

**Proposed Amendments to the Disciplinary Guidelines for Criminal Conduct to Include  
Rationale for How the Crimes Relate to the Practice of Nursing**

**Summary of Request:**

To request that the Board adopt the revisions to the Disciplinary Guidelines for Criminal Conduct which is attached. The guidelines propose criteria for the staff to use in proposing eligibility and disciplinary orders involving individuals with specific criminal conduct for the Board's approval. The amendments are primarily the addition of a new column that addresses the rationale for how the crimes directly relate to the practice of nursing. Any additional changes made to the grid are underlined, except for the new rationale column. Concurrent with the amendments to the guidelines are the proposed adoption of amendments to Texas Administrative Code 213.28 addressing the general types of crimes that the board considers to affect the practice of nursing and the grid provides guidelines to some of the specific crimes. These amendments were added to address the requirements of chapter 53 of the Texas Occupations Code and the recommendations of the Staff of the Sunset Advisory Committee. These guidelines are intended to provide consistency and guidance to Staff in its recommended Agreed Orders to the Board.

In addition to the effect a crime may have on nursing, the Staff recommends the addition of the crime of "Terroristic Threat" and the removal of "Unlawfully Carrying a Weapon."

**Staff Recommendation:**

Board action: Move to adopt the amendments to "The Disciplinary Guidelines for Criminal Conduct," as attached, and submit them for publication in the *Texas Register* in compliance with chapter 53 of the Texas Occupations Code.

## Disciplinary Guidelines for Criminal Conduct

This document is ~~provided~~ ~~introduced~~ by the board to inform ~~provide~~ licensees and the public ~~of with guidance~~ to the board's view of the effect of the first commission of certain crimes on nurse licensure and applicants for licensure. In some instances, the document may provide guidance when multiple crimes are at issue. This list is not exhaustive. Additionally, for further information ~~guidance~~, please review the Nursing Practice Act (NPA), Texas Occupations Code ch. 301, board's rules at 22 Texas Administrative Code chs. 211 - 227, and the board's disciplinary policies located on the board's web site, [www.bne.state.tx.us](http://www.bne.state.tx.us).

The board may request ~~require~~ evaluations from Board-approved evaluators to better determine the appropriate recommendation and/or to determine whether an individual is safe to practice nursing and able to comply with the NPA and Board's rules and regulations. The Board will also consider an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection. Other applicable laws and rules are Texas Occupations Code ch. 53 and 22 Texas Administrative Code §§ 213.27 - 213.30.

Each case is considered on its own merits. The following list includes some of the factors the Board will use in its case-by-case analysis:

- the nature and seriousness of the crime, i.e. absence of criminal plan or premeditation, presence of contributing influences, evidence of immature thought process/judgment at the time of activity, etc.;
- failure to disclose criminal offense to the Board;
- the actual damages, physical or otherwise, resulting from the criminal activity;
- the extent and nature of the person's past criminal activity;
- conduct evidences a lack of truthfulness or trustworthiness;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
- a record of steady employment and has supported his or her dependents;
- other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the person;
- paid all outstanding court costs, supervision fees, fines, and evidence of restitution to both victim and community;

- whether conduct indicates inability to practice nursing in an autonomous role with patients/clients, their families and significant others and members of the public who are or who may become physically, emotionally or financially vulnerable;
- evidence of remorse;
- evidence of current maturity and personal accountability;
- evidence of having learned from past mistakes;
- evidence of current support structures that will prevent future criminal activity;
- evidence of current ability to practice in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing;
- 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;
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
- whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision;
- conduct that results in the revocation of probation imposed because of criminal conduct;
- evidence of the licensee's safe practice;
- Expunction, nondisclosure of criminal offense;
- Successful completion of probation/community supervision;
- if criminal activity due to chemical dependency including alcohol, evidence of evaluation and treatment, after care and support group attendance (written verification of compliance with any treatment); and
- if criminal activity due to mental illness, evidence of evaluation, including a prognosis, by a psychologist or psychiatrist, evidence of treatment, including any medication (written verification of compliance with any treatment).

<b>OFFENSE</b>	<b>PENALTY</b>	<b>PENAL CODE SECTION (or Crim. Pro. ch. 62)</b>	<b>If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:</b>	<b>If judicial order for conviction or deferred adjudication occurred 5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:</b>	<b>Rationale for How Crimes Relate to the Practice of Nursing:</b>
*Abandonment/Endangerment of a Child	F	22.041	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Agree to Abduct Child for Remuneration: Younger than 18	F	25.031	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Aiding Suicide: Serious Bodily Injury/Death	F	22.08	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Assault, Aggravated	F	22.02	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Attempt, Conspiracy, or Solicitation of ch. 62 offense	M,F	ch. 62	Deny/Revoke License	Deny/Revoke License	Offense that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Burglary (if punishable under Penal Code § 30.02(d))	F	ch. 62 (§ 62.001(5)(D))	Deny/Revoke License	Deny/Revoke License	Offense that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Capital Murder	F	19.03	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Child Pornography, Possession or Promotion	F	43.26(a),(e) (ch .62)	Deny/Revoke License	Deny/Revoke License	Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Indecency w/Child	F	21.11(ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Indecent exposure x 2 (2d n/deferred)	M	21.08 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.

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*Injury to Child/Elderly/Disabled	F	22.04	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Kidnapping	F	20.03, 20.04 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Manslaughter	F	19.04	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Murder	F	19.02	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Online Solicitation of a Minor (conviction)	F	33.021(b),(c),(f); (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Prostitution, Compelling	F	43.05 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Protective Order, Violation	F	25.07, 25.071	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Robbery	F	29.02	Deny/Revoke License	Deny/Revoke License	Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Robbery, Aggravated	F	29.03	Deny/Revoke License	Deny/Revoke License	Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sale or Purchase of a Child	F	25.08	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.

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*Sexual Assault	F	22.011 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sexual Conduct, Prohibited	F	25.02 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sexual Assault, Aggravated	F	22.021 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sexual Performance by Child	F	43.25(b), .24(d) (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Unlawful Restraint	F	20.02	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
Arson	F	28.02(d)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves intent to destroy or damage property and involves knowledge that financial or personal harm may result. Being a nurse and having autonomy in the care of a vulnerable population may give that individual an opportunity to exploit the patient, employer, or other entities dependent on the professional character of a nurse. Patients would be vulnerable to similar acts involving intent to destroy property or inflict financial harm.
Assault	F	22.01(b)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against the Person that involves intentionally, knowingly, or recklessly causing bodily injury to another person. Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an

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					assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.
Burglary	F	30.02	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves entering another's property w/intent to commit theft or harm to another person. Nurses have access to persons who are vulnerable due to illness or injury. Patients are frequently in a vulnerable position to be exploited. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. 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. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nurse license would provide unfettered opportunity and access to a patient's person and property.
Criminal Attempt or Conspiracy	F	15.01, 15.02	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Inchoate Offense. Please refer to the rationale listed in the intended offense.
Criminal Mischief	F	28.03	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves destruction to or damage of property and involves knowledge that financial or personal harm may result. Being a nurse and having autonomy in the care of a vulnerable population may give that individual an opportunity to

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					exploit the patient, employer, or other entities dependent on the professional character of a nurse. Patients would be vulnerable to similar acts of property damage or personal injury.
Criminally negligent homicide	F	19.05	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	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. Nurses, by virtue of their license, must hold to a higher standard of conduct where the risk to life and limb is the norm. A person who engages in conduct that falls below ordinary standards when life is at risk raises serious questions about the ability to comply when there is a higher standard of care and where a patient's health is at risk.
Drug Violations	F	HSC 481, 482, 483	0-3 yrs old Deny/Revoke/ Suspend; 4-5 yrs issue license w/ sanctions or TPAPN	Issue License w/ stipulations or issue TPAPN Order (if chemically dependent) if not on felony probation; if on felony probation, then Deny/Revoke.	Crimes involving drugs that include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code. Nursing allows you 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 nurse 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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Forgery	F	32.21(d),(e)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves forging a writing with an intent to defraud or harm another. By definition this conduct is deemed unprofessional or dishonorable conduct as defined in TOC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Improper Relationship between Educator and Student	F	21.12	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against the Person that involves a teacher engaging in sexual contact with a primary or secondary school student. Such a violation of trust given the disparate relationship between a student and teacher raises serious public concern. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients, including minors. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct that involves violation of the boundaries between teacher and student raise serious concerns that similar behavior may be repeated in the nurse - patient relationship with even more vulnerable victims. (Note: If required to register on sex offender data base, subject to § 301.4535)

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Improper photography	F	21.15	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against the Person that involves engaging in the secret photography of another person for purposes of sexual gratification. Such a violation of trust and secret activity raises serious concern that such behaviors may be repeated in nursing care. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct involving the secret photography of another person for prurient interests raises serious concerns that similar behavior may be repeated by a nurse with even more vulnerable victims.
Insurance Fraud: Intent to Defraud	F	35.02(a-1), (d)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	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. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.

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Insurance Fraud: Claim > \$500	F	35.02(c)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	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. By definition this conduct is deemed unprofessional or dishonorable conduct as defined in TOC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility and there is constant opportunity to commit similar offenses as a nurse. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Medicaid Fraud > \$1500	F	35A.02(b)(4)-(7)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke (See Note below)	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. Professional character is required in nursing, and the nurse must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all

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					of the patient's property and valuables are accessible to the nurse. Nurses often manage and own certified nursing facilities and home health agencies. The commission of Medicaid fraud raises serious concerns of professional character and whether the same misconduct will be repeated with respect to a patient's property/possessions, future Medicaid charges, or in facility certification processes.
Money Laundering \$1500	F	34.02(e)(1)-(4)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	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. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. In nursing, patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. A person who has demonstrated behaviour associated with profiteering from criminal enterprises raises questions of professional character and whether similar behaviour will be repeated with respect to a patient's property.
Obscenity, Wholesale promotion	F	43.23(a),(h)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material, obscene device, or activity. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. The need or desire to profit from sexually explicit and obscene material raises

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					concerns that sexual misconduct may be committed through exploitation of patients.
Prostitution X 3 or Aggravated Promotion	F	43.02, 43.04	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency involving repeatedly offering to engage in sexual conduct for a fee or promoting others to engage in sex for a fee. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability both financially and sexually. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. Repeated acts of illegal sexual conduct raise serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients and avoid exploitation of patients.
Resisting Arrest, Use of Deadly Weapon	F	38.03(d)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Administration that involves using a deadly weapon against another person. 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. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.
Stalking	F	42.072(b)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	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

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					bodily injury or death on another person. The motivations of an individual who would engage in such threatening behavior raises questions regarding his/her ability to provide safe, competent care to vulnerable patients. Such behavior is unprofessional/ dishonorable conduct that is likely to injure the public. TOC 301.452(b)(10).
Tampering w/ Government Record	F	37.10	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Administration that requires an intent to defraud or harm another by destroying or falsifying a government record. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. The Board depends on its own government records in the licensing/ authorization process that contain several questions that might affect the ability of an individual to function safely as a nurse. Tampering w/ government records, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing. Nurses must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care.
Theft \$1500	F	31.03(e)(4)-(7)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. Theft is a crime of moral

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					<p>turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. 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. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nurse license would provide unfettered opportunity and access to a patient's person and property.</p>
Vehicle, Unauthorized Use	F	31.07	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	<p>Offense Against Property that involves an intentional or knowing act to deprive a person of his/her vehicle without his/her consent. Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. 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. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/ possessions in the future.</p>

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Assault	M	22.01(a)(1), (c)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against the Person that involves causing bodily injury to another person. 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.
Driving While Intoxicated X 3	M, F	49.09	0-3 yrs old Deny/Revoke/Suspend; 4-5 yrs issue license w/sanctions or TPAPN	Deny license or require proof of completion of TPAPN or TPAPN Order	Offense 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. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients and demonstrate a potential inability to practice nursing with reasonable skill and safety.
Driving While Intoxicated X 2	M, F	49.09	Deny license or TPAPN	Deny license or require proof of completion of TPAPN or TPAPN Order	Offense 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. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients and demonstrate a potential inability to practice nursing with reasonable skill and safety.
Drug Violations	M	Health & Safety Code chs. 481, 482, 483	0-3 yrs old issue w/sanctions or issue TPAPN Order (if appropriate w/chemically	Issue License w/ Stipulations unless proof of successful treatment and five years of sobriety	Crimes involving drugs include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code. Nursing allows you access to medications, Rx pads, and physician

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			dependent); 4-5 yrs issue license w/stipulations if proof of successful treatment and one year sobriety		or DEA authorizations to obtain them. Nurses handle and administer drugs. A person who has engaged in behaviors in violation of a controlled substances act raises concerns about the ability to practice nursing given that a nurse license provides access and opportunity to repeat criminal conduct. Violations of controlled substances act which have resulted in use and abuse of controlled substances may affect a nurse's cognitive ability to perform the duties of the occupation.
False Report or Statement	M, F	32.32, 42.06	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation; Deny/Revoke if on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves intentionally or knowingly making a false material representation to obtain money or property. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Harassment	M	42.07	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against Public Order and Decency that involves intent to alarm, abuse, or torment another person. It also may involve threats to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property. Patients

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication 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>under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Nurses are frequently in situations where they provide intimate care to patients and are in the position to have access to privileged information and opportunity to exploit patient vulnerability. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. A person who has committed harassment against another person raises concerns that similar behaviour may be repeated to exploit or harm vulnerable patients.</p>
Insurance Fraud: Claim \$500	M	35.02 (c)(1)-(3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license	<p>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). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.</p>
Medicaid Fraud < \$1500	M	35A.02(b)(2)-(3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license (See Note below)	<p>Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of less than \$1500.00 which</p>

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					<p>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. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Nurses are often in the position to run and often own certified nursing facilities and home health agencies. The commission of Medicaid fraud raises serious concerns of professional character and whether the same misconduct will be repeated with respect a patient's property/possessions and future Medicaid charges.</p>
Prostitution or Promotion of	M	43.02	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	<p>Offense Against Public Order and Decency involving offering to engage in sexual conduct for a fee or promotes others to engage in sex for a fee. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability both financially and sexually. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. Repeated acts of illegal sexual conduct raise serious questions regarding the</p>

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					individual's ability to provide safe, competent care to vulnerable patients and the necessary professional character to be a nurse.
Protective Order, Violation	M	25.07, 38.112	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against the Family identified by § 301.4535 as directly affecting the practice of nursing. It also may involve threats to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Nurses are frequently in situations where they provide intimate care to patients and are in the position to have access to privileged information and opportunity to exploit patient vulnerability. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. A person who has committed harassment against another person raises concerns that similar behaviour may be repeated to exploit or harm vulnerable patients.
Resisting Arrest	M	38.03(a)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against Public Administration that involves intentionally obstructing or preventing an arrest by using force against another person. 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. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.

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Criminal Trespass	MA	30.05(d)	Issue license w/ sanctions	Issue License	Offense Against Property that involves entering or remaining on or in the property of another without consent. 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. Nurses frequently provide care in settings without direct supervision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Trespass crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future.
Cruelty to Animals	MA, F	42.09	Issue license w/ sanctions if misdemeanor or not on felony probation; Deny/Revoke if on felony probation	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency that involves the intentional or knowing infliction of torture on, neglect of, or unreasonable abandonment of a domesticated or captured animal. Animals are vulnerable by nature of their reliance on people for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. 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. When harm occurs to these individuals, many time they are unable to communicate the harm inflicted. Individuals who commit crimes involving cruelty to animals raise serious concerns whether they are capable of providing autonomous care to vulnerable individuals in their care.

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Deadly conduct	MA	22.05(a)	Issue license w/ sanctions	Issue License	Offense Against the Person that involves causing bodily injury to another person. 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.
Forgery	MA	32.21(c)	Issue license w/ sanctions	Issue License	Offense Against Property that involves an intent to defraud or harm another which by its own definition is deemed unprofessional or dishonorable conduct as defined in TOC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Obscenity, Participates	MA, F	43.23(c),(h)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material or obscene device. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship

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					which nurses must clearly understand and be trusted not to cross. Sexual misconduct involving the secret photography of another person for prurient interests raises serious concerns that similar behavior may be repeated by a nurse with even more vulnerable victims.
Theft §1499	MA	31.03(e)(1) - (3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license (stipulations if theft during practice of nursing)	Issue license	Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. 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. Nurses frequently provide care in settings without direct supervision. Crimes of theft raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nurse license would provide unfettered opportunity and access to a patient's person and property.
<u>Terroristic Threat</u>	M,F	22.07	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against Persons that involves threatening violence to persons or property. 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. Patients could be vulnerable to similar acts involving intent to injure or reckless

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					behavior that would risk injury.
Criminal Trespass	MB	30.05(a)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against Property that involves an individual who enters or remains on a property without the consent of another. Nurses frequently provide care in private homes and home-like settings and frequently provide care in settings without direct supervision.
Aiding Suicide	MC	22.08	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license	Offense Against the Person identified by § 301.4535 as directly affecting the practice of nursing.

\* Texas Occupations Code § 301.4535 (Nursing Practice Act) offenses (effective September 1, 2005 - bars to nurse licensure). Licensees or applicants for licensure receiving judicial orders for 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 (TOC § 301.4535). 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 licensed nurse with a criminal history.**