

**From:** [Trisha Linebarger](#)  
**To:** [Trisha Linebarger](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Friday, October 21, 2016 4:29:24 PM

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

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]  
Sent: Friday, October 21, 2016 4:03 PM  
To: Sunset Advisory Commission  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS BOARD NURSING TBN

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Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

As an initial note, as a member of the Texas Nurses Association (TNA) and the Texas Chapter of The American Association of Nurse Attorney's (TAANA-Texas), I adopt all comments and discussion made in the responses filed by each organization to the extent that they are not in conflict with my comments below (see Recommendation 1.1).

To the extent that the Staff Report looks at disciplinary sanction policies of the Texas Board of Nursing in Issue #2, I find no fault with the recommendations promoted by the Staff Report. However, as noted by TAANA-Texas, and to a lesser extent by TNA, there are many other areas of the disciplinary process that need significant review and legislative direction.

And I also concur with TNA that TNA should be given some time to solve the issues with the TPAPN program (Issue 3) and since they have already started that process with a new program director

On a more personal level, my nursing degree is from the predecessor to Excelsior College. And while I am critical of Excelsior's failure to work with Board and outside agencies in studying the issue, I also don't believe that there has been any study to determine if there is an actual issue with Excelsior graduates practicing in Texas. In the Board's self-evaluation, they cite borderline pass rates on the NCLEX as evidence of an issue with the lack of clinical training. There is absolutely no evidence that would validate such a conclusion - if anything it would speak to the non-clinical academic preparation of Excelsior students, which is not the issue identified by the legislature and the Board. A more likely study model to indicate if there is a problem with the lack of clinical training that shows up in enforcement rates, which the Board completely failed to address in their proposed study. Allowing the exception to expire when there is no good data as to that issue is a recommendation that I oppose (Recommendation 1.1).

Any Alternative or New Recommendations on This Agency:

As an initial matter, I have been the president of TAANA-Texas and I am currently a member of the Board of Directors of the national organization. I am writing here separately to address an issue with the Board's interpretation of Section 53.021(b) of the Occupations code dealing with the automatic revocation of a profession license when a person is incarcerated.

Board Staff is improperly interpreting a section of the Occupations code which mandate revocations of professional licenses when a person is incarcerated in prison. Tex. Occ. Code 53.021(b). While there is no doubt that there is sound public policy behind this statute, it is clear in the statute that the license is considered revoked when the person is incarcerated. However, the Board believes that they must revoke the license going forward, which goes against a pair of opinions from the Attorney General which found that the revocation occurred when the licensee was incarcerated, not when the agency takes action against the licensee. The Board has lost a series of four hearings at SOAH on this issue over the past five years, yet they persist in interpreting this statute incorrectly.

Why this is important to a nurse is that it sets the time frame when the nurse may petition for reinstatement.

Consider the recent case of a nurse that convicted of child endangerment for having children in car when she ran from police for a misdemeanor warrant. The nurse was incarcerated in 2007 for two years. When she got out, because the conviction was under Section 4535 of the Nursing Practice Act, the nurse was required to wait for five years to petition for reinstatement. In 2014, when eligible, the nurse contacted the Board, who advised her to file for reactivation because she never took a positive action to surrender her license (there is no statutory duty to do anything if you don't renew your license). Two years later, after a successful side trip to SOAH to set the revocation date as the date of incarceration in 2007, the nurse is just now petitioning for reinstatement.

As noted in the TAANA response, such delays are truly unwarranted and do nothing to further the Board mission to protect the public.

I have continually recommended to Board Staff that they handle these cases differently. If they find out that a nurse is incarcerated, then that nurse's license should be handled under the temporary suspension rules contained in Section 301.455 of the Nursing Practice Act and allow a hearing to determine if the nurse is a continuing and imminent threat to public safety (I would argue that if a nurse is incarcerated, this is obvious, but there may be circumstances if the nurse has been released where they may not be a continuing and imminent threat to public safety, so no other legislative action is necessary - just an admonishment to the Board to follow their own rules already in place). In accordance with the Attorney General opinions, the Board should then consider these cases to be reinstatement proceedings if the nurse meets the time stipulations in Section 301.467 of the Nursing Practice Act.

My Comment Will Be Made Public: I agree