

1-1 By: Allen of Dallas (Senate Sponsor - Janek) H.B. No. 1366
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 13, 2005, read first time and referred to Committee on Health
1-4 and Human Services; May 20, 2005, reported favorably, as amended,
1-5 by the following vote: Yeas 7, Nays 0; May 20, 2005, sent to
1-6 printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Janek

1-8 Amend H.B. No. 1366 as follows:

1-9 (1) Strike Section 6 of the bill, adding proposed Section
1-10 301.354, Occupations Code (house engrossment page 3, line 27,
1-11 through page 4, line 6).

1-12 (2) Strike Section 7 of the bill (house engrossment page 4,
1-13 lines 7 and 8) and substitute the following appropriately numbered
1-14 section:

1-15 SECTION____. Section 304.010, Occupations Code, is repealed.

1-16 (3) Renumber the sections of the bill accordingly.

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the regulation of nursing.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 301.161, Occupations Code, is amended by
1-22 adding Subsections (d) and (e) to read as follows:

1-23 (d) The board may establish a criminal investigations unit
1-24 to investigate suspected criminal acts relating to the practice of
1-25 nursing as authorized by this chapter.

1-26 (e) The board may assist federal, state, or local law
1-27 enforcement agencies in the investigation and prosecution of crimes
1-28 related to the practice of nursing.

1-29 SECTION 2. Section 301.301(b), Occupations Code, is amended
1-30 to read as follows:

1-31 (b) A person may renew an unexpired license issued under
1-32 this chapter on payment of the required renewal fee, payment of any
1-33 costs assessed under Section 301.461, and compliance with any other
1-34 renewal requirements adopted by the board.

1-35 SECTION 3. Section 301.452(b), Occupations Code, is amended
1-36 to read as follows:

1-37 (b) A person is subject to denial of a license or to
1-38 disciplinary action under this subchapter for:

1-39 (1) a violation of this chapter, a rule or regulation
1-40 not inconsistent with this chapter, or an order issued under this
1-41 chapter;

1-42 (2) fraud or deceit in procuring or attempting to
1-43 procure a license to practice professional nursing or vocational
1-44 nursing;

1-45 (3) a conviction for, or placement on deferred
1-46 adjudication community supervision or deferred disposition for, a
1-47 felony or for a misdemeanor involving moral turpitude;

1-48 (4) conduct that results in the revocation of
1-49 probation imposed because of conviction for a felony or for a
1-50 misdemeanor involving moral turpitude;

1-51 (5) use of a nursing license, diploma, or permit, or
1-52 the transcript of such a document, that has been fraudulently
1-53 purchased, issued, counterfeited, or materially altered;

1-54 (6) impersonating or acting as a proxy for another
1-55 person in the licensing examination required under Section 301.253
1-56 or 301.255;

1-57 (7) directly or indirectly aiding or abetting an
1-58 unlicensed person in connection with the unauthorized practice of
1-59 nursing;

1-60 (8) revocation, suspension, or denial of, or any other
1-61 action relating to, the person's license or privilege to practice
1-62 nursing in another jurisdiction;

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

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

(11) adjudication of mental incompetency;

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

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

SECTION 4. Subchapter J, Chapter 301, Occupations Code, is amended by adding Section 301.4535 to read as follows:

Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

(1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;

(2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;

(3) sexual assault under Section 22.011, Penal Code;

(4) aggravated sexual assault under Section 22.021, Penal Code;

(5) indecency with a child under Section 21.11, Penal Code;

(6) aggravated assault under Section 22.02, Penal Code;

(7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;

(8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code;

(9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;

(10) an offense under Section 25.07, Penal Code, punished as a felony;

(11) an offense under Section 25.071, Penal Code, punished as a felony;

(12) an agreement to abduct a child from custody under Section 25.031, Penal Code;

(13) the sale or purchase of a child under Section 25.08, Penal Code;

(14) robbery under Section 29.02, Penal Code;

(15) aggravated robbery under Section 29.03, Penal Code;

(16) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(17) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

(b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license if the applicant or license holder did not previously disclose the conviction or plea and the fifth anniversary of the date the person successfully completed community supervision or parole has not occurred.

(c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

SECTION 5. Section 301.455, Occupations Code, is amended to read as follows:

Sec. 301.455. TEMPORARY LICENSE SUSPENSION OR RESTRICTION. (a) The license of a nurse shall be temporarily suspended or restricted on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.

(b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension or determination to restrict; and

(2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists. The probable cause hearing shall be conducted as a de novo hearing.

(d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension or restriction.

SECTION 6. Subchapter H, Chapter 301, Occupations Code, is amended by adding Section 301.354 to read as follows:

Sec. 301.354. NURSE FIRST ASSISTANTS; ASSISTING AT SURGERY BY OTHER NURSES. (a) In this section, "nurse first assistant" means a registered nurse who:

(1) has completed a nurse first assistant educational program approved or recognized by an organization recognized by the board; and

(2) is either:
(A) certified in perioperative nursing by an organization recognized by the board; or

(B) recognized by the board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.

(b) Unless the person is a nurse first assistant, the person may not use:

(1) the title "nurse first assistant" or "registered nurse first assistant";

(2) the abbreviation "R.N.F.A."; or

(3) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under this section.

(c) A health maintenance organization or an insurer, including an insurer offering a preferred provider benefit plan, may not, by contract or any other method, require a physician to use the services of a nurse first assistant.

(d) A nurse who is not a nurse first assistant may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:

(1) assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;

(2) is in the same sterile field as the physician, podiatrist, or dentist;

(3) is employed by:

(A) the physician, podiatrist, or dentist;

(B) a group to which the physician, podiatrist, or dentist belongs; or

(C) a hospital licensed or owned by the state; and

(4) is qualified by education, training, or experience to perform the tasks assigned to the nurse.

(e) A patient or third-party insurer may not be billed separately for the services performed by a nurse described by

Subsection (d).

(f) A registered nurse must perform circulating duties in the operating room. In accordance with approved medical staff policies and procedures, a vocational nurse or surgical technologist may assist in circulating duties under the direct supervision of the registered nurse.

SECTION 7. Sections 301.1525, 301.1526, 301.1527, and 304.010, Occupations Code, are repealed.

SECTION 8. (a) The change in law made by this Act by the amendment of Section 301.301(b), Occupations Code, applies only to the renewal of a license that expires on or after the effective date of this Act. The renewal of a license that expires before the effective date of this Act is governed by the law in effect on the date the license expired, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act by the enactment of Section 301.4535, Occupations Code, applies only to a person who is initially convicted of an offense or placed on deferred adjudication after a plea of guilty or nolo contendere for an offense on or after the effective date of this Act. A person initially convicted of an offense or placed on deferred adjudication before that date is governed by the law in effect on the date the conviction or plea occurred, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act by the amendment of Section 301.455, Occupations Code, applies only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2005.

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