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H.B. No. 3961

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of nursing.

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

SECTION 1. Section 301.160(a)(2), Occupations Code, is amended to read as follows:

(2) "Targeted continuing nursing education" means continuing education focusing on a skill that would likely benefit a significant proportion of [~~registered~~] nurses in a particular practice area.

SECTION 2. Sections 301.160(b) and (j) are amended to read as follows:

(b) The board may develop pilot programs to evaluate the effectiveness of mechanisms, including proactive nursing peer review and targeted continuing nursing education, for maintenance of the clinical competency of a [~~registered~~] nurse in the nurse's area of practice and the understanding by [~~registered~~] nurses of the laws, including regulations, governing the practice of [~~professional~~] nursing.

(j) The board shall issue an annual report regarding any pilot programs developed or approved and a status report on those programs, including preliminary or final findings concerning their effectiveness. The board shall mail the report to statewide associations of [~~registered~~] nurses and [~~registered nurse~~] educators[~~7~~] and employers of [~~registered~~] nurses that request a

1 copy. ~~[The board shall issue a final report not later than~~
2 ~~September 1, 2000.]~~

3 SECTION 3. Sections 301.1605(a) and (c), Occupations Code,
4 are amended to read as follows:

5 (a) The board may approve and adopt rules regarding pilot
6 programs for innovative applications in the practice and regulation
7 of ~~[professional]~~ nursing.

8 (c) In approving a pilot program, the board may grant the
9 program an exception to the mandatory reporting requirements of
10 Sections 301.401-301.409 or to a rule adopted under this chapter or
11 Chapter 303 that relates to the practice of ~~[professional]~~ nursing,
12 including education and reporting requirements for ~~[registered]~~
13 nurses. The board may not grant an exception to:

14 (1) the education requirements of this chapter unless
15 the program includes alternate but substantially equivalent
16 requirements; or

17 (2) the mandatory reporting requirements unless the
18 program:

19 (A) is designed to evaluate the efficiency of
20 alternative reporting methods; and

21 (B) provides consumers adequate protection from
22 ~~[registered]~~ nurses whose continued practice is a threat to public
23 safety.

24 SECTION 4. Sections 301.1606(a) and (b), Occupations Code,
25 are amended to read as follows:

26 (a) The ~~[Before January 1, 2004, the]~~ board may ~~[shall]~~
27 solicit proposals for pilot programs designed to evaluate the

1 efficacy and effect on protection of the public of reporting
2 systems designed to encourage identification of system errors.

3 (b) The board may grant a pilot program approved under this
4 section an exception to the mandatory reporting requirements of
5 Sections 301.401-301.409 or to a rule adopted under this chapter or
6 Chapter 303 that relates to the practice of [~~professional~~] nursing,
7 including education and reporting requirements for [~~registered~~]
8 nurses. If the board grants an exception, the board may require
9 that the program:

10 (1) provide for the remediation of the deficiencies of
11 a [~~registered~~] nurse who has knowledge or skill deficiencies that
12 unless corrected may result in an unreasonable risk to public
13 safety;

14 (2) provide for supervision of the nurse during
15 remediation of deficiencies under Subdivision (1);

16 (3) require reporting to the board of a [~~registered~~]
17 nurse:

18 (A) who fails to satisfactorily complete
19 remediation, or who does not make satisfactory progress in
20 remediation, under Subdivision (1);

21 (B) whose incompetence in the practice of
22 [~~professional~~] nursing would pose a continued risk of harm to the
23 public; or

24 (C) whose error contributed to a patient death or
25 serious patient injury; or

26 (4) provide for a nursing peer review committee to
27 review whether a [~~registered~~] nurse is appropriate for remediation

1 under Subdivision (1).

2 SECTION 5. Subchapter E, Chapter 301, Occupations Code, is
3 amended by adding Sections 301.206 and 301.207 to read as follows:

4 Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR
5 EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief
6 program" means a program operated or sponsored by the federal
7 government, the state, or a nonprofit organization to provide
8 nurses to assist in providing health care to victims or potential
9 victims of a disaster or state or local emergency.

10 (b) A nurse's personal contact information, including
11 e-mail addresses, telephone numbers, and fax numbers, collected by
12 the board for use by an emergency relief program is:

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

15 (2) not subject to disclosure, discovery, subpoena, or
16 other means of legal compulsion for release to anyone other than for
17 the purpose of contacting the nurse to assist in an emergency relief
18 program.

19 Sec. 301.207. CONFIDENTIALITY OF HEALTH INFORMATION
20 PROVIDED FOR LICENSURE. Information regarding a person's diagnosis
21 or treatment for a physical condition, mental condition, or
22 chemical dependency that the person submits to the board for a
23 petition for a declaratory order of eligibility for a license or for
24 an application for an initial license or a license renewal under
25 this chapter is confidential to the same extent information
26 collected on a nurse as part of an investigation of a complaint is
27 confidential under Section 301.466.

1 SECTION 6. Section 301.257(a), Occupations Code, is amended
2 to read as follows:

3 (a) A person may petition the board for a declaratory order
4 as to the person's eligibility for a license under this chapter if
5 the person has reason to believe that the person is ineligible for
6 the license and:

7 (1) is enrolled or planning to enroll in an
8 educational program that prepares a person for an initial license
9 as a registered nurse or vocational nurse; or ~~and~~

10 (2) is an applicant for a ~~[has reason to believe that~~
11 ~~the person is ineligible for the]~~ license.

12 SECTION 7. Section 301.401(2), Occupations Code, is amended
13 to read as follows:

14 (2) "Minor incident" means conduct by a nurse that
15 does not indicate that the nurse's continued practice poses a risk
16 of harm to a patient or another person. This term is synonymous
17 with "minor error" or "minor violation of this chapter or board
18 rule."

19 SECTION 8. Subchapter J, Chapter 301, Occupations Code, is
20 amended by adding Section 301.4521 to read as follows:

21 Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a)
22 In this section:

23 (1) "Applicant" means:

24 (A) a petitioner for a declaratory order of
25 eligibility for a license; or

26 (B) an applicant for an initial license or
27 renewal of a license.

1 (2) "Evaluation" means a physical or psychological
2 evaluation conducted to determine a person's fitness to practice
3 nursing.

4 (b) The board may require a nurse or applicant to submit to
5 an evaluation only if the board has probable cause to believe that
6 the nurse or applicant is unable to practice nursing with
7 reasonable skill and safety to patients because of:

8 (1) physical impairment;

9 (2) mental impairment; or

10 (3) chemical dependency or abuse of drugs or alcohol.

11 (c) A demand for an evaluation under Subsection (b) must be
12 in writing and state:

13 (1) the reasons probable cause exists to require the
14 evaluation; and

15 (2) that refusal by the nurse or applicant to submit to
16 the evaluation will result in an administrative hearing to be held
17 to make a final determination of whether probable cause for the
18 evaluation exists.

19 (d) If the nurse or applicant refuses to submit to the
20 evaluation, the board shall schedule a hearing on the issue of
21 probable cause to be conducted by the State Office of
22 Administrative Hearings. The nurse or applicant must be notified
23 of the hearing by personal service or certified mail. The hearing
24 is limited to the issue of whether the board had probable cause to
25 require an evaluation. The nurse or applicant may present testimony
26 and other evidence at the hearing to show why the nurse or applicant
27 should not be required to submit to the evaluation. The board has

1 the burden of proving that probable cause exists. At the conclusion
2 of the hearing, the hearing officer shall enter an order requiring
3 the nurse or applicant to submit to the evaluation or an order
4 rescinding the board's demand for an evaluation. The order may not
5 be vacated or modified under Section 2001.058, Government Code.

6 (e) If a nurse or applicant refuses to submit to an
7 evaluation after an order requiring the evaluation is entered under
8 Subsection (d), the board may:

9 (1) refuse to issue or renew a license;

10 (2) suspend a license; or

11 (3) issue an order limiting the license.

12 (f) The board may request a nurse or applicant to consent to
13 an evaluation by a practitioner approved by the board for a reason
14 other than a reason listed in Subsection (b). A request for an
15 evaluation under this subsection must be in writing and state:

16 (1) the reasons for the request;

17 (2) the type of evaluation requested;

18 (3) how the board may use the evaluation;

19 (4) that the nurse or applicant may refuse to submit to
20 an evaluation; and

21 (5) the procedures for submitting an evaluation as
22 evidence in any hearing regarding the issuance or renewal of the
23 nurse's or applicant's license.

24 (g) If a nurse or applicant refuses to consent to an
25 evaluation under Subsection (f), the nurse or applicant may not
26 introduce an evaluation into evidence at a hearing to determine the
27 nurse's or applicant's right to be issued or retain a nursing

1 license unless the nurse or applicant:

2 (1) not later than the 30th day before the date of the
3 hearing, notifies the board that an evaluation will be introduced
4 into evidence at the hearing;

5 (2) provides the board the results of that evaluation;

6 (3) informs the board of any other evaluations by any
7 other practitioners; and

8 (4) consents to an evaluation by a practitioner that
9 meets board standards established under Subsection (h).

10 (h) The board shall establish by rule the qualifications for
11 a licensed practitioner to conduct an evaluation under this
12 section. The board shall maintain a list of qualified
13 practitioners. The board may solicit qualified practitioners
14 located throughout the state to be on the list.

15 (i) A nurse or applicant shall pay the costs of an
16 evaluation conducted under this section.

17 (j) The results of an evaluation under this section are:

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

20 (2) not subject to disclosure by discovery, subpoena,
21 or other means of legal compulsion for release to anyone, except
22 that the results may be:

23 (A) introduced as evidence in a proceeding before
24 the board or a hearing conducted by the State Office of
25 Administrative Hearings under this chapter; or

26 (B) included in the findings of fact and
27 conclusions of law in a final board order.

1 (k) If the board determines there is insufficient evidence
2 to bring action against a person based on the results of any
3 evaluation under this section, the evaluation must be expunged from
4 the board's records.

5 (l) The board shall adopt guidelines for requiring or
6 requesting a nurse or applicant to submit to an evaluation under
7 this section.

8 (m) The authority granted to the board under this section is
9 in addition to the board's authority to make licensing decisions
10 under this chapter.

11 SECTION 9. Sections 301.453(a) and (b), Occupations Code,
12 are amended to read as follows:

13 (a) If the board determines that a person has committed an
14 act listed in Section 301.452(b), the board shall enter an order
15 imposing one or more of the following:

16 (1) denial of the person's application for a license,
17 license renewal, or temporary permit;

18 (2) issuance of a written warning;

19 (3) administration of a public reprimand;

20 (4) limitation or restriction of the person's license,
21 including:

22 (A) limiting to or excluding from the person's
23 practice one or more specified activities of nursing; or

24 (B) stipulating periodic board review;

25 (5) suspension of the person's license [~~for a period~~
26 ~~not to exceed five years~~];

27 (6) revocation of the person's license; or

1 (7) assessment of a fine.

2 (b) In addition to or instead of an action under Subsection
3 (a), the board, by order, may require the person to:

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

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

10 (3) practice for a specified period under the
11 direction of a registered nurse or vocational nurse designated by
12 the board; or

13 (4) perform public service the board considers
14 appropriate.

15 SECTION 10. Section 301.4535, Occupations Code, is amended
16 by adding Subsection (a-1) and amending Subsection (b) to read as
17 follows:

18 (a-1) An applicant or nurse who is refused an initial
19 license or renewal of a license or whose license is suspended under
20 Subsection (a) is not eligible for a probationary, stipulated, or
21 otherwise encumbered license unless the board establishes by rule
22 criteria that would permit the issuance or renewal of the license.

23 (b) On final conviction or a plea of guilty or nolo
24 contendere for an offense listed in Subsection (a), the board, as
25 appropriate, may not issue a license to an applicant, shall refuse
26 to renew a license, or shall revoke a license [~~if the applicant or~~
27 ~~license holder did not previously disclose the conviction or plea~~

1 ~~and the fifth anniversary of the date the person successfully~~
2 ~~completed community supervision or parole has not occurred].~~

3 SECTION 11. Subchapter J, Chapter 301, Occupations Code, is
4 amended by adding Section 301.4551 to read as follows:

5 Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR
6 ALCOHOL USE. The board shall temporarily suspend the license of a
7 nurse as provided by Section 301.455 if the nurse is under a board
8 order prohibiting the use of alcohol or a drug or requiring the
9 nurse to participate in a peer assistance program, and the nurse:

- 10 (1) tests positive for alcohol or a prohibited drug;
11 (2) refuses to comply with a board order to submit to a
12 drug or alcohol test; or
13 (3) fails to participate in the peer assistance
14 program and the program issues a letter of dismissal and referral to
15 the board for noncompliance.

16 SECTION 12. Section 301.468, Occupations Code, is amended
17 by amending Subsection (a) and adding Subsections (e) and (f) to
18 read as follows:

19 (a) The board may determine that an order denying a license
20 application or suspending a license be probated. A person subject
21 to a probation order shall conform to each condition the board sets
22 as the terms of probation, including a condition:

23 (1) limiting the practice of the person to, or
24 excluding, one or more specified activities of professional nursing
25 or vocational nursing; ~~or~~

26 (2) requiring the person to submit to supervision,
27 care, counseling, or treatment by a practitioner designated by the

1 board; or

2 (3) requiring the person to submit to random drug or
3 alcohol tests in the manner prescribed by the board.

4 (e) A hearing under this section is limited to a
5 determination of whether the person violated the terms of the
6 probation order under Subsection (a) and whether the board should:

7 (1) continue, rescind, or modify the terms of
8 probation, including imposing an administrative penalty; or

9 (2) enter an order denying, suspending, or revoking
10 the person's license.

11 (f) If one of the conditions of probation is the
12 prohibition of using alcohol or a drug or participation in a peer
13 assistance program, violation of that condition is established by:

14 (1) a positive drug or alcohol test result;

15 (2) refusal to submit to a drug or alcohol test as
16 required by the board; or

17 (3) a letter of noncompliance from the peer assistance
18 program.

19 SECTION 13. Section 301.202(b), Occupations Code, is
20 repealed.

21 SECTION 14. (a) The change in law made by Section 301.4521,
22 Occupations Code, as added by this Act, applies only to an
23 application filed with the Texas Board of Nursing on or after the
24 effective date of this Act. An application filed before the
25 effective date of this Act is covered by the law in effect when the
26 application was filed, and the former law is continued in effect for
27 that purpose.

1 (b) The changes in law made by Section 301.4551, Occupations
2 Code, as added by this Act, and Section 301.468, Occupations Code,
3 as amended by this Act, apply only to a violation of an order issued
4 by the Texas Board of Nursing on or after the effective date of this
5 Act. A violation of an order issued by the Texas Board of Nursing
6 before the effective date of this Act is covered by the law in
7 effect when the order was issued, and the former law is continued in
8 effect for that purpose.

9 SECTION 15. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2009.