

1-1 By: Nelson S.B. No. 791
1-2 (In the Senate - Filed February 11, 2009; March 4, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 30, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 30, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 791 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the certified nurse aide registry and the regulation of
1-11 certified nurse aides by the Texas Board of Nursing.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 301.002, Occupations Code, is amended by
1-14 adding Subdivision (6) to read as follows:

1-15 (6) "Certified nurse aide" means a person who holds a
1-16 certificate of registration issued under this chapter as a
1-17 certified nurse aide.

1-18 SECTION 2. Section 301.151, Occupations Code, is amended to
1-19 read as follows:

1-20 Sec. 301.151. GENERAL RULEMAKING AUTHORITY. The board may
1-21 adopt and enforce rules consistent with this chapter and necessary
1-22 to:

1-23 (1) perform its duties and conduct proceedings before
1-24 the board;

1-25 (2) regulate the practice of professional nursing and
1-26 vocational nursing and the practice of certified nurse aides;

1-27 (3) establish standards of professional conduct for
1-28 license and certificate holders under this chapter; ~~and~~

1-29 (4) determine the scope of practice for certified
1-30 nurse aides; and

1-31 (5) determine whether an act constitutes the practice
1-32 of professional nursing or vocational nursing or the practice of
1-33 certified nurse aides.

1-34 SECTION 3. Section 301.157, Occupations Code, is amended by
1-35 adding Subsection (i) to read as follows:

1-36 (i) The board by rule shall:

1-37 (1) prescribe a program of study to qualify a person
1-38 for an initial certificate of registration as a certified nurse
1-39 aide; and

1-40 (2) approve training programs that meet the board's
1-41 requirements for the program of study.

1-42 SECTION 4. Subchapter D, Chapter 301, Occupations Code, is
1-43 amended by adding Section 301.1596 to read as follows:

1-44 Sec. 301.1596. CERTIFIED NURSE AIDE ADVISORY COMMITTEE.

1-45 (a) The board shall establish a certified nurse aide advisory
1-46 committee to advise the board on the regulation of certified nurse
1-47 aides.

1-48 (b) The advisory committee consists of at least 14 members
1-49 appointed by the executive director as follows:

1-50 (1) two nursing home representatives;

1-51 (2) two representatives from community colleges with
1-52 certified nurse aide training programs in this state;

1-53 (3) one hospital representative;

1-54 (4) one home health industry representative;

1-55 (5) three certified nurse aides, two with not more
1-56 than five years' experience as certified nurse aides and one with at
1-57 least five years' experience as a certified nurse aide;

1-58 (6) two representatives of certified nurse aide
1-59 training programs that are not conducted by a facility described by
1-60 Section 250.001, Health and Safety Code, or a community college;

1-61 (7) one registered nurse with at least two years'
1-62 experience in training certified nurse aides;

1-63 (8) one licensed vocational nurse with at least two

2-1 years' experience in working directly with certified nurse aides;
2-2 and
2-3 (9) one representative from the Department of Aging
2-4 and Disability Services who is familiar with certified nurse aide
2-5 training and regulation.
2-6 (c) The nurse aide advisory committee shall study and
2-7 provide recommendations to the board in the manner required by the
2-8 executive director on:
2-9 (1) improving communication between nurses and
2-10 certified nurse aides;
2-11 (2) clarifying the scope of practice of certified
2-12 nurse aides;
2-13 (3) clarifying the professional relationship between
2-14 nurses and certified nurse aides;
2-15 (4) improving the practice of certified nurse aides;
2-16 (5) improving the training for certified nurse aides
2-17 to more adequately meet the state health care system's acute and
2-18 long-term care demands;
2-19 (6) establishing the program of study and classroom
2-20 hours required for successful completion of a certified nurse aide
2-21 training program;
2-22 (7) listing the subjects to be included in the
2-23 training program curriculum to ensure the curriculum's continued
2-24 relevancy in health care, including consideration of curriculum
2-25 related to:
2-26 (A) successful strategies for dealing with
2-27 patients with dementia or other difficult patients;
2-28 (B) time management;
2-29 (C) task prioritizing;
2-30 (D) interpersonal communication skills;
2-31 (E) cultural sensitivity;
2-32 (F) teamwork training;
2-33 (G) psychosocial skills; and
2-34 (H) the aging process; and
2-35 (8) establishing the examination requirements for
2-36 issuance of a certificate of registration as a certified nurse aide
2-37 and for inclusion on the nurse aide registry.
2-38 (d) A member of the advisory committee is entitled to
2-39 reimbursement for travel expenses incurred for service on the
2-40 advisory committee as provided by the General Appropriations Act.
2-41 A member may not receive any compensation for that service.
2-42 (e) The advisory committee shall meet regularly as
2-43 necessary at the call of the presiding officer of the advisory
2-44 committee or at the call of the executive director.
2-45 (f) The board shall provide administrative support for the
2-46 advisory committee.
2-47 (g) Chapter 2110, Government Code, does not apply to the
2-48 advisory committee established under this section.
2-49 SECTION 5. Subchapter D, Chapter 301, Occupations Code, is
2-50 amended by adding Section 301.168 to read as follows:
2-51 Sec. 301.168. INTERAGENCY CONTRACT. (a) The board shall
2-52 enter into an interagency contract with the Health and Human
2-53 Services Commission and the Department of Aging and Disability
2-54 Services under which the board shall administer and maintain the
2-55 nurse aide registry established under Chapter 250, Health and
2-56 Safety Code.
2-57 (b) The interagency contract must provide that:
2-58 (1) the Department of Aging and Disability Services
2-59 has oversight authority over the nurse aide registry established
2-60 under Chapter 250, Health and Safety Code;
2-61 (2) the Department of Aging and Disability Services is
2-62 the only state agency authorized to place findings of abuse,
2-63 neglect, or exploitation in the registry as prescribed by federal
2-64 law;
2-65 (3) the board shall administer and maintain the daily
2-66 operation of the registry and receive the necessary federal funding
2-67 from the Department of Aging and Disability Services to reimburse
2-68 the board for the duties performed by the board; and
2-69 (4) the Department of Aging and Disability Services is

3-1 responsible for reimbursement provided to nursing home providers
 3-2 for the cost of certified nurse aide training at the provider's
 3-3 facilities.

3-4 SECTION 6. Chapter 301, Occupations Code, is amended by
 3-5 adding Subchapter F-1 to read as follows:

3-6 SUBCHAPTER F-1. NURSE AIDES: REGISTRATION AND REGISTRATION
 3-7 RENEWAL REQUIREMENTS

3-8 Sec. 301.281. CERTIFICATE OF REGISTRATION REQUIRED. (a) A
 3-9 person may not engage in practice as a certified nurse aide or hold
 3-10 out to the public that the person is a certified nurse aide or is
 3-11 included on the nurse aide registry under Chapter 250, Health and
 3-12 Safety Code, unless the person holds a certificate of registration
 3-13 as a certified nurse aide under this chapter and is included on the
 3-14 nurse aide registry under Chapter 250, Health and Safety Code.

3-15 (b) The board, in consultation with the nurse aide advisory
 3-16 committee established under Section 301.1596, by rule shall:

3-17 (1) define the scope of practice of a certified nurse
 3-18 aide, including the general criteria for delegation and supervision
 3-19 of tasks performed by a certified nurse aide; and

3-20 (2) establish the qualifications for holding a
 3-21 certificate of registration as a certified nurse aide and for
 3-22 inclusion on the nurse aide registry.

3-23 (c) The qualifications established by board rule must
 3-24 require a person applying to hold a certificate of registration as a
 3-25 certified nurse aide and to be included on the nurse aide registry
 3-26 to successfully complete:

3-27 (1) a board-approved training program that consists of
 3-28 not less than 90 hours and not more than 359 hours of course work as
 3-29 specified by board rule; and

3-30 (2) a competency examination on completion of the
 3-31 training program.

3-32 Sec. 301.282. APPLICATION. Each person applying for a
 3-33 certified nurse aide certificate of registration and for inclusion
 3-34 on the nurse aide registry must submit to the board a sworn
 3-35 application that demonstrates the applicant's qualifications under
 3-36 this chapter, accompanied by evidence that the applicant:

3-37 (1) has good professional character;

3-38 (2) has successfully completed a training program
 3-39 approved by the board; and

3-40 (3) has passed the examination approved by the board.

3-41 Sec. 301.283. ISSUANCE AND INCLUSION; FEE. (a) The board
 3-42 shall issue a certificate of registration as a certified nurse aide
 3-43 to each qualified person who applies to the board on the form
 3-44 prescribed by the board and include the person on the nurse aide
 3-45 registry.

3-46 (b) The board may charge a fee for the issuance of a copy of
 3-47 a certificate of registration.

3-48 Sec. 301.284. TERM. (a) A certificate of registration as
 3-49 a certified nurse aide issued under this subchapter is valid for two
 3-50 years. The board shall include the expiration date on each
 3-51 certificate of registration issued under this subchapter.

3-52 (b) Inclusion on the nurse aide registry is valid until
 3-53 expiration of the certificate of registration.

3-54 Sec. 301.285. RENEWAL. (a) A person may renew the
 3-55 person's certificate of registration as a certified nurse aide and
 3-56 renew inclusion on the nurse aide registry by:

3-57 (1) submitting a renewal application to the board on
 3-58 the form prescribed by the board before the registration expires;

3-59 (2) providing proof that the person has successfully
 3-60 completed during the preceding two years the continuing education
 3-61 hours required by Subsection (b); and

3-62 (3) complying with any other renewal requirements
 3-63 adopted by the board.

3-64 (b) A person who is registered as a certified nurse aide and
 3-65 who is included on the nurse aide registry shall annually in
 3-66 accordance with board rules complete at least 12 hours of
 3-67 continuing education.

3-68 (c) At least 30 days before the expiration of the person's
 3-69 certificate of registration, the board shall send written notice of

4-1 the impending certificate expiration to the person at the person's
 4-2 last known address according to the records of the board.

4-3 SECTION 7. Subsection (b), Section 301.407, Occupations
 4-4 Code, is amended to read as follows:

4-5 (b) Unless expressly prohibited by state or federal law, a
 4-6 state agency that has reason to believe that a nurse or nurse aide
 4-7 has engaged in conduct subject to reporting shall report the nurse
 4-8 or nurse aide in writing to the board or to a nursing peer review
 4-9 committee under Chapter 303.

4-10 SECTION 8. Section 301.451, Occupations Code, is amended to
 4-11 read as follows:

4-12 Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may
 4-13 not:

4-14 (1) sell, fraudulently obtain, or fraudulently
 4-15 furnish a nursing diploma, license, certificate, renewal license or
 4-16 certificate, or record;

4-17 (2) assist another person in selling, fraudulently
 4-18 obtaining, or fraudulently furnishing a nursing diploma, license,
 4-19 certificate, renewal license or certificate, or record;

4-20 (3) practice nursing or practice as a nurse aide under
 4-21 a diploma, license, certificate, or record that was:

4-22 (A) obtained unlawfully or fraudulently; or

4-23 (B) signed or issued unlawfully or under false
 4-24 representation; or

4-25 (4) practice nursing or practice as a nurse aide in a
 4-26 period in which the person's license or certificate is suspended or
 4-27 revoked.

4-28 SECTION 9. Subsection (b), Section 301.452, Occupations
 4-29 Code, is amended to read as follows:

4-30 (b) A person is subject to denial of a license or
 4-31 certificate or to disciplinary action under this subchapter for:

4-32 (1) a violation of this chapter, a rule or regulation
 4-33 not inconsistent with this chapter, or an order issued under this
 4-34 chapter;

4-35 (2) fraud or deceit in procuring or attempting to
 4-36 procure a license to practice professional nursing or vocational
 4-37 nursing or a nurse aide certificate;

4-38 (3) a conviction for, or placement on deferred
 4-39 adjudication community supervision or deferred disposition for, a
 4-40 felony or for a misdemeanor involving moral turpitude;

4-41 (4) conduct that results in the revocation of
 4-42 probation imposed because of conviction for a felony or for a
 4-43 misdemeanor involving moral turpitude;

4-44 (5) use of a nursing license, diploma, or permit, a
 4-45 nurse aide certificate, or the transcript of such a document, that
 4-46 has been fraudulently purchased, issued, counterfeited, or
 4-47 materially altered;

4-48 (6) impersonating or acting as a proxy for another
 4-49 person in the licensing examination required under Section 301.253
 4-50 or 301.255;

4-51 (7) directly or indirectly aiding or abetting an
 4-52 unlicensed or uncertified person in connection with the
 4-53 unauthorized practice of nursing or unauthorized practice as a
 4-54 nurse aide;

4-55 (8) revocation, suspension, or denial of, or any other
 4-56 action relating to, the person's license, certificate, or privilege
 4-57 to practice nursing or to practice as a nurse aide in another
 4-58 jurisdiction;

4-59 (9) intemperate use of alcohol or drugs that the board
 4-60 determines endangers or could endanger a patient;

4-61 (10) unprofessional or dishonorable conduct that, in
 4-62 the board's opinion, is likely to deceive, defraud, or injure a
 4-63 patient or the public;

4-64 (11) adjudication of mental incompetency;

4-65 (12) lack of fitness to practice because of a mental or
 4-66 physical health condition that could result in injury to a patient
 4-67 or the public; or

4-68 (13) failure to care adequately for a patient or to
 4-69 conform to the minimum standards of acceptable nursing practice in

5-1 a manner that, in the board's opinion, exposes a patient or other
 5-2 person unnecessarily to risk of harm.

5-3 SECTION 10. Section 301.453, Occupations Code, is amended
 5-4 to read as follows:

5-5 Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF
 5-6 DISCIPLINE. (a) If the board determines that a person has
 5-7 committed an act listed in Section 301.452(b), the board shall
 5-8 enter an order imposing one or more of the following:

5-9 (1) denial of the person's application for a license or
 5-10 certificate, license or certificate renewal, or temporary permit;

5-11 (2) issuance of a written warning;

5-12 (3) administration of a public reprimand;

5-13 (4) limitation or restriction of the person's license
 5-14 or certificate, including:

5-15 (A) limiting to or excluding from the person's
 5-16 practice one or more specified activities of nursing or as a nurse
 5-17 aide; or

5-18 (B) stipulating periodic board review;

5-19 (5) suspension of the person's license or certificate
 5-20 for a period not to exceed five years;

5-21 (6) revocation of the person's license or certificate;
 5-22 or

5-23 (7) assessment of a fine.

5-24 (b) In addition to or instead of an action under Subsection
 5-25 (a), the board, by order, may require the person to:

5-26 (1) submit to care, counseling, or treatment by a
 5-27 health provider designated by the board as a condition for the
 5-28 issuance or renewal of a license or certificate;

5-29 (2) participate in a program of education or
 5-30 counseling prescribed by the board;

5-31 (3) practice for a specified period under the
 5-32 direction of a registered nurse or vocational nurse designated by
 5-33 the board; or

5-34 (4) perform public service the board considers
 5-35 appropriate.

5-36 (c) The board may probate any penalty imposed on a nurse or
 5-37 nurse aide and may accept the voluntary surrender of a license or
 5-38 certificate. The board may not reinstate a surrendered license or
 5-39 certificate unless it determines that the person is competent to
 5-40 resume practice.

5-41 (d) If the board suspends, revokes, or accepts surrender of
 5-42 a license or certificate, the board may impose conditions for
 5-43 reinstatement that the person must satisfy before the board may
 5-44 issue an unrestricted license or certificate.

5-45 SECTION 11. Subsection (c), Section 301.4531, Occupations
 5-46 Code, is amended to read as follows:

5-47 (c) In the case of a person described by:

5-48 (1) Subsection (b)(1)(A), the board shall consider
 5-49 taking a more severe disciplinary action, including revocation of
 5-50 the person's license or certificate, than the disciplinary action
 5-51 that would be taken for a single violation; and

5-52 (2) Subsection (b)(1)(B), the board shall consider
 5-53 taking a more severe disciplinary action, including revocation of
 5-54 the person's license or certificate, than the disciplinary action
 5-55 that would be taken for a person who has not previously been the
 5-56 subject of disciplinary action by the board.

5-57 SECTION 12. Section 301.4535, Occupations Code, is amended
 5-58 to read as follows:

5-59 Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL
 5-60 OF LICENSE OR CERTIFICATE FOR CERTAIN OFFENSES. (a) The board
 5-61 shall suspend a nurse's license or a nurse aide's certificate or
 5-62 refuse to issue a license or certificate to an applicant on proof
 5-63 that the nurse, nurse aide, or applicant has been initially
 5-64 convicted of:

5-65 (1) murder under Section 19.02, Penal Code, capital
 5-66 murder under Section 19.03, Penal Code, or manslaughter under
 5-67 Section 19.04, Penal Code;

5-68 (2) kidnapping or unlawful restraint under Chapter 20,
 5-69 Penal Code, and the offense was punished as a felony or state jail

6-1 felony;

6-2 (3) sexual assault under Section 22.011, Penal Code;

6-3 (4) aggravated sexual assault under Section 22.021,

6-4 Penal Code;

6-5 (5) continuous sexual abuse of young child or children

6-6 under Section 21.02, Penal Code, or indecency with a child under

6-7 Section 21.11, Penal Code;

6-8 (6) aggravated assault under Section 22.02, Penal

6-9 Code;

6-10 (7) intentionally, knowingly, or recklessly injuring

6-11 a child, elderly individual, or disabled individual under Section

6-12 22.04, Penal Code;

6-13 (8) intentionally, knowingly, or recklessly

6-14 abandoning or endangering a child under Section 22.041, Penal Code;

6-15 (9) aiding suicide under Section 22.08, Penal Code,

6-16 and the offense was punished as a state jail felony;

6-17 (10) an offense under Section 25.07, Penal Code,

6-18 punished as a felony;

6-19 (11) an offense under Section 25.071, Penal Code,

6-20 punished as a felony;

6-21 (12) an agreement to abduct a child from custody under

6-22 Section 25.031, Penal Code;

6-23 (13) the sale or purchase of a child under Section

6-24 25.08, Penal Code;

6-25 (14) robbery under Section 29.02, Penal Code;

6-26 (15) aggravated robbery under Section 29.03, Penal

6-27 Code;

6-28 (16) an offense for which a defendant is required to

6-29 register as a sex offender under Chapter 62, Code of Criminal

6-30 Procedure; or

6-31 (17) an offense under the law of another state,

6-32 federal law, or the Uniform Code of Military Justice that contains

6-33 elements that are substantially similar to the elements of an

6-34 offense listed in this subsection.

6-35 (b) On final conviction or a plea of guilty or nolo

6-36 contendere for an offense listed in Subsection (a), the board, as

6-37 appropriate, may not issue a license or certificate to an

6-38 applicant, shall refuse to renew a license or certificate, or shall

6-39 revoke a license or certificate if the applicant or license or

6-40 certificate holder did not previously disclose the conviction or

6-41 plea and the fifth anniversary of the date the person successfully

6-42 completed community supervision or parole has not occurred.

6-43 (c) A person is not eligible for an initial license or

6-44 certificate or for reinstatement or endorsement of a license to

6-45 practice nursing or a certificate as a nurse aide in this state

6-46 before the fifth anniversary of the date the person successfully

6-47 completed and was dismissed from community supervision or parole

6-48 for an offense described by Subsection (a).

6-49 SECTION 13. Subsections (a), (c), and (e), Section 301.454,

6-50 Occupations Code, are amended to read as follows:

6-51 (a) Except in the case of a temporary suspension authorized

6-52 under Section 301.455 or an action taken in accordance with an

6-53 agreement between the board and a license or certificate holder,

6-54 the board may not initiate a disciplinary action relating to a

6-55 license or certificate unless:

6-56 (1) the board has served notice to the license or

6-57 certificate holder of the facts or conduct alleged to warrant the

6-58 intended action; and

6-59 (2) the license or certificate holder has been given

6-60 an opportunity, in writing or through an informal meeting, to show

6-61 compliance with all requirements of law for the retention of the

6-62 license or certificate.

6-63 (c) A person is entitled to a hearing conducted by the State

6-64 Office of Administrative Hearings if the board proposes to:

6-65 (1) refuse to admit the person to examination;

6-66 (2) refuse to issue a license, certificate, or

6-67 temporary permit;

6-68 (3) refuse to renew a license or certificate; or

6-69 (4) suspend or revoke the person's license,

7-1 certificate, or permit.

7-2 (e) Notwithstanding Subsection (a), a person is not
7-3 entitled to a hearing on a refusal to renew a license or certificate
7-4 if the person:

7-5 (1) fails to submit a renewal application; or

7-6 (2) submits an application that:

7-7 (A) is incomplete;

7-8 (B) shows on its face that the person does not
7-9 meet the renewal requirements; or

7-10 (C) is not accompanied by the correct fee.

7-11 SECTION 14. The heading of Section 301.455, Occupations
7-12 Code, is amended to read as follows:

7-13 Sec. 301.455. TEMPORARY LICENSE OR CERTIFICATE SUSPENSION
7-14 OR RESTRICTION.

7-15 SECTION 15. Subsections (a) and (b), Section 301.455,
7-16 Occupations Code, are amended to read as follows:

7-17 (a) The license of a nurse or the certificate of a nurse aide
7-18 shall be temporarily suspended or restricted on a determination by
7-19 a majority of the board or a three-member committee of board members
7-20 designated by the board that, from the evidence or information
7-21 presented, the continued practice of the nurse or nurse aide would
7-22 constitute a continuing and imminent threat to the public welfare.

7-23 (b) A license or certificate may be temporarily suspended or
7-24 restricted under this section without notice or hearing on the
7-25 complaint if:

7-26 (1) institution of proceedings for a hearing before
7-27 the State Office of Administrative Hearings is initiated
7-28 simultaneously with the temporary suspension or determination to
7-29 restrict; and

7-30 (2) a hearing is held as soon as possible under this
7-31 chapter and Chapter 2001, Government Code.

7-32 SECTION 16. The heading of Section 301.457, Occupations
7-33 Code, is amended to read as follows:

7-34 Sec. 301.457. COMPLAINT AND INVESTIGATION RELATED TO
7-35 NURSES.

7-36 SECTION 17. Subchapter J, Chapter 301, Occupations Code, is
7-37 amended by adding Section 301.4571 to read as follows:

7-38 Sec. 301.4571. COMPLAINT AND INVESTIGATION RELATED TO NURSE
7-39 AIDES. (a) The board or any person may initiate a proceeding under
7-40 this subchapter by filing with the board a complaint against a nurse
7-41 aide. The complaint must be in writing and signed by the
7-42 complainant.

7-43 (b) Except as otherwise provided by this section, the board
7-44 or a person authorized by the board shall conduct each
7-45 investigation. Each complaint against a nurse aide that requires a
7-46 determination of competency shall be reviewed by a board member,
7-47 consultant, or employee with a nursing background the board
7-48 considers sufficient.

7-49 (c) On the filing of a complaint, the board:

7-50 (1) may conduct a preliminary investigation into the
7-51 identity of the nurse aide named or described in the complaint;

7-52 (2) shall make a timely and appropriate preliminary
7-53 investigation of the complaint; and

7-54 (3) may issue a warning or reprimand to the nurse aide.

7-55 (d) After any preliminary investigation to determine the
7-56 identity of the subject of the complaint, unless it would
7-57 jeopardize an investigation, the board shall notify the nurse aide
7-58 that a complaint has been filed and the nature of the complaint. If
7-59 the investigation reveals probable cause to take further
7-60 disciplinary action, the board shall either attempt an informal
7-61 disposition of the complaint or file a formal charge against the
7-62 nurse aide stating the provision of this chapter or board rule that
7-63 is alleged to have been violated and a brief description of each act
7-64 or omission that constitutes the violation.

7-65 (e) The board shall conduct an investigation of the
7-66 complaint to determine:

7-67 (1) whether the nurse aide's continued practice poses
7-68 a risk of harm to clients or other persons; and

7-69 (2) whether probable cause exists that a nurse aide

8-1 committed an act listed in Section 301.452(b) or that violates
 8-2 other law.

8-3 (f) In making a determination under Subsection (e), the
 8-4 board shall review the evidence to determine the extent to which a
 8-5 deficiency in care by the nurse aide was the result of deficiencies
 8-6 in the nurse aide's judgment, knowledge, training, or skill rather
 8-7 than other factors beyond the nurse aide's control. A
 8-8 determination that a deficiency in care is attributable to a nurse
 8-9 aide must be based on the extent to which the nurse aide's conduct
 8-10 was the result of a deficiency in the nurse aide's judgment,
 8-11 knowledge, training, or skill.

8-12 (g) If the board determines after investigating a complaint
 8-13 under Subsection (e) that there is reason to believe that a nurse
 8-14 aide's deficiency in care was the result of a factor beyond the
 8-15 nurse aide's control, the board shall report that determination to
 8-16 the patient safety committee at the facility where the nurse aide's
 8-17 deficiency in care occurred or, if the facility does not have a
 8-18 patient safety committee, to the chief nursing officer.

8-19 (h) The board and the Department of Aging and Disability
 8-20 Services shall share investigation information, including files,
 8-21 reports, witness lists, findings, and any other pertinent
 8-22 information related to the investigation of a nurse aide by the
 8-23 board or department.

8-24 SECTION 18. Subsections (a) and (c), Section 301.458,
 8-25 Occupations Code, are amended to read as follows:

8-26 (a) Unless there is an agreed disposition of the complaint
 8-27 under Section 301.463, and if probable cause is found under Section
 8-28 301.457(e)(2) or Section 301.4571(e)(2), the board or the board's
 8-29 authorized representative shall initiate proceedings by filing
 8-30 formal charges against the nurse or nurse aide.

8-31 (c) A copy of the formal charge shall be served on the nurse
 8-32 or nurse aide, or on the nurse's or nurse aide's counsel of record.

8-33 SECTION 19. Subsection (b), Section 301.459, Occupations
 8-34 Code, is amended to read as follows:

8-35 (b) In any hearing under this section, a nurse or nurse aide
 8-36 is entitled to appear in person or by counsel.

8-37 SECTION 20. Subsection (a), Section 301.460, Occupations
 8-38 Code, is amended to read as follows:

8-39 (a) Except for good cause shown for delay and subject to any
 8-40 other privilege or restriction set forth by statute, rule, or legal
 8-41 precedent, the board shall, not later than the 30th day after the
 8-42 date the board receives a written request from a license or
 8-43 certificate holder who is the subject of a formal charge filed under
 8-44 Section 301.458 or from the license or certificate holder's counsel
 8-45 of record, provide the license or certificate holder with access
 8-46 to:

8-47 (1) all known exculpatory information in the board's
 8-48 possession; and

8-49 (2) information in the board's possession that the
 8-50 board intends to offer into evidence in presenting its case in chief
 8-51 at the contested hearing on the complaint.

8-52 SECTION 21. Section 301.462, Occupations Code, is amended
 8-53 to read as follows:

8-54 Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE OR
 8-55 CERTIFICATE. (a) The board may revoke a nurse's license without
 8-56 formal charges, notice, or opportunity of hearing if the nurse
 8-57 voluntarily surrenders the nurse's license to the board and
 8-58 executes a sworn statement that the nurse does not desire to be
 8-59 licensed.

8-60 (b) The board may revoke a nurse aide's certificate without
 8-61 formal charges, notice, or opportunity of hearing if the nurse aide
 8-62 voluntarily surrenders the nurse aide's certificate to the board
 8-63 and executes a sworn statement that the nurse aide does not desire
 8-64 to be certified.

8-65 SECTION 22. Subsection (b), Section 301.464, Occupations
 8-66 Code, is amended to read as follows:

8-67 (b) Rules adopted under this section must:

8-68 (1) provide the complainant and the license or
 8-69 certificate holder an opportunity to be heard; and

9-1 (2) require the presence of a representative of the
 9-2 board's legal staff or of the attorney general to advise the board
 9-3 or the board's employees.

9-4 SECTION 23. Section 301.466, Occupations Code, is amended
 9-5 to read as follows:

9-6 Sec. 301.466. CONFIDENTIALITY. (a) A complaint and
 9-7 investigation concerning a nurse or nurse aide under this
 9-8 subchapter and all information and material compiled by the board
 9-9 in connection with the complaint and investigation are:

9-10 (1) confidential and not subject to disclosure under
 9-11 Chapter 552, Government Code; and

9-12 (2) not subject to disclosure, discovery, subpoena, or
 9-13 other means of legal compulsion for release to anyone other than the
 9-14 board or a board employee or agent involved in license or
 9-15 certificate holder discipline.

9-16 (b) Notwithstanding Subsection (a), information regarding a
 9-17 complaint and an investigation may be disclosed to:

9-18 (1) a person involved with the board in a disciplinary
 9-19 action against the nurse or nurse aide;

9-20 (2) a nursing licensing, certifying, or disciplinary
 9-21 board in another jurisdiction;

9-22 (3) a peer assistance program approved by the board
 9-23 under Chapter 467, Health and Safety Code;

9-24 (4) a law enforcement agency; or

9-25 (5) a person engaged in bona fide research, if all
 9-26 information identifying a specific individual has been deleted.

9-27 (c) The filing of formal charges against a nurse or nurse
 9-28 aide by the board, the nature of those charges, disciplinary
 9-29 proceedings of the board, and final disciplinary actions, including
 9-30 warnings and reprimands, by the board are not confidential and are
 9-31 subject to disclosure in accordance with Chapter 552, Government
 9-32 Code.

9-33 SECTION 24. Subsections (a) and (b), Section 301.467,
 9-34 Occupations Code, are amended to read as follows:

9-35 (a) On application, the board may reinstate:

9-36 (1) a license to practice professional nursing or
 9-37 vocational nursing to a person whose license has been revoked,
 9-38 suspended, or surrendered; or

9-39 (2) a certificate of a nurse aide to a person whose
 9-40 certificate has been revoked, suspended, or surrendered.

9-41 (b) An application to reinstate a revoked license or
 9-42 certificate:

9-43 (1) may not be made before the first anniversary of the
 9-44 date of the revocation; and

9-45 (2) must be made in the manner and form the board
 9-46 requires.

9-47 SECTION 25. Section 301.468, Occupations Code, is amended
 9-48 by amending Subsections (a) and (c) and adding Subsections (a-1)
 9-49 and (a-2) to read as follows:

9-50 (a) The board may determine that an order denying a license
 9-51 or certificate application or suspending a license or certificate
 9-52 be probated.

9-53 (a-1) A person subject to a probation order under Subsection
 9-54 (a) related to a license shall conform to each condition the board
 9-55 sets as the terms of probation, including a condition:

9-56 (1) limiting the practice of the person to, or
 9-57 excluding, one or more specified activities of professional nursing
 9-58 or vocational nursing; or

9-59 (2) requiring the person to submit to supervision,
 9-60 care, counseling, or treatment by a practitioner designated by the
 9-61 board.

9-62 (a-2) A person subject to a probation order under Subsection
 9-63 (a) related to a certificate shall conform to each condition the
 9-64 board sets as the terms of probation, including a condition:

9-65 (1) limiting the practice of the person to, or
 9-66 excluding, one or more specified activities performed by nurse
 9-67 aides; or

9-68 (2) requiring the person to submit to supervision,
 9-69 care, counseling, or treatment by a practitioner designated by the

10-1 board.

10-2 (c) At any time while the person remains subject to the
10-3 probation order, the board may hold a hearing and rescind the
10-4 probation and enforce the board's original action in denying or
10-5 suspending the license or certificate. The hearing shall be called
10-6 by the presiding officer of the board, who shall issue a notice to
10-7 be served on the person or the person's counsel not later than the
10-8 20th day before the date scheduled for the hearing that:

10-9 (1) sets the time and place for the hearing; and
10-10 (2) contains the charges or complaints against the
10-11 probationer.

10-12 SECTION 26. Section 301.469, Occupations Code, is amended
10-13 to read as follows:

10-14 Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a
10-15 final disciplinary action, including a warning or reprimand,
10-16 against a nurse or nurse aide under this subchapter, the board shall
10-17 immediately send a copy of the board's final order to the nurse or
10-18 nurse aide and to the last known employer of the nurse or nurse
10-19 aide.

10-20 SECTION 27. Section 301.470, Occupations Code, is amended
10-21 to read as follows:

10-22 Sec. 301.470. REFUND. (a) Subject to Subsection (b), the
10-23 board may order a license or certificate holder to pay a refund to a
10-24 consumer as provided in an agreement resulting from an informal
10-25 settlement conference instead of or in addition to imposing an
10-26 administrative penalty under this chapter.

10-27 (b) The amount of a refund ordered as provided in an
10-28 agreement resulting from an informal settlement conference may not
10-29 exceed the amount the consumer paid to a nurse or nurse aide for a
10-30 service regulated by this chapter or the actual amount stolen or
10-31 defrauded from a patient by the nurse or nurse aide. The board may
10-32 not require payment of other damages or estimate harm in a refund
10-33 order.

10-34 SECTION 28. Section 301.471, Occupations Code, is amended
10-35 by adding Subsection (a-1) and amending Subsection (b) to read as
10-36 follows:

10-37 (a-1) If it appears to the board that a person who is not
10-38 certified as a nurse aide under this chapter is violating this
10-39 chapter, a rule adopted under this chapter, or another state
10-40 statute or rule relating to the practice of a nurse aide and the
10-41 board determines that the unauthorized activity constitutes a
10-42 clear, imminent, or continuing threat to the public health and
10-43 safety, the board may:

10-44 (1) issue an emergency cease and desist order
10-45 prohibiting the person from engaging in the activity; and

10-46 (2) report the activity to a local law enforcement
10-47 agency or the attorney general for prosecution.

10-48 (b) An order issued under Subsection (a) or (a-1) must:

10-49 (1) be delivered on issuance to the person affected by
10-50 the order by personal delivery or registered or certified mail,
10-51 return receipt requested, to the person's last known address;

10-52 (2) state the acts or practices alleged to be an
10-53 unauthorized activity and require the person immediately to cease
10-54 and desist from the unauthorized activity; and

10-55 (3) contain a notice that a request for hearing may be
10-56 filed under this section.

10-57 SECTION 29. Section 301.552, Occupations Code, is amended
10-58 to read as follows:

10-59 Sec. 301.552. MONITORING OF LICENSE OR CERTIFICATE HOLDER.
10-60 The board by rule shall develop a system for monitoring the
10-61 compliance of license and certificate holders with the requirements
10-62 of this chapter. Rules adopted under this section must include
10-63 procedures to:

10-64 (1) monitor for compliance a license or certificate
10-65 holder who is ordered by the board to perform certain acts; and

10-66 (2) identify and monitor each license or certificate
10-67 holder who represents a risk to the public.

10-68 SECTION 30. Section 250.001, Health and Safety Code, is
10-69 amended by amending Subdivisions (1) and (3) and adding Subdivision

11-1 (6) to read as follows:

11-2 (1) "Nurse aide registry" means a list of certified
 11-3 nurse aides maintained and administered by the Texas Board of
 11-4 Nursing as provided by Chapter 301, Occupations Code, under the
 11-5 oversight of the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~
 11-6 Services and maintained in compliance with ~~[of nurse aides under]~~
 11-7 the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.
 11-8 100-203).

11-9 (3) "Facility" means:

11-10 (A) a nursing home, custodial care home, or other
 11-11 institution licensed by the department ~~[Texas Department of Human~~
 11-12 ~~Services]~~ under Chapter 242;

11-13 (B) an assisted living facility licensed by the
 11-14 department ~~[Texas Department of Human Services]~~ under Chapter 247;

11-15 (C) a home and community support services agency
 11-16 licensed under Chapter 142;

11-17 (D) an adult day care facility licensed by the
 11-18 department ~~[Texas Department of Human Services]~~ under Chapter 103,
 11-19 Human Resources Code;

11-20 (E) a facility for persons with mental
 11-21 retardation licensed under Chapter 252;

11-22 (F) an adult foster care provider that contracts
 11-23 with the department ~~[Texas Department of Human Services]~~;

11-24 (G) a facility that provides mental health
 11-25 services and that is operated by or contracts with the ~~[Texas]~~
 11-26 Department of State ~~[Mental]~~ Health Services ~~[and Mental~~
 11-27 ~~Retardation]~~;

11-28 (H) a local mental health or mental retardation
 11-29 authority designated under Section 533.035; or

11-30 (I) a person exempt from licensing under Section
 11-31 142.003(a)(19).

11-32 (6) "Department" means the Department of Aging and
 11-33 Disability Services.

11-34 SECTION 31. Chapter 250, Health and Safety Code, is amended
 11-35 by adding Section 250.0011 to read as follows:

11-36 Sec. 250.0011. NURSE AIDE REGISTRY. (a) The department
 11-37 shall establish a registry of certified nurse aides.

11-38 (b) The department shall oversee the nurse aide registry
 11-39 administered and maintained by the Texas Board of Nursing under
 11-40 Chapter 301, Occupations Code, and under the interagency contract
 11-41 between the department, the Health and Human Services Commission,
 11-42 and the board.

11-43 (c) The department shall place any finding of abuse,
 11-44 neglect, or exploitation by a certified nurse aide in the registry
 11-45 and in the employee misconduct registry maintained under Chapter
 11-46 253.

11-47 SECTION 32. (a) Not later than October 1, 2009, the
 11-48 executive director of the Texas Board of Nursing shall appoint the
 11-49 members to the nurse aide advisory committee established by Section
 11-50 301.1596, Occupations Code, as added by this Act.

11-51 (b) Not later than January 1, 2010, the Texas Board of
 11-52 Nursing, the Health and Human Services Commission, and the
 11-53 Department of Aging and Disability Services shall enter into an
 11-54 interagency contract as required by Section 301.168, Occupations
 11-55 Code, as added by this Act.

11-56 (c) Not later than May 1, 2010, the Texas Board of Nursing
 11-57 shall:

11-58 (1) establish the qualifications for issuance of a
 11-59 certificate of registration and renewal of a certificate of
 11-60 registration as a certified nurse aide; and

11-61 (2) adopt the rules necessary to implement the changes
 11-62 in law made by this Act.

11-63 SECTION 33. (a) A person listed as a certified nurse aide
 11-64 on the nurse aide registry under Chapter 250, Health and Safety
 11-65 Code, on the effective date of this Act is entitled to renew a
 11-66 certificate of registration as a certified nurse aide and renew
 11-67 inclusion on the nurse aide registry without fulfilling any
 11-68 additional educational training or examination requirements
 11-69 established by the Texas Board of Nursing under Chapter 301,

12-1 Occupations Code, as amended by this Act, if the person has the
12-2 other qualifications required by the board and Chapter 301,
12-3 Occupations Code, and if, before August 31, 2010, the person
12-4 submits a renewal application as required by Chapter 301.

12-5 (b) Chapter 301, Occupations Code, as amended by this Act,
12-6 applies only to the issuance of a certificate of registration or
12-7 renewal of a certificate of registration as a certified nurse aide
12-8 and the inclusion or renewal of inclusion on the nurse aide registry
12-9 under Chapter 250, Health and Safety Code, as amended by this Act,
12-10 on or after September 1, 2010.

12-11 (c) Except as provided by Subsection (d) of this section, an
12-12 application for issuance of a certificate of registration or
12-13 renewal of a certificate of registration as a certified nurse aide
12-14 under Chapter 301, Occupations Code, as amended by this Act, and the
12-15 inclusion or renewal of inclusion on the nurse aide registry under
12-16 Chapter 250, Health and Safety Code, as amended by this Act, before
12-17 the effective date of this Act is covered by the law in effect
12-18 immediately before that date, and that law is continued in effect
12-19 for that purpose.

12-20 (d) The Department of Aging and Disability Services shall
12-21 include the expiration date, as required by Chapter 301,
12-22 Occupations Code, as amended by this Act, on each certified nurse
12-23 aide certificate of registration issued or renewed by the
12-24 department on or after the effective date of this Act. A certified
12-25 nurse aide certificate of registration issued by the Department of
12-26 Aging and Disability Services before the effective date of this Act
12-27 expires on the earlier of the second anniversary of the date of
12-28 issuance of the certificate or August 31, 2011.

12-29 SECTION 34. This Act takes effect September 1, 2009.

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