

From: [Sunset Advisory Commission](#)
To: [Cecelia Hartley](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Thursday, October 20, 2016 4:36:14 PM

-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
Sent: Thursday, October 20, 2016 4:33 PM
To: Sunset Advisory Commission
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS BOARD NURSING TBN

First Name: Laura

Last Name: Diamond

Title:

Organization you are affiliated with:

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State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed: The staff recommendations regarding discipline are well intentioned, but only scratch the surface of needed changes. Please see below.

Any Alternative or New Recommendations on This Agency:

The Board has a history of placing Formal Charges on a Nurse's record while the informal resolution process is ongoing. These Formal Charges are filed internally "Before the Board of Nursing," but not with SOAH. To my knowledge, the BON is the only licensure agency that does this.

The Board regularly files these Formal Charges when a licensee requests an Informal Settlement Conference, makes a counterproposal to a proposed agreed order, and/or declines a Board request such as completing a chemical dependency or mental health evaluation. This practice raises Due Process concerns because Board complaints and investigations are statutorily confidential, but when the Board files the Formal Charges they list "Formal Charges Filed" along with the date of the filing on their public verification page online. This means that any member of the public can look up the nurse and will be presented with "Formal Charges Filed" on that nurse's profile, even though the investigation into that nurse's conduct is still ongoing. It is a presumption of guilt by any viewer, and violates the due process rights of nurses.

Additionally, this practice puts the nurse in a very difficult spot with their employer by revealing a Board investigation is pending since "Formal Charges Filed" sounds ominous and criminal to employers. Nurses with jobs are often fired, and nurses without jobs are unable to find employment.

In a recent example, a nurse without a complaint or disciplinary history was charged with theft from a resident at an assisted living facility. While the criminal charges were pending, the Board requested that the nurse complete a forensic evaluation and polygraph to determine "the likelihood that [she] will engage in such behavior again." The nurse declined the Board's request noting that since the criminal charges remained pending, there was no

determination she engaged in the alleged behavior in the first place. The Board responded by filing Formal Charges “Before the Board of Nursing” and attaching that fact to the nurse’s online profile. The nurse’s employer knew about the pending criminal charges and continued to employ her in spite of the pending criminal issue, but the filing of Formal Charges prompted the employer to terminate the nurse.

Given the current act of filing Formal Charges is purely an internal process by the Board, I feel there should be a statutory fix to prohibit Formal Charges from being filed internally before the Board of Nursing docket the case at SOAH.

My Comment Will Be Made Public: I agree