

By: Nelson

S.B. No. 1058

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of the practice of nursing.

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

4 SECTION 1. Subsection (a), Section 301.004, Occupations
5 Code, is amended to read as follows:

6 (a) This chapter does not apply to:

7 (1) gratuitous nursing care of the sick that is
8 provided by a friend;

9 (2) nursing care provided during a disaster under the
10 state emergency management plan adopted under Section 418.042,
11 Government Code, if the person providing the care does not hold the
12 person out as a nurse unless the person is licensed in another
13 state;

14 (3) nursing care in which treatment is solely by
15 prayer or spiritual means;

16 (4) an act performed by a person under the delegated
17 authority of a person licensed by the Texas Medical Board;

18 (5) an act performed by a person licensed by another
19 state agency if the act is authorized by the statute under which the
20 person is licensed except that if the person also holds a license
21 under this chapter and the act is within the practice of nursing,
22 the board may take action against that license based on that act;

23 (6) the practice of nursing that is incidental to a
24 program of study by a student enrolled in a nursing education

1 program approved under Section 301.157(d) leading to an initial
2 license as a nurse; or

3 (7) the practice of nursing by a person licensed in
4 another state who is in this state on a nonroutine basis for a
5 period not to exceed 72 hours to:

6 (A) provide care to a patient being transported
7 into, out of, or through this state;

8 (B) provide nursing consulting services; or

9 (C) attend or present a continuing nursing
10 education program.

11 SECTION 2. Subsection (c), Section 301.2511, Occupations
12 Code, is amended to read as follows:

13 (c) The board by rule shall ~~[may]~~ develop a system for
14 ~~[initiating the process of]~~ obtaining criminal history record
15 information for a person accepted for enrollment in a nursing
16 ~~[applicants for a license under this chapter by requiring persons~~
17 ~~who enroll or plan to enroll in an]~~ educational program that
18 prepares the ~~[a]~~ person for initial licensure ~~[a license]~~ as a
19 registered or vocational nurse by requiring the person to submit to
20 the board a set of fingerprints that meets the requirements of
21 Subsection (a). The board may develop a similar system for an
22 applicant for enrollment in a nursing educational program. The
23 board may require payment of a fee by a person who is required to
24 submit a set of fingerprints under this subsection.

25 SECTION 3. Section 301.257, Occupations Code, is amended by
26 adding Subsections (j) and (k) to read as follows:

27 (j) The board may file a petition under this section based

1 on the results of a criminal history record information check
2 conducted under Section 301.2511. The board by rule shall adopt
3 requirements for the petition and determination under this
4 subsection. The rules must:

5 (1) identify the criminal offenses that constitute
6 grounds for the board to file the petition; and

7 (2) describe the documents required by the board to
8 make a determination of license eligibility.

9 (k) The board shall make a determination of license
10 eligibility under Subsection (j) not later than the 120th day after
11 the date the person submits the required documents to the board
12 under that subsection.

13 SECTION 4. Subsection (b), Section 301.452, Occupations
14 Code, is amended to read as follows:

15 (b) A person is subject to denial of a license or to
16 disciplinary action under this subchapter for:

17 (1) a violation of this chapter, a rule or regulation
18 not inconsistent with this chapter, or an order issued under this
19 chapter;

20 (2) fraud or deceit in procuring or attempting to
21 procure a license to practice professional nursing or vocational
22 nursing;

23 (3) a conviction for, or placement on deferred
24 adjudication community supervision or deferred disposition for, a
25 felony or for a misdemeanor involving moral turpitude;

26 (4) conduct that results in the revocation of
27 probation imposed because of conviction for a felony or for a

1 misdemeanor involving moral turpitude;

2 (5) use of a nursing license, diploma, or permit, or
3 the transcript of such a document, that has been fraudulently
4 purchased, issued, counterfeited, or materially altered;

5 (6) impersonating or acting as a proxy for another
6 person in the licensing examination required under Section 301.253
7 or 301.255;

8 (7) directly or indirectly aiding or abetting an
9 unlicensed person in connection with the unauthorized practice of
10 nursing;

11 (8) revocation, suspension, or denial of, or any other
12 action relating to, the person's license or privilege to practice
13 nursing in another jurisdiction or under federal law;

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

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

19 (11) adjudication of mental incompetency;

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

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

27 SECTION 5. Subsection (b), Section 301.453, Occupations

1 Code, is amended to read as follows:

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; or

15 (5) abstain from the consumption of alcohol or the use
16 of drugs and submit to random periodic screening for alcohol or drug
17 use.

18 SECTION 6. Subsection (a), Section 301.454, Occupations
19 Code, is amended to read as follows:

20 (a) Except in the case of a temporary suspension authorized
21 under Section 301.455 or 301.4551 or an action taken in accordance
22 with an agreement between the board and a license holder, the board
23 may not take any ~~[initiate a]~~ disciplinary action relating to a
24 license unless:

25 (1) the board has served notice to the license holder
26 of the facts or conduct alleged to warrant the intended action; and

27 (2) the license holder has been given an opportunity,

1 in writing or through an informal meeting, to show compliance with
2 all requirements of law for the retention of the license.

3 SECTION 7. Subsection (a), Section 301.458, Occupations
4 Code, is amended to read as follows:

5 (a) Unless there is an agreed disposition of the complaint
6 under Section 301.463, ~~[and]~~ if probable cause is found under
7 Section 301.457(e)(2), the board or the board's authorized
8 representative shall file ~~[initiate proceedings by filing]~~ formal
9 charges against the nurse.

10 SECTION 8. Subsection (a), Section 301.465, Occupations
11 Code, is amended to read as follows:

12 (a) Notwithstanding Section 2001.089, Government Code, the
13 ~~[The]~~ board may request issuance of a subpoena to be served by ~~[in~~
14 ~~any manner authorized by law, including]~~ personal service by a
15 board investigator or ~~[and service]~~ by certified mail.

16 SECTION 9. Section 301.466, Occupations Code, is amended
17 by amending Subsection (a) and adding Subsection (d) to read as
18 follows:

19 (a) A complaint and investigation concerning a nurse under
20 this subchapter, ~~[and]~~ all information and material compiled by the
21 board in connection with the complaint and investigation, and the
22 information described by Subsection (d) are:

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

25 (2) not subject to disclosure, discovery, subpoena, or
26 other means of legal compulsion for release to anyone other than the
27 board or a board employee or agent involved in license holder

1 discipline.

2 (d) Notwithstanding Subsection (c), if the board orders a
3 nurse to participate in a peer assistance program approved by the
4 board under Section 467.003, Health and Safety Code, the complaint,
5 filing of formal charges, nature of those charges, final board
6 order, and disciplinary proceedings are subject to disclosure:

7 (1) only to the same extent as information regarding a
8 complaint is subject to disclosure under Subsection (b); or

9 (2) in a subsequent matter relating to the board order
10 or a subsequent violation of this chapter or a board rule.

11 SECTION 10. The heading to Subchapter N, Chapter 301,
12 Occupations Code, is amended to read as follows:

13 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

14 SECTION 11. Section 301.651, Occupations Code, is amended
15 to read as follows:

16 Sec. 301.651. DEFINITIONS [~~DEFINITION~~]. In this
17 subchapter:

18 (1) "Corrective [~~, "corrective]~~ action" means a fine or
19 remedial education imposed under Section 301.652.

20 (2) "Deferred action" means an action against a person
21 licensed or regulated under this chapter that is deferred by the
22 board as provided by this subchapter.

23 SECTION 12. Subsection (b), Section 301.655, Occupations
24 Code, is amended to read as follows:

25 (b) If the person does not accept the executive director's
26 determination and recommended corrective action as originally
27 proposed or as modified by the board or fails to respond in a timely

1 manner to the executive director's notice as provided by Section
2 301.654, the executive director shall:

3 (1) terminate corrective action proceedings [~~under~~
4 ~~this subchapter~~]; and

5 (2) dispose of the matter as a complaint under
6 Subchapter J.

7 SECTION 13. Subchapter N, Chapter 301, Occupations Code, is
8 amended by adding Section 301.6555 to read as follows:

9 Sec. 301.6555. DEFERRED ACTION. (a) For any action or
10 complaint for which the board proposes to impose on a person a
11 sanction other than a reprimand or a denial, suspension, or
12 revocation of a license, the board may:

13 (1) defer the final action the board has proposed if
14 the person conforms to conditions imposed by the board, including
15 any condition the board could impose as a condition of probation
16 under Section 301.468; and

17 (2) if the person successfully meets the imposed
18 conditions, dismiss the complaint.

19 (b) Except as provided by this subsection, a deferred action
20 by the board is not confidential and is subject to disclosure in
21 accordance with Chapter 552, Government Code. If the person
22 successfully meets the conditions imposed by the board in deferring
23 final action and the board dismisses the action or complaint, the
24 deferred action of the board is confidential to the same extent as a
25 complaint is confidential under Section 301.466.

26 SECTION 14. Section 301.656, Occupations Code, is amended
27 to read as follows:

1 Sec. 301.656. REPORT TO BOARD. The executive director
2 shall report periodically to the board on the corrective or
3 deferred actions imposed under this subchapter, including:

- 4 (1) the number of [~~corrective~~] actions imposed; and
5 (2) the types of violations for which [~~corrective~~]
6 actions were imposed [~~, and~~
7 [~~(3) whether affected nurses accepted the corrective~~
8 ~~actions~~].

9 SECTION 15. Section 301.657, Occupations Code, is amended
10 to read as follows:

11 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR
12 DEFERRED ACTION. (a) Except to the extent provided by this
13 section, a person's acceptance of a corrective or deferred action
14 under this subchapter does not constitute an admission of a
15 violation but does constitute a plea of nolo contendere.

16 (b) The board may treat a person's acceptance of corrective
17 or deferred action as an admission of a violation if the board
18 imposes a sanction on the person for a subsequent violation of this
19 chapter or a rule or order adopted under this chapter.

20 (c) The board may consider a corrective or deferred action
21 taken against a person to be a prior disciplinary action under this
22 chapter when imposing a sanction on the person for a subsequent
23 violation of this chapter or a rule or order adopted under this
24 chapter.

25 SECTION 16. Section 301.1607, Occupations Code, is
26 repealed.

27 SECTION 17. (a) Except as provided by Subsection (b) of

1 this section, the changes in law made by this Act to Chapter 301,
2 Occupations Code, apply only to a violation that occurs on or after
3 the effective date of this Act. A violation that occurs before that
4 date is governed by the law in effect on the date the violation
5 occurred, and the former law is continued in effect for that
6 purpose.

7 (b) The changes in law made by this Act to Subchapter N,
8 Chapter 301, Occupations Code, shall apply to a violation that
9 occurs before the effective date of this Act if the complaint
10 relating to that violation remains pending on that date.

11 SECTION 18. This Act takes effect September 1, 2013.