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CRIMINAL HISTORY AND NURSE LICENSURE

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Introduction

- Through the development of objective guidelines related to criminal conduct, the Texas Board of Nursing attempts to ensure consistency and fair consideration of criminal history information in licensing and disciplinary decisions

IS THE CHARACTER OF NURSES RELEVANT?

DEC. 21, 2015 (PRNEWswire-USNewswire)

ACCORDING TO ANNUAL GALLUP SURVEY, AMERICANS TRUST NURSES MORE THAN ANY OTHER PROFESSION (14TH YEAR IN A ROW)

NURSES ARE VIEWED AS HAVING “VERY HIGH” OR “HIGH” ETHICAL AND HONESTY STANDARDS BY 85 PERCENT OF PUBLIC, A FULL 17 POINT HIGHER THAN ANY OTHER PROFESSION

PROFESSIONAL CHARACTER OF NURSES

DEC. 21, 2015 (PRNEWswire-USNewswire)

ETHICS OF PROFESSION (PERCENTAGE “VERY HIGH” OR “HIGH”)

- TOP SIX
 - NURSES 85
 - PHARMACISTS 68 (-17PTS)
 - MEDICAL DOCTORS 67
 - HIGH SCHOOL TEACHERS 60
 - POLICE 56
 - CLERGY 45

PROFESSIONAL CHARACTER OF NURSES

HONESTY AND ETHICS OF PROFESSION (PERCENTAGE “VERY HIGH” OR “HIGH”)

- BOTTOM 6
 - STOCKBROKER 13 (+6PTS)
 - ADVERTISING PRACTITIONERS 10
 - CAR SALESPEOPLE 8
 - MEMBERS OF CONGRESS 8
 - TELEMARKETERS 8
 - LOBBYISTS 7
- OTHER
 - LAWYERS 21 (-64, +14)

Is the public perception of nursing based on misconceptions or reality?

“Professional character” is a requirement for licensure in Texas



NURSING PRACTICE ACT

TEX. OCC. CODE SEC. 301.252

An applicant for licensure must demonstrate:

- a) Good professional character and
- b) Successful completion of accredited nursing program
- c) Pass a Licensure Exam

CRIMINAL HISTORY RELEVANT TO EVALUATION OF PROFESSIONAL CHARACTER

- a) Tex. Occ. Code, Chapter 53: Consequences of Criminal Convictions on Occupational Licenses (applies to all occupational licensing agencies)
- b) Nurse Practice Act. Tex. Occ. Code § 301.452(b)(3): It is grounds for disciplinary action or denial of license a conviction for, or placement on deferred adjudication community supervision for a felony or for a misdemeanor involving moral turpitude
- c) Board Rule 213.28 (22 Tex. Admin. Code § 213.28). Licensure of Individuals with Criminal History

TEX. OCC. CODE SECTION 301.452(B)(3)

FELONY OR MISDEMEANOR INVOLVING MORAL TURPITUDE

“(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

* * *

(3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;”

Note: In 2009, section NPA 301.4535 was enacted that establishes a time limited bar to licensure for serious crimes, such as murder, rape and aggravated assault.

TEX. OCC. CODE § 53.021: AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE.

- a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

- b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

TEX. OCC. CODE CH. 53.022

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

TEX. OCC. CODE CH. 53.023

- ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER. (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section [53.022](#):
 - (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) other evidence of the person's fitness

- Sec. 53.025. GUIDELINES. (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

WHAT TYPES OF CRIMES RELATE TO NURSING?

BOARD RULE: 22 TEX. ADMIN. CODE § 213.28

- Offenses against the person, e.g., homicide, kidnapping, sexual offenses, and assaultive offenses
- Offenses against property, e.g., robbery, burglary and theft, etc.
- Offenses involving fraud or deception
- Offenses involving lying and falsification
- Offenses involving the delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug, or mood-altering substance

GENERAL RATIONALE FOR WHY MOST OFFENSES RELATE TO NURSING

22 TEX. ADMIN. CODE SEC. 213.28

- Nurses have access to persons who are vulnerable by virtue of illness or injury;
- Nurses have access to persons who are especially vulnerable including 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;
- Nurses provide care to critical care, geriatric, and pediatric patients who are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition;
- Nurses are able to provide care in private homes and home-like setting without supervision;
- Nurses who are chemically dependent may have impaired judgment while caring for patients

MANDATORY CRIMINAL BACKGROUND CHECKS

- In 2003, the BON received legislative approval to run CBCs on RN applicants.
- In February 2004, the CBC program was complicated by the merger of the Board of Nurse Examiners (regulating RNs) and the Board of Vocational Nurse Examiners (regulating LVNs).
- BON received approval to conduct CBCs on all of Texas's RN and LVN licensees and applicants.
- The BON developed a plan to conduct CBCs on all applicants for initial licensure, including LVNs, and started a CBC audit process on 10% of renewal applicants each month.
- Over 350,000 CBCs have been conducted



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DISCIPLINARY GUIDELINES FOR CRIMINAL CONDUCT

- In 2006, the Texas legislature required the BON to ensure consistency and fair consideration of criminal history information in licensing and disciplinary decisions by developing disciplinary guidelines.
- These guidelines have evolved over time and have proven effective in settlements and contested case proceedings.
- The Board's Disciplinary Guidelines are now written into Board Rule at 213.28.
- They are formatted in a matrix

EXAMPLE: MURDER

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	If judicial order** occurred 0-5 yrs. ago:	If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing
***Murder	F	<u>19.02</u>	Revocation/Denial of Licensure Required by TOC §301.4535.	If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years.	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535.



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EXAMPLE: FELONY DRUG CRIME

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	If judicial order** occurred 0-5 yrs. ago:	If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing
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, M	Health & Safety Code Chs. <u>481</u> , <u>482</u> , <u>483</u>	If felony, then Deny/Revoke/ Suspend. A suspension may be enforced or probated. In order to be eligible for a probated suspension, an individual must provide verifiable evidence of successful completion of treatment, 12 consecutive months of sobriety, and successful completion of at least	For felony or misdemeanor, impose discipline/issue license with stipulations. In order to be eligible for a stipulated license, an individual must provide verifiable evidence of successful completion of treatment, 12 consecutive months of sobriety, and successful completion of at least one year of felony probation. A license may be suspended or denied until, at a minimum, an individual is able to provide such evidence. An individual may be eligible for a peer assistance program if not on felony probation.	Nursing allows access to medications, Rx pads, and physician or DEA authorizations to obtain them. Nurses handle and administer drugs. Controlled substances are ubiquitous in nursing practice. A person who has engaged in behaviors in violation of controlled substances laws raises concerns about the ability to practice nursing safely. A nursing license provides access and opportunity to repeat this type of criminal conduct. Additionally, violations of controlled substances laws which have resulted in use and abuse of controlled substances may affect a nurse's cognitive ability to perform the duties of the occupation safely.



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EXAMPLE: FELONY DRUG CRIME CONT'D

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	If judicial order** occurred 0-5 yrs. ago:	If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing
			<p>one year of felony probation. A suspension will be enforced, at a minimum, until an individual is able to provide such evidence. Any probation period should be a minimum of two years. An individual may be eligible for a peer assistance program if not on felony probation.</p> <p>For a misdemeanor, if verifiable evidence of successful completion of treatment and 12 consecutive months of sobriety, impose discipline/issue license with stipulations or a peer assistance program. If no proof of successful completion of treatment and 12 consecutive months</p>	<p>A chemical dependency evaluation may be required.</p>	

EXAMPLE: FELONY DRUG CRIME CONT'D

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	If judicial order** occurred 0-5 yrs. ago:	If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing
			<p>of sobriety, Deny/Revoke/ Suspend, at a minimum, until individual is able to provide such evidence.</p> <p>For either felony or misdemeanor, a chemical dependency evaluation may be required.</p>		

EXAMPLE: DEADLY CONDUCT (MISDEMEANOR)

OFFENSE	PENALTY <u>F = Felony</u> <u>M=Misdemeanor</u>	PENAL CODE SECTION (<u>or Crim. Pro. ch. 62</u>)	If judicial order** occurred 0-5 yrs. ago:	If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing
Deadly conduct: Offense Against the Person that involves causing bodily injury to another person.	M	<u>22.05(a)</u>	Impose discipline/issue license with stipulations.	Issue license with or without stipulations.	Stress inherent in the practice of nursing and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care.

GUIDELINE VALUE?

- The guideline provides a recommended sanction or range of sanctions for each offense. In order to determine the appropriate sanction in a particular case, each case must be considered on its own merits, taking into account the presence of aggravating and/or mitigating factors.
- For example: If multiple offenses are present in a single case, the most severe sanction recommended for any one of the individual offenses should be imposed.
- If criminal activity is due to, associated with, or related to substance abuse or chemical dependency, including alcohol, evidence of evaluation by a board approved evaluator, treatment (written verification of compliance with any treatment) may be required.

WHAT INFORMATION FROM CBC's

Year to Year Analysis

Type	2011	2012	2013	2014(*)
RN Students/exam	18,612 1 st submissions 2527 positive hits 13.58%	16,498 1 st submissions 1923 positive hits 11.66%	20,455 1 st submissions 2,162 positive hits 10.57%	21,895 1 st submissions 2,483 positive hits 11.34%
LVN Students/exam	10,326 1 st submissions 2182 positive hits 21.13%	9,522 1 st submissions 1891 positive hits 19.86%	8,513 1 st submissions 1,583 positive hits 18.60%	9,709 1 st submissions 1,930 positive hits 19.88%
RN Endorsements	6238 1 st submissions 437 positive hits 7.00%	6063 1 st submissions 396 positive hits 6.53%	7,682 1 st submissions 573 positive hits 7.46%	7,766 1 st submissions 534 positive hits 6.88%
LVN Endorsements	1237 1 st submissions 197 positive hits 15.93%	1181 1 st submissions 207 positive hits 17.53%	1,151 1 st submissions 199 positive hits 17.29%	1,188 1 st submissions 191 positive hits 16.08%

MINOR CRIMINAL HISTORY?

- *Policy on Minor Criminal History Review and Staff Approval of Applicants and Petitioners with Minor Criminal History*
 - A single minor criminal incident, or minor criminal behavior should ordinarily not result in disciplinary action.
 - This policy allows Staff to conduct an initial graduated review process for a minor single incident or minor criminal misdemeanor offenses.

MINOR CRIMINAL EXAMPLES

1. One misdemeanor DWI/DUI (not on probation)
2. One misdemeanor offense of Possession of Marijuana
3. Up to two misdemeanor Theft by Check less than \$750
4. One misdemeanor Domestic/Family Violence
5. One misdemeanor Theft less than \$750
6. One misdemeanor Criminal Mischief less than \$750
7. Misdemeanor Graffiti
8. One misdemeanor Criminal Trespass
9. One misdemeanor Disorderly Conduct

MINOR CRIMINAL EXAMPLES CONT'D

10. Up to two misdemeanor Public Intoxication
11. Up to two misdemeanor Pan Handling
12. Misdemeanor "loud noise" violations
13. One misdemeanor Reckless Driving
14. Misdemeanor Minor in Possession of Tobacco
15. One misdemeanor Selling Alcohol to a Minor
16. Failure to Appear
17. Vehicular Molestation (slashing tires)
18. An arrest for a misdemeanor (must be a misdemeanor included in this list) that has been dismissed completely

MINOR CRIMINAL HISTORY POLICY (CAVEAT)

- Before a matter is closed without further investigation or action, Staff will review the documents, information and individual's written explanation. After a cumulative review, the matter will not be closed unless it is established that:
 1. There appears to be no material omissions or misrepresentations;
 2. The incident is isolated or minor;
 3. There is no recency of conduct or other evidence of a failure to rehabilitate; and
 4. There is no reasonable basis to conclude the behavior will affect the individual's ability to safely practice nursing.

MINOR CRIMINAL HISTORY POLICY CON'T

- Age Based Minor Criminal History Review
- The Board has determined that certain misdemeanor offenses have little impact on the ability of an individual to safely practice nursing and pose little risk of harm to the public. In such cases, the Board believes it is generally appropriate to close the matter without action against the individual.

AGE BASED MINOR CRIMINAL HISTORY REVIEW

- The following applies to Class B and C Misdemeanor Offenses:
 1. The Board will not take disciplinary action against an applicant or petitioner when a judicial order of conviction, or deferred adjudication, was entered more than five (5) years before the individual applies for initial licensure.
 2. The Board will not take disciplinary action against a licensee for a Class B or C misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than five (5) years before the Board learns of the conviction or deferred adjudication.

AGE BASED MINOR CRIMINAL HISTORY REVIEW

- The following applies to Class A Misdemeanor Offenses:
 1. The Board will not take disciplinary action against an applicant or petitioner for a Class A misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than ten (10) years before the individual applies for initial licensure.
 2. The Board will not take disciplinary action against a licensee for a Class A misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than ten (10) years before the Board learns of the conviction or deferred adjudication.

AGE BASED MINOR CRIMINAL HISTORY REVIEW

- Exceptions:
 - 1. The Board may take disciplinary action against an applicant, petitioner or licensee for a Class A, B, or C misdemeanor offense, if the misdemeanor is part of a pattern of conduct.
 - 2. The Board may take disciplinary action against an applicant, petitioner or licensee for a Class A misdemeanor offense identified in the Board's rules.
- Non-disclosure Policy:
 - The Board has the authority to take action against an individual for the non-disclosure of any criminal offense

CONCLUSION

- Criminal history is important in licensure decisions because often criminal conduct is relevant to professional character.
- Past criminal behaviors may compromise patient safety if repeated.
- A successful regulatory approach includes anticipating the volume of criminal history investigations that result from CBCs.
- Developing guidelines for recommending disciplinary action ensures that decision-making is consistent, transparent, and focused on the BON's mission to protect and promote the welfare of patients and public.

QUESTIONS?



THE END