

Agenda Item: 7.9  
July 18-19, 2013  
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**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.3,  
Pertaining to *Pleading***

**Background:** Senate Bill (SB) 1058 was passed during the 83rd Legislative Session and will become effective on September 1, 2013. The proposed amendments to §213.3(a) are necessary for consistency with the provisions of SB 1058. The proposed amendments to §213.3(b) are intended to clarify the procedural requirements that apply to matters involving licensure (where a license currently exists) and eligibility (where eligibility for initial licensure, renewal, or reinstatement of licensure is at issue, e.g. limited status, suspension, revocation, or voluntary surrender). A copy of the proposed amendments is attached hereto as Attachment "A".

**Board Action:** Move to approve the proposed amendments to 22 Tex. Admin. Code §213.3, Pertaining to *Pleading*, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt the proposed amendments to 22 Tex. Admin. Code §213.3, Pertaining to *Pleading*, as proposed.

## Attachment "A"

### §213.3. Pleading.

(a) In licensure [~~disciplinary~~] matters:

(1) In actions by the staff as petitioner against a licensee, the staff's pleading shall be styled "Formal Charges."

(2) Except in cases of temporary suspension and injunction, the Board may not take disciplinary action unless [formal charges shall be filed only after] notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the APA, Texas Government Code §2001.054(c). Notice of hearing or amended notice of hearing constitutes institution of agency proceedings for purposes of §2001.054(c).

(b) In eligibility [~~nondisciplinary~~] matters:

(1) In actions by the staff as petitioner, ~~[to enforce and regulate matters]~~ the staff's pleading shall ordinarily be styled "Petition of the Board of Nurse Examiners."

(2) In actions by a person as petitioner, e.g., an individual seeking a determination of eligibility for licensure, examination or licensure applicant, or an individual petitioning to return to direct patient care or seeking reinstatement of a surrendered, revoked, or suspended license, the person's pleading shall be styled "Petition of NAME." The person shall have the burden of initiating the action, going forward with the administrative proceeding and proving the allegations contained in the pleading. The Board

at its discretion, may initiate proceedings before SOAH without relieving petitioner of the burden of proof as outlined herein. If the Board has provided the petitioner with written notice of the basis of its refusal or denial of license, permit, application or petition, the Board may file an answer incorporating this notice and may rely on the notice as a responsive pleading.

AN ACT

relating to the regulation of the practice of nursing.

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

SECTION 1. Subsection (a), Section 301.004, Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided by a friend;

(2) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a nurse unless the person is licensed in another state;

(3) nursing care in which treatment is solely by prayer or spiritual means;

(4) an act performed by a person under the delegated authority of a person licensed by the Texas Medical Board;

(5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;

(6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education

1 program approved under Section 301.157(d) leading to an initial  
2 license as a nurse; or

3 (7) the practice of nursing by a person licensed in  
4 another state who is in this state on a nonroutine basis for a  
5 period not to exceed 72 hours to:

6 (A) provide care to a patient being transported  
7 into, out of, or through this state;

8 (B) provide nursing consulting services; or

9 (C) attend or present a continuing nursing  
10 education program.

11 SECTION 2. Subsection (c), Section 301.2511, Occupations  
12 Code, is amended to read as follows:

13 (c) The board by rule shall ~~[may]~~ develop a system for  
14 ~~[initiating the process of]~~ obtaining criminal history record  
15 information for a person accepted for enrollment in a nursing  
16 ~~[applicants for a license under this chapter by requiring persons~~  
17 ~~who enroll or plan to enroll in an]~~ educational program that  
18 prepares the ~~[a]~~ person for initial licensure ~~[a license]~~ as a  
19 registered or vocational nurse by requiring the person to submit to  
20 the board a set of fingerprints that meets the requirements of  
21 Subsection (a). The board may develop a similar system for an  
22 applicant for enrollment in a nursing educational program. The  
23 board may require payment of a fee by a person who is required to  
24 submit a set of fingerprints under this subsection.

25 SECTION 3. Section 301.257, Occupations Code, is amended by  
26 adding Subsections (j) and (k) to read as follows:

27 (j) The board may file a petition under this section based

1 on the results of a criminal history record information check  
2 conducted under Section 301.2511. The board by rule shall adopt  
3 requirements for the petition and determination under this  
4 subsection. The rules must:

5 (1) identify the criminal offenses that constitute  
6 grounds for the board to file the petition; and

7 (2) describe the documents required by the board to  
8 make a determination of license eligibility.

9 (k) The board shall make a determination of license  
10 eligibility under Subsection (j) not later than the 120th day after  
11 the date the person submits the required documents to the board  
12 under that subsection.

13 SECTION 4. Subchapter G, Chapter 301, Occupations Code, is  
14 amended by adding Sections 301.305 and 301.307 to read as follows:

15 Sec. 301.305. CONTINUING EDUCATION IN NURSING  
16 JURISPRUDENCE AND NURSING ETHICS. (a) As part of a continuing  
17 competency program under Section 301.303, a license holder shall  
18 complete at least two hours of continuing education relating to  
19 nursing jurisprudence and nursing ethics before the end of every  
20 third two-year licensing period.

21 (b) The board shall adopt rules implementing the  
22 requirement under Subsection (a) in accordance with the guidelines  
23 for targeted continuing education under Section 301.303(g).

24 (c) The board may not require a license holder to complete  
25 more than four hours of continuing education under this section.

26 Sec. 301.307. CONTINUING EDUCATION IN OLDER ADULT OR  
27 GERIATRIC CARE. (a) As part of a continuing competency program

1 under Section 301.303, a license holder whose practice includes  
2 older adult or geriatric populations shall complete at least two  
3 hours of continuing education relating to older adult or geriatric  
4 populations or maintain certification in an area of practice  
5 relating to older adult or geriatric populations.

6 (b) The board shall adopt rules implementing the  
7 requirement under Subsection (a) in accordance with the guidelines  
8 for targeted continuing education under Section 301.303(g).

9 (c) The board may not require a license holder to complete  
10 more than six hours of continuing education under this section.

11 SECTION 5. Subsection (b), Section 301.452, Occupations  
12 Code, is amended to read as follows:

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

15 (1) a violation of this chapter, a rule or regulation  
16 not inconsistent with this chapter, or an order issued under this  
17 chapter;

18 (2) fraud or deceit in procuring or attempting to  
19 procure a license to practice professional nursing or vocational  
20 nursing;

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

24 (4) conduct that results in the revocation of  
25 probation imposed because of conviction for a felony or for a  
26 misdemeanor involving moral turpitude;

27 (5) use of a nursing license, diploma, or permit, or

1 the transcript of such a document, that has been fraudulently  
2 purchased, issued, counterfeited, or materially altered;

3 (6) impersonating or acting as a proxy for another  
4 person in the licensing examination required under Section 301.253  
5 or 301.255;

6 (7) directly or indirectly aiding or abetting an  
7 unlicensed person in connection with the unauthorized practice of  
8 nursing;

9 (8) revocation, suspension, or denial of, or any other  
10 action relating to, the person's license or privilege to practice  
11 nursing in another jurisdiction or under federal law;

12 (9) intemperate use of alcohol or drugs that the board  
13 determines endangers or could endanger a patient;

14 (10) unprofessional or dishonorable conduct that, in  
15 the board's opinion, is likely to deceive, defraud, or injure a  
16 patient or the public;

17 (11) adjudication of mental incompetency;

18 (12) lack of fitness to practice because of a mental or  
19 physical health condition that could result in injury to a patient  
20 or the public; or

21 (13) failure to care adequately for a patient or to  
22 conform to the minimum standards of acceptable nursing practice in  
23 a manner that, in the board's opinion, exposes a patient or other  
24 person unnecessarily to risk of harm.

25 SECTION 6. Subsection (b), Section 301.453, Occupations  
26 Code, is amended to read as follows:

27 (b) In addition to or instead of an action under Subsection

1 (a), the board, by order, may require the person to:

2 (1) submit to care, counseling, or treatment by a  
3 health provider designated by the board as a condition for the  
4 issuance or renewal of a license;

5 (2) participate in a program of education or  
6 counseling prescribed by the board, including a program of remedial  
7 education;

8 (3) practice for a specified period under the  
9 direction of a registered nurse or vocational nurse designated by  
10 the board; ~~[or]~~

11 (4) perform public service the board considers  
12 appropriate; or

13 (5) abstain from the consumption of alcohol or the use  
14 of drugs and submit to random periodic screening for alcohol or drug  
15 use.

16 **SECTION 7.** Subsection (a), Section 301.454, Occupations  
17 Code, is amended to read as follows:

18 (a) Except in the case of a temporary suspension authorized  
19 under Section 301.455 or 301.4551 or an action taken in accordance  
20 with an agreement between the board and a license holder, the board  
21 may not take any ~~[initiate a]~~ disciplinary action relating to a  
22 license unless:

23 (1) the board has served notice to the license holder  
24 of the facts or conduct alleged to warrant the intended action; and

25 (2) the license holder has been given an opportunity,  
26 in writing or through an informal meeting, to show compliance with  
27 all requirements of law for the retention of the license.

1       **SECTION 8.** Subsection (a), Section 301.458, Occupations  
2 Code, is amended to read as follows:

3           (a) Unless there is an agreed disposition of the complaint  
4 under Section 301.463, ~~[and]~~ if probable cause is found under  
5 Section 301.457(e)(2), the board or the board's authorized  
6 representative shall file ~~[initiate proceedings by filing]~~ formal  
7 charges against the nurse.

8       SECTION 9. Subsection (a), Section 301.465, Occupations  
9 Code, is amended to read as follows:

10          (a) Notwithstanding Section 2001.089, Government Code, the  
11 ~~[The]~~ board may request issuance of a subpoena to be served in any  
12 manner authorized by law, including personal service by a board  
13 investigator or ~~[and service]~~ by certified mail.

14       SECTION 10. Section 301.466, Occupations Code, is amended  
15 by amending Subsection (a) and adding Subsection (d) to read as  
16 follows:

17          (a) A complaint and investigation concerning a nurse under  
18 this subchapter, ~~[and]~~ all information and material compiled by the  
19 board in connection with the complaint and investigation, and the  
20 information described by Subsection (d) are:

21               (1) confidential and not subject to disclosure under  
22 Chapter 552, Government Code; and

23               (2) not subject to disclosure, discovery, subpoena, or  
24 other means of legal compulsion for release to anyone other than the  
25 board or a board employee or agent involved in license holder  
26 discipline.

27          (d) Notwithstanding Subsection (c), if the board orders a

1 nurse to participate in a peer assistance program approved by the  
2 board under Section 467.003, Health and Safety Code, the complaint,  
3 filing of formal charges, nature of those charges, final board  
4 order, and disciplinary proceedings are subject to disclosure:

5 (1) only to the same extent as information regarding a  
6 complaint is subject to disclosure under Subsection (b); or

7 (2) in a subsequent matter relating to the board order  
8 or a subsequent violation of this chapter or a board rule.

9 SECTION 11. The heading to Subchapter N, Chapter 301,  
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

12 SECTION 12. Section 301.651, Occupations Code, is amended  
13 to read as follows:

14 Sec. 301.651. DEFINITIONS [~~DEFINITION~~]. In this  
15 subchapter:

16 (1) "Corrective [~~,"corrective]~~ action" means a fine or  
17 remedial education imposed under Section 301.652.

18 (2) "Deferred action" means an action against a person  
19 licensed or regulated under this chapter that is deferred by the  
20 board as provided by this subchapter.

21 SECTION 13. Subsection (b), Section 301.655, Occupations  
22 Code, is amended to read as follows:

23 (b) If the person does not accept the executive director's  
24 determination and recommended corrective action as originally  
25 proposed or as modified by the board or fails to respond in a timely  
26 manner to the executive director's notice as provided by Section  
27 301.654, the executive director shall:

1 (1) terminate corrective action proceedings [~~under~~  
2 ~~this subchapter~~]; and

3 (2) dispose of the matter as a complaint under  
4 Subchapter J.

5 SECTION 14. Subchapter N, Chapter 301, Occupations Code, is  
6 amended by adding Section 301.6555 to read as follows:

7 Sec. 301.6555. DEFERRED ACTION. (a) For any action or  
8 complaint for which the board proposes to impose on a person a  
9 sanction other than a reprimand or a denial, suspension, or  
10 revocation of a license, the board may:

11 (1) defer the final action the board has proposed if  
12 the person conforms to conditions imposed by the board, including  
13 any condition the board could impose as a condition of probation  
14 under Section 301.468; and

15 (2) if the person successfully meets the imposed  
16 conditions, dismiss the complaint.

17 (b) Except as provided by this subsection, a deferred action  
18 by the board is not confidential and is subject to disclosure in  
19 accordance with Chapter 552, Government Code. If the person  
20 successfully meets the conditions imposed by the board in deferring  
21 final action and the board dismisses the action or complaint, the  
22 deferred action of the board is confidential to the same extent as a  
23 complaint is confidential under Section 301.466.

24 SECTION 15. Section 301.656, Occupations Code, is amended  
25 to read as follows:

26 Sec. 301.656. REPORT TO BOARD. The executive director  
27 shall report periodically to the board on the corrective or

1 deferred actions imposed under this subchapter, including:

- 2 (1) the number of [~~corrective~~] actions imposed; and  
3 (2) the types of violations for which [~~corrective~~]  
4 actions were imposed[~~, and~~  
5 [~~(3) whether affected nurses accepted the corrective~~  
6 ~~actions~~].

7 SECTION 16. Section 301.657, Occupations Code, is amended  
8 to read as follows:

9 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR  
10 DEFERRED ACTION. (a) Except to the extent provided by this  
11 section, a person's acceptance of a corrective or deferred action  
12 under this subchapter does not constitute an admission of a  
13 violation but does constitute a plea of nolo contendere.

14 (b) The board may treat a person's acceptance of corrective  
15 or deferred action as an admission of a violation if the board  
16 imposes a sanction on the person for a subsequent violation of this  
17 chapter or a rule or order adopted under this chapter.

18 (c) The board may consider a corrective or deferred action  
19 taken against a person to be a prior disciplinary action under this  
20 chapter when imposing a sanction on the person for a subsequent  
21 violation of this chapter or a rule or order adopted under this  
22 chapter.

23 SECTION 17. Section 301.1607, Occupations Code, is  
24 repealed.

25 SECTION 18. (a) Except as provided by Subsection (b) of  
26 this section, the changes in law made by this Act to Chapter 301,  
27 Occupations Code, apply only to a violation that occurs on or after

1 the effective date of this Act. A violation that occurs before that  
2 date is governed by the law in effect on the date the violation  
3 occurred, and the former law is continued in effect for that  
4 purpose.

5 (b) The changes in law made by this Act to Subchapter N,  
6 Chapter 301, Occupations Code, apply to a violation that occurs  
7 before, on, or after the effective date of this Act.

8 (c) Sections 301.305 and 301.307, Occupations Code, as  
9 added by this Act, apply only to a licensing period that begins on  
10 or after January 1, 2014.

11 SECTION 19. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1058 passed the Senate on March 27, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1058 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 145, Nays 3, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor