

Agenda Item: 7.2
April 19-20, 2012
Prepared by: Jena Abel

**Consideration of Proposed Amendments to 22 Tex. Admin. Code §216.3,
Pertaining to Requirements and §213.33(c), Pertaining to Factors Considered for
Imposition of Penalties/Sanctions**

Background: During the past legislative session, the Legislature passed companion bills HB 2975 and SB 1360 (attached hereto as Attachment “A”) addressing continuing education for physicians and nurses whose practice includes the treatment of tick-borne diseases.

Pursuant to the legislation, license holders whose practice includes the treatment of tick-borne diseases are encouraged, but not required, to participate in continuing education relating to the treatment of tick-borne diseases. Under the bills’ requirements, the Board is required to adopt rules that establish the content of the continuing education courses¹ and identify the license holders who will be encouraged to complete the continuing education courses. The legislation also requires the Board to consider, if relevant, a license holder’s participation in a continuing education course (meeting the Board’s content requirements) if the license holder is being investigated by the Board for his/her selection of clinical care for the treatment of tick-borne diseases and the license holder completed the continuing education course not more than two years prior to the beginning of the investigation.

The legislation also requires the Board to consult/cooperate with the Texas Medical Board (Medical Board)². The Medical Board approved proposed amendments to implement the requirements of the legislation at its February 9-10, 2012, Board meeting and published its proposed rules in the *Texas Register* on March 9, 2012 (37 *TexReg* 1639;1643). Public comment on the proposed rules will be received by the Medical Board at its April 13, 2012, Board meeting. A copy of the Medical Board’s proposed rules are attached hereto as Attachment “B” for your reference.

Staff provided a copy of the legislation and the rules proposed by the Medical Board to several of the Board’s advanced practice registered nurse (APRN) advisory committee members and organizations and requested comment/feedback. Staff received one comment from an APRN, which is attached hereto as Attachment “C” for your reference.

¹ Subject to the bills’ requirements, continuing education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases must qualify as approved continuing education courses for license renewal.

² Pursuant to the legislation, physicians who treat tick-borne diseases are similarly encouraged to complete continuing medical education in the treatment of tick-borne diseases.

Summary of Proposed Amendments

Attached hereto as Attachment “D” are proposed amendments to two sections of the Board’s rules. The proposed amendments are designed to implement the requirements of HB 2975 and SB 1360.

§216.3

- applies the legislation to APRNs
- requires courses to include information relevant to the treatment of tick-borne disease within the APRN’s role and population focus area
- permits courses to represent a spectrum of relevant medical clinical treatment for tick-borne disease
- permits APRNs who complete tick-borne disease continuing medical education courses to receive credit under Chapter 216

§213.33(c)

- if an individual is being investigated for his/her selection of clinical care for the treatment of tick-borne disease, allows participation in a tick-borne disease continuing education course to be considered as mitigation, provided the individual completed the course within two years of the beginning of the investigation
- clarifies that the presence of mitigating factors does not, in and of itself, require a dismissal for a violation of the NPA and/or Board rules³

Board Action: Move to approve the proposed amendments to §216.3, pertaining to *Requirements* and §213.33(c), pertaining to *Factors Considered for Imposition of Penalties/Sanctions*, with authority for 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 amendments to §216.3, pertaining to *Requirements* and §213.33(c), pertaining to *Factors Considered for Imposition of Penalties/Sanctions*, as proposed.

³ The legislation does not address this issue. However, while §213.33(c) is open for amendment, it may be appropriate to clarify that the presence of mitigating factors in an eligibility and/or disciplinary matter does not mean that the matter should be dismissed without Board action. Rather, mitigation is one factor among many, and the Board is entitled to consider mitigation, along with any other relevant factors, when determining the appropriate sanction in an eligibility/disciplinary matter. Based upon recent PFDs and Respondent argument, it appears that confusion may exist regarding this issue.

AN ACT

relating to continuing education for physicians and nurses regarding the treatment of tick-borne diseases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that tick-borne diseases are an important public health issue in Texas. The legislature further finds that medical and nursing education on the appropriate care and treatment of tick-borne diseases is essential to the delivery of necessary health care to individuals in Texas suffering from tick-borne diseases. It is the intent of the legislature to address the need for medical and nursing education on tick-borne diseases through the continuing medical education requirements for physicians and nurses.

SECTION 2. Subchapter B, Chapter 156, Occupations Code, is amended by adding Section 156.059 to read as follows:

Sec. 156.059. CONTINUING EDUCATION IN TICK-BORNE DISEASES.

(a) A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes the treatment of tick-borne diseases is encouraged to include continuing medical education in the treatment of tick-borne diseases among the hours of continuing medical education completed for purposes of rules adopted under Section 156.051(a)(2).

(b) The board shall adopt rules to establish the content of

1 and approval requirements for continuing medical education
2 relating to the treatment of tick-borne diseases. In adopting
3 rules, the board shall seek input from affected parties and review
4 relevant courses, including courses that have been approved in
5 other states. Rules adopted under this section must provide for the
6 identification and approval of accredited continuing medical
7 education courses that represent an appropriate spectrum of
8 relevant medical clinical treatment relating to tick-borne
9 diseases.

10 (c) If relevant, the board shall consider a physician's
11 participation in a continuing medical education course approved
12 under Subsection (b) if:

13 (1) the physician is being investigated by the board
14 regarding the physician's selection of clinical care for the
15 treatment of tick-borne diseases; and

16 (2) the physician completed the course not more than
17 two years before the start of the investigation.

18 (d) The board may adopt other rules to implement this
19 section.

20 SECTION 3. Subchapter G, Chapter 301, Occupations Code, is
21 amended by adding Section 301.304 to read as follows:

22 Sec. 301.304. CONTINUING EDUCATION IN TICK-BORNE DISEASES.

23 (a) As part of the continuing education requirements under Section
24 301.303, a license holder whose practice includes the treatment of
25 tick-borne diseases shall be encouraged to participate, during each
26 two-year licensing period, in continuing education relating to the
27 treatment of tick-borne diseases.

1 (b) The board shall adopt rules to identify the license
2 holders who are encouraged to complete continuing education under
3 Subsection (a) and establish the content of that continuing
4 education. In adopting rules, the board shall seek input from
5 affected parties and review relevant courses, including courses
6 that have been approved in other states. Rules adopted under this
7 section must provide that continuing education courses
8 representing an appropriate spectrum of relevant medical clinical
9 treatment relating to tick-borne diseases qualify as approved
10 continuing education courses for license renewal.

11 (c) If relevant, the board shall consider a license holder's
12 participation in a continuing education course approved under
13 Subsection (b) if:

14 (1) the license holder is being investigated by the
15 board regarding the license holder's selection of clinical care for
16 the treatment of tick-borne diseases; and

17 (2) the license holder completed the course not more
18 than two years before the start of the investigation.

19 (d) The board may adopt other rules to implement this
20 section, including rules under Section 301.303(c) for the approval
21 of education programs and providers.

22 SECTION 4. The Texas Medical Board and the Texas Board of
23 Nursing shall consult and cooperate in adopting the rules required
24 under Sections 156.059 and 301.304, Occupations Code, as added by
25 this Act.

26 SECTION 5. Not later than January 31, 2012, the Texas
27 Medical Board shall adopt rules required by Section 156.059,

1 Occupations Code, as added by this Act.

2 SECTION 6. Not later than January 31, 2012, the Texas Board
3 of Nursing shall adopt rules required by Section 301.304,
4 Occupations Code, as added by this Act.

5 SECTION 7. Not later than February 6, 2012, the Texas
6 Medical Board and the Texas Board of Nursing shall report to the
7 governor, the lieutenant governor, and the speaker of the house of
8 representatives concerning the adoption of rules as required by
9 Sections 156.059 and 301.304, Occupations Code, as added by this
10 Act.

11 SECTION 8. Subsection (c), Section 156.059, and Subsection
12 (c), Section 301.304, Occupations Code, as added by this Act, apply
13 only to the investigation of a complaint or a disciplinary action
14 based on a complaint filed on or after the effective date of this
15 Act. The investigation of a complaint or a disciplinary action
16 based on a complaint filed before that date is governed by the law
17 in effect on the date the complaint was filed, and that law is
18 continued in effect for that purpose.

19 SECTION 9. This Act takes effect September 1, 2011.

S.B. No. 1360

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1360 passed the Senate on May 11, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1360 passed the House on May 25, 2011, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to continuing education for physicians and nurses regarding the treatment of tick-borne diseases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that tick-borne diseases are an important public health issue in Texas. The legislature further finds that medical and nursing education on the appropriate care and treatment of tick-borne diseases is essential to the delivery of necessary health care to individuals in Texas suffering from tick-borne diseases. It is the intent of the legislature to address the need for medical and nursing education on tick-borne diseases through the continuing medical education requirements for physicians and nurses.

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(b) The board shall adopt rules to establish the content of

1 and approval requirements for continuing medical education
2 relating to the treatment of tick-borne diseases. In adopting
3 rules, the board shall seek input from affected parties and review
4 relevant courses, including courses that have been approved in
5 other states. Rules adopted under this section must provide for the
6 identification and approval of accredited continuing medical
7 education courses that represent an appropriate spectrum of
8 relevant medical clinical treatment relating to tick-borne
9 diseases.

10 (c) If relevant, the board shall consider a physician's
11 participation in a continuing medical education course approved
12 under Subsection (b) if:

13 (1) the physician is being investigated by the board
14 regarding the physician's selection of clinical care for the
15 treatment of tick-borne diseases; and

16 (2) the physician completed the course not more than
17 two years before the start of the investigation.

18 (d) The board may adopt other rules to implement this
19 section.

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21 amended by adding Section 301.304 to read as follows:

22 Sec. 301.304. CONTINUING EDUCATION IN TICK-BORNE DISEASES.

23 (a) As part of the continuing education requirements under Section
24 301.303, a license holder whose practice includes the treatment of
25 tick-borne diseases shall be encouraged to participate, during each
26 two-year licensing period, in continuing education relating to the
27 treatment of tick-borne diseases.

1 (b) The board shall adopt rules to identify the license
2 holders who are encouraged to complete continuing education under
3 Subsection (a) and establish the content of that continuing
4 education. In adopting rules, the board shall seek input from
5 affected parties and review relevant courses, including courses
6 that have been approved in other states. Rules adopted under this
7 section must provide that continuing education courses
8 representing an appropriate spectrum of relevant medical clinical
9 treatment relating to tick-borne diseases qualify as approved
10 continuing education courses for license renewal.

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12 participation in a continuing education course approved under
13 Subsection (b) if:

14 (1) the license holder is being investigated by the
15 board regarding the license holder's selection of clinical care for
16 the treatment of tick-borne diseases; and

17 (2) the license holder completed the course not more
18 than two years before the start of the investigation.

19 (d) The board may adopt other rules to implement this
20 section, including rules under Section 301.303(c) for the approval
21 of education programs and providers.

22 SECTION 4. The Texas Medical Board and the Texas Board of
23 Nursing shall consult and cooperate in adopting the rules required
24 under Sections 156.059 and 301.304, Occupations Code, as added by
25 this Act.

26 SECTION 5. Not later than January 31, 2012, the Texas
27 Medical Board shall adopt rules required by Section 156.059,

1 Occupations Code, as added by this Act.

2 SECTION 6. Not later than January 31, 2012, the Texas Board
3 of Nursing shall adopt rules required by Section 301.304,
4 Occupations Code, as added by this Act.

5 SECTION 7. Not later than February 6, 2012, the Texas
6 Medical Board and the Texas Board of Nursing shall report to the
7 governor, the lieutenant governor, and the speaker of the house of
8 representatives concerning the adoption of rules as required by
9 Sections 156.059 and 301.304, Occupations Code, as added by this
10 Act.

11 SECTION 8. Subsection (c), Section 156.059, and Subsection
12 (c), Section 301.304, Occupations Code, as added by this Act, apply
13 only to the investigation of a complaint or a disciplinary action
14 based on a complaint filed on or after the effective date of this
15 Act. The investigation of a complaint or a disciplinary action
16 based on a complaint filed before that date is governed by the law
17 in effect on the date the complaint was filed, and that law is
18 continued in effect for that purpose.

19 SECTION 9. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 2975 was passed by the House on May 12, 2011, by the following vote: Yeas 141, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2975 on May 27, 2011, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2975 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Medical Board (Board) proposes an amendment to §166.2, concerning Continuing Medical Education.

The amendment to §166.2 provides that physicians that treat tick-borne diseases should complete relevant CME as required by Senate Bill 1360.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously proposes the rule review for Chapter 166.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to encourage physicians who treat tick-borne diseases to seek out CME in the treatment of such diseases.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §156.059, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories:

(1) - (5) (No change.)

(6) A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

(b) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2012.

TRD-201201095

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: April 8, 2012

For further information, please call: (512) 305-7016



CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.3

The Texas Medical Board (Board) proposes an amendment to §171.3, concerning Physician-in-Training Permits.

The amendment provides that physician-in-training permit holders may complete additional working experience within the facility that they are training under limited conditions.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to allow residents to obtain additional clinical experience while in a supervised residency training program.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §155.105, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§171.3. Physician-in-Training Permits.

(a) Definitions.

(1) - (5) (No change.)

(6) Physician-in-Training Permit:

(A) A physician-in-training permit is a permit issued by the board in its discretion to a physician who does not hold a license to practice medicine in Texas and is enrolled in a training program as defined in paragraphs (1), (2), and (4) of this subsection in Texas, regardless of his/her postgraduate year (PGY) status within the program.

(B) The permit shall be effective for the length of the postgraduate training program as reported by the training program.

(C) A physician-in-training permit is valid only for the practice of medicine within the training program for which it was approved. If a permit holder enters into a new program that is not covered by the issued permit, the permit shall be terminated and the permit holder must apply for a new permit for the new program.

(D) A physician-in-training permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine that is outside of the approved program. Internal moonlighting shall be considered additional optional training within the scope of a training program, provided the internal moonlighting:

medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §156.059, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§190.15. Aggravating and Mitigating Factors.

(a) (No change.)

(b) Mitigation. In any disciplinary action, the following may be considered as mitigating factors that warrant less severe or restrictive action by the board. The licensee shall have the burden to present evidence regarding any mitigating factors that may apply in the particular case. The presence of mitigating factors does not constitute a requirement of dismissal of a violation of the Act. A final order shall include a finding of fact on each applicable mitigating factor.

(1) self-reported and voluntary admissions of violation(s);

(2) implementation of remedial measures to correct or mitigate harm from the violation(s);

(3) acknowledgment of wrongdoing and willingness to cooperate with the board, as evidenced by acceptance of an Agreed Order;

(4) rehabilitative potential;

(5) prior community service and present value to the community;

(6) participation in a continuing medical education course described in §166.2(a)(6) of this title (relating to Continuing Medical Education) completed not more than two years before the start of the investigation, if the physician is being investigated by the board regarding the physician's selection of clinical care for the treatment of tick-borne diseases;

(7) [(6)] other relevant circumstances reducing the seriousness of the misconduct; and[;]

(8) [(7)] other relevant circumstances lessening responsibility for the misconduct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2012.

TRD-201201100

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: April 8, 2012

For further information, please call: (512) 305-7016



CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1, §192.2

The Texas Medical Board (Board) proposes amendments to §192.1, concerning Definitions, and §192.2, concerning Provision of Anesthesia Services in Outpatient Settings.

The amendment to §192.1 changes the term "Basic Cardiac Life Support" to "Basic Life Support (BLS)", consistent with the def-

initions promulgated by the American Heart Association. The amendment also clarifies what constitutes a level II service.

The amendment to §192.2 makes grammatical changes regarding the requirement that personnel who provide office-based anesthesia services be certified by the American Heart Association in BLS or ACLS, as noted. Also, the amendment deletes subsection (k) as it is unnecessary due to changes previously made in subsection (c) which provide more specifically for required certifications of qualified personnel participating in the provision of office-based anesthesia services.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously proposes the rule review for Chapter 192.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to correctly define terms consistent with those terms used by specialists in the field of cardiology and to ensure that level II services are appropriately defined so that practitioners follow proper protocols and register with the Board and to eliminate ambiguity in the rule.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rule as proposed is undetermined, but physicians whose services will be considered level II services as a result of the rule may have additional costs to ensure compliance. The effect on small or micro businesses is undetermined, but if there are providers of BLS, ACLS, or PALS not recognized by the rule, then the rule may have an adverse effect on their revenue.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §162.102, Texas Occupations Code.

§192.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

(4) AHSI--American Health and Safety Institute.

(5) [(4)] Analgesics--Dangerous or scheduled drugs that alleviate pain.

(6) [(5)] Anesthesia--The loss of feeling or sensation resulting from the use of dangerous or scheduled drugs to depress nerve function. Anesthetics are scheduled or dangerous drugs used to induce anesthesia.

Abel, Jena

From: Ginger Savely
Sent: Tuesday, March 13, 2012 7:47 PM
To: Zych, Jolene
Cc:
Subject: Re: Texas Medical Board Rule on Tick Borne Illness

Hello Jolene:

I would like to thank the BON for supporting this bill which is a long time coming. It is within the scope of a nurse practitioner to treat diseases for which she has specialized training. I am pleased to know that the advanced training that I and other Texas NPs have in treating Lyme disease will be taken into consideration. Because there are two standards of care for the treatment of Lyme disease it only makes sense that patients should be allowed to chose their treatment protocol based upon informed choice, just as they do with many other diseases. Please thank the BON for me!

Ginger Savely, DNP, FNP-C

Attachment “D”

§216.3. Requirements.

(a) - (e) (No change).

(f) Tick-Borne Diseases. An APRN, whose practice includes the treatment of tick-borne diseases, is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the role and population focus area applicable to the APRN and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Completion of continuing medical education in the treatment of tick-borne disease that meets the requirements of this subsection shall be credited as continuing education under this chapter.

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) - (b) (No change).

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

- (1) evidence of actual or potential harm to patients, clients, or the public;
- (2) evidence of a lack of truthfulness or trustworthiness;
- (3) evidence of misrepresentation(s) of knowledge, education,

experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;

(4) evidence of practice history;

(5) evidence of present fitness to practice;

(6) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;

(7) the length of time the person has practiced;

(8) the actual damages, physical, economic, or otherwise, resulting from the violation;

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances, including those specified in the Disciplinary Matrix;

(12) the extent to which system dynamics in the practice setting contributed to the problem;

(13) whether the person is being disciplined for multiple violations of the NPA or its derivative rules and orders;

(14) the seriousness of the violation;

(15) the threat to public safety;

(16) evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character); ~~and~~

(17) participation in a continuing education course described in <*>216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and ~~any other matter that justice may require.~~

(18) any other matter that justice may require.

The presence of mitigating factors does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules.

(d) - (m) (No change).