



# Texas Board of Nursing Responses to Sunset Recommendations 2016-2017 85<sup>th</sup> Legislature

## **Issue 1**

Absent conclusive evidence regarding Excelsior's nursing program, the Board is the most appropriate entity to determine qualifications for initial nurse licensure.

### **Recommendations**

#### *Change in Statute*

1.1 Allow Excelsior College's exception to initial licensure requirements to expire.

*The Board of Nursing (BON) agrees with this recommendation.*

1.2 Require the Board to develop a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Texas programs.

*The BON agrees with this recommendation.*

## **Issue 2**

Broad and subjective standards extending beyond the practice of nursing could lead to harsher sanctions for nurses.

### **Recommendations**

#### *Change in Statute*

2.1 Clarify the definitions of unprofessional conduct and good professional character to limit their application to the practice of nursing.

*The Board agrees that definitions of unprofessional conduct and good professional character are relevant only to the extent they apply to the practice of nursing. Similarly, the Board agrees that it must demonstrate a clear and rational connection between character and conduct that would impact a nurse's professional practice. The Board does not object to the removal of the term "dishonorable" from the statute or any amendment that would guide the Board's objective application of its unprofessional conduct rules.*

*The Board's past and present collaboration with Sunset Staff in examining the Board's disciplinary processes has clearly led to a much improved objective review and application in those processes. The Board believes it can continue to improve in applying the less restrictive forms of discipline and still achieve its mission to protect the public. The Board, however, would not agree to the characterization in the Sunset Staff's findings that its enforcement practices are based on unreasonable subjective standards or that its enforcement culture is inconsistent with Legislative policy to protect the public.*

*The Board, the provisions of the Nursing Practice Act and the historic application of its regulations to the nursing profession continue to recognize that professional character is a very important factor to be considered. The Board clearly believes that the vulnerability of the patients at issue and the privilege over health decisions and actions sanctioned by a nursing license demand some scrutiny of professional character. This position seems shared by the Texas Legislature in enacting the provision and the general public who have perennially rated the nursing profession as the most honest and ethical profession. These ratings have historically demonstrated a margin of a least 17 points higher than the next rated profession. See <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx>.*

*The Board's mission to protect the public is taken very seriously considering the harm that can befall those subject to incompetent or dishonest nursing practice. The Board believes the issue of character will always matter, both in evaluating those who seek licensure and as a factor in examining appropriate discipline for violation. Nurses are the largest group of healthcare providers and they provide the majority of patient care. Their experiences with patients and families are often at the vulnerable moments with the young and old when they are physically or mentally ill, or disabled.*

*Professional character and the evaluation of honesty and integrity remains relevant now more than ever when nursing is being practiced with ever increasing regularity in people's homes with minimal supervision over the nurse. In 2016, it was reported the Journal of Nursing Regulation, 7(1), S4-S6, based on the 2015 National Nursing Workforce Survey that although RNs practice mostly in the hospital setting, as the number of RNs increases, fewer are working in hospital. Similarly, LVNs most common practice setting is in the nursing home and extended care setting followed by home setting and hospitals. This survey highlights that the work setting for both is changing to a setting no longer confined to the hospital. There is no other profession where need for character matters more given the vulnerability and intimacy of these patients and these changing settings.*

*Further, the Board's professional character rule as quoted in the Sunset Staff's report expressly ties the evaluation of an individual's good professional character to the practice of nursing. While the Board believes the definition may be improved, the rule is fundamentally designed to utilize objective criteria in evaluating a nurse's alleged conduct with the practice of nursing and protection of the public.*

*The few examples provided by Sunset Staff in order to illustrate the Board's pursuit of "unwarranted sanctions" were all properly argued and evaluated through the contested case process at SOAH. The Board would submit that no unwarranted sanctions were issued. Based on the evidence presented and properly vetted at SOAH, the Board adopted those recommendations of the ALJ when the findings indicated the conduct or requested remedy was not warranted or did not sufficiently relate to the practice of nursing.*

*In summary, while the Board believes its rules may always be subject to improvement, an analysis of the nexus to nursing practice is already imbedded in the Board's rules, statutes, and practices and is appropriately being considered by the Board and ALJs. Further, none of the examples given by Sunset Staff would implicate an unfair or inappropriate application of the Board's good professional character rule as it applies to violations of the Nursing Practice Act.*

## **Management Action**

2.2 Direct the Board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing.

*The Board agrees to review its criminal conduct guidelines. Its rule regarding criminal conduct has been reviewed and readopted several times since 2007. However, the Board would comment that the management recommendation appears to suggest that the Board's guidelines should not include crimes if they have not occurred in relation to the nurse's job. This suggestion appears to further limit the criteria of Chapter 53 of the Texas Occupations Code.*

*The Texas Occupations Code requires the Board to show a nexus between a crime and the licensed profession (nursing). Also note, that §53.021(a)(2) permits action for conduct not related to the licensed profession if committed within 5 years prior to application. It does not require the crime to be committed in association with the nurse's job.*

*As a requirement of Chapter 53, the Board has adopted rules (Board Rule 213.28) that comply with the requirements of the APA for rulemaking that set forth its determination of how a particular crime relates to the practice of nursing. The Board views crimes that indicate traits like honesty and integrity would have a bearing on the ability to practice nursing without risks to the public. The Board Staff has vetted this rule with stakeholders several times since 2007 and believe the Board has complied with the legal requirements that apply to all licensing agencies with respect to criminal conduct. Not all crimes should impact licensure and the Board has further clarified that with regard to old, isolated or minor criminal conduct that no action will be taken.*

## **Issue 3**

The Board's Peer Assistance Program needs improved flexibility and oversight to most effectively rehabilitate nurses.

### **Recommendations**

#### ***Change in Statute***

3.1 Require the Board's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnosis.

*The BON agrees with this recommendation.*

3.2 Require the Board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.

*The BON agrees with this recommendation.*

3.3 Require the Board to adequately measure the effectiveness of its peer assistance program.

*The BON agrees with this recommendation.*

### ***Management Action***

3.4 Direct the Board to designate a contract manager assigned to the peer assistance program.

*The BON agrees with this recommendation.*

3.5 Direct the Board to require its peer assistance program to publicly post information about the various program tracks and requirements.

*The BON agrees with this recommendation.*

### **Issue 4**

Texas must adopt the new Nurse Licensure Compact to ensure continued mobility within the profession.

#### **Recommendations**

##### ***Change in Statute***

4.1 Adopt the new Nurse Licensure Compact.

*The BON agrees with this recommendation.*

### **Issue 5**

Clear statutory authority could help the Board better monitor improper prescribing of controlled substances.

#### **Recommendations**

##### ***Change in Statute***

5.1 Clarify in statute and provide direction to the board to monitor APRNs' improper prescribing of controlled substances.

*The BON agrees with this recommendation.*

### **Issue 6**

The Board's statute does not reflect standard elements of Sunset reviews.

#### **Recommendations**

##### ***Change in Statute***

6.1 Update the standard across-the board- requirement related to Board member training.

*The BON agrees with this recommendation.*

6.2 Discontinue the Board's two reporting requirements and eliminate the specific statutory authority for nurse competency pilot programs.

*The BON agrees with this recommendation.*

### **Issue 7**

The state has a continuing need to regulate nurses.

### **Recommendations**

#### ***Change in Statute***

7.1 Continue the Texas Board of Nursing for 12 years.

*The BON agrees with this recommendation.*