.04	

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION <u>(or Crim. Pro. ch. 62)</u>	NOTES
<p>Trafficking of Persons: Offense Against the Person that involves knowingly trafficking another person with the intent that the other person engage in forced labor or services and/or trafficking another person and causing the person to engage in certain criminal acts through fraud, coercion, or force.</p>	F	20A.02	
<p>Unlawful Carrying Weapon: Offense Against Public Health, Safety, and Morals that involves the intentional, knowing, or reckless carrying on his/her person of a prohibited weapon.</p>	F, M	46.02	
<p>Vehicle, Unauthorized Use: Offense Against Property that involves an intentional or knowing act to deprive a person of his/her vehicle without his/her consent.</p>	F	31.07	
<p>Violation of Civil Rights of Person in Custody/Improper Sexual Acts With a Person In Custody: Offense Against Public Administration that involves intentionally denying or impeding a another person in custody at a correctional facility a lawful right, privilege, or immunity and/or engaging in sexual conduct with a person in custody at a correctional or youth facility.</p>	F	39.04	

* In accordance with Texas Occupations Code §301.4535, licensees or applicants for licensure receiving judicial orders for these designated offenses on or after September 1, 2005, shall not

be licensed, shall be revoked, and/or shall not be renewed and not considered for re-licensure until at least the fifth anniversary following release from probation or community service has occurred. This does not prevent a nurse or applicant for licensure from exercising any right or privilege to have a formal hearing as established by virtue of Texas Occupations Code §301.454(c).

Note: Licensees may be excluded from working in various federally-funded facilities for convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans. The Office of Inspector General states that “[n]o payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. Federal health care programs include Medicare, Medicaid, and all other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan). For exclusions implemented prior to August 4, 1997, the exclusion covers the following Federal health care programs: Medicare (Title XVIII), Medicaid (Title XIX), Maternal and Child Health Services Block Grant (Title V), Block Grants to States for Social Services (Title XX) and State Children's Health Insurance (Title XXI) programs.” For more information, see <http://www.oig.hhs.gov/fraud/exclusions/aboutexclusions.html>, and 1 Tex. Admin. Code §§371.1655 & 371.1657 (mandatory and permissive exclusions from Medicaid and Title V, XIX, XX, and CHIP programs by the Texas Health and Human Services Commission, Office of Inspector General).

The Board's recommendation regarding licensure is independent of any decision by an employer or potential employer to hire a person with a criminal history.