

Consideration of Proposed Amendments to the Board's adopted Disciplinary Sanctions for Lying and Falsification

Background: The Eligibility & Disciplinary Advisory Committee (Committee) is one of the Board's standing advisory committees and was created to advise the Board on regulatory matters, either as specifically charged by the Board or on a continuous basis¹. Attachment "A" contains a rewrite of the Board's current disciplinary policy regarding Lying and Falsification, as recommended by the Committee after review and discussion at meetings in August 2014 and January, May, and June 2015².

The proposed new policy:

- is re-organized for clarity;
- amends the term "the mentally ill" to "persons with mental disorders" throughout the policy; and
- includes additional information regarding disciplinary action, consistent with the Board's rules, including the Board's Disciplinary Matrix.

Staff recommends adopting the amended disciplinary policy regarding *Behavior Involving Lying and Falsification*, as set out in Attachment "A".

Board Action: Move to approve the amended disciplinary policy regarding *Behavior Involving Lying and Falsification*, as set out in Attachment "A".

¹ See 22 Tex. Admin. Code §211.6.

² The Board issued a charge to the Committee at its April 2012 meeting to review its Criminal Guidelines and Sanction policies.

Behavior Involving Lying and Falsification

Purpose

The Texas Board of Nursing (Board) is committed to its mission to protect the public health, safety, and welfare. In keeping with this mission, the Board is concerned about the deceptive or dishonest conduct of an individual as it relates to the provision of health care. Such conduct includes falsifying documents related to patient care, employment, and licensure.

This policy is intended to explain the Board's position regarding deceptive and dishonest behaviors and inform licensees, petitioners, applicants and the public about the Board's process for reviewing such conduct.

Effect on Practice

Nurses, by virtue of the license issued to them by the Board, have a duty to their patients to provide safe, effective nursing care and to demonstrate good professional character at all times. The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is especially true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized.

Nurses are frequently in situations where they must report patient conditions, their interventions, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct. Patients have the right to expect nurses to conduct themselves with professionalism and in an honest manner. Honesty, accuracy, and integrity are imperative for the provision of safe and effective nursing care.

Nurses are expected to exhibit honesty, accuracy, and integrity in the provision of nursing care, including: performing nursing assessments; applying the nursing process; reporting changes in patients' condition; acknowledging errors in practice and reporting them promptly; accurately charting and reporting, whether verbal or written; implementing care as ordered; complying with all laws and rules affecting the practice of nursing; and complying with the minimum standards of nursing.

Falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception or omission raise serious concerns about an individual's ability to provide safe nursing care and prevents subsequent caregivers from having a complete and accurate picture of the patient's care and condition. When a nurse has exhibited dishonest or fraudulent behavior, the Board is mindful that similar misconduct may be repeated, thereby jeopardizing the effectiveness of patient care in the future.

Employers, Nursing Education Programs, and Nursing Training Programs

Generally, the falsification of an application to an employer, school of nursing, or other nursing training program is the responsibility of the employer, school, or training program to resolve, unless the falsification involves misrepresentation of the individual's credentials, competencies, or work experience. The misrepresentation of an individual's credentials to an employer will be investigated and viewed by the Board in the same way that lying or falsification within nursing practice is viewed. Further, a student nurse who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that the individual may continue similar dishonest acts after licensure. If the Board is made aware of such acts committed as a student, the Board will initiate an investigation of the individual's conduct once the student submits an application for licensure to the Board. Depending on the particular circumstances, disciplinary action may be warranted.

Licensure Forms

Each licensure form or document, whether an initial application for licensure, an application by endorsement, or a renewal application, contains questions that require a "yes" or "no" answer. These forms contain several questions that may affect the ability of an individual to function safely as a nurse. In addition, these forms require individuals to provide information to determine if the individual meets the practice requirements for nursing licensure. Answers to these questions are used by the Board to determine the individual's fitness for licensure.

The Board recognizes that, sometimes, an individual may mark a "yes" or "no" answer in error or misunderstand the question being asked. The Board believes, however, that intentionally supplying false information is a serious matter, not only because of the lying or falsification itself, but because the false answers may allow an otherwise disqualified individual to obtain or retain licensure. Falsification raises concerns about the individual's propensity to lie and the likelihood that such conduct may continue in the practice of nursing. Depending on the particular circumstances, disciplinary action may be warranted.

Criminal Behavior

Crimes which involve fraudulent, dishonest, and deceitful behavior are concerning to the Board, as they may indicate a lack of good professional character. The Board may rely solely on the disposition of a crime, with or without an adjudication of guilt, to initiate disciplinary action against a nurse's license, which may include licensure denial, suspension, revocation, or other limitation.

Nurse Imposter

The Board has no jurisdiction over a person who holds him or herself out to be a nurse, but does not actually hold a license or privilege to practice nursing in the State of Texas. If alerted to such conduct, the Board may issue a cease and desist order prohibiting the individual from engaging in any nursing activities and may report the conduct to a local law

enforcement agency or the attorney general for prosecution.

The Board does have jurisdiction, however, over an individual who holds a nursing license or privilege to practice nursing in Texas (or has held one in the past) and represents him/herself as licensed for a broader scope of practice than authorized by the individual's actual nursing license, e.g., LVN to RN, RN to APRN. The Board has no tolerance for this type of behavior. An individual who engages in this type of conduct may face disciplinary action by the Board, including the maximum dollar amount of a fine allowed under the Nursing Practice Act and Board rules.

Disciplinary Action

In all situations involving an individual's fraudulent or deceitful conduct, the Board's primary objective is to ensure the protection of the public. However, not all matters involving a nurse's fraudulent or deceptive behavior will require the same amount of Board intervention or will necessarily result in disciplinary action. The Board will consider each case on its own merit. Factors that may be particularly relevant to fraudulent or deceitful conduct include: the nature and seriousness of the conduct, the actual harm resulting from the conduct, the individual's history, premeditation, lack of remorse, and/or restitution, and the risk the individual's practice poses to patients and the public. Depending on the particular circumstances, an individual may be able to obtain or retain licensure under an encumbered license, with conditions/restrictions determined by the Board, for a specified period of time. Because patients in autonomous healthcare settings are particularly vulnerable to acts involving fraud, theft, and deception, an individual who has previously exhibited such conduct will likely be precluded from working in a home health or independent practice setting for a period of time. Further, if the individual circumstances do not necessarily warrant removal of an individual from practice or an independent practice setting, supervision and/or additional restrictions applicable to the setting will likely be required to ensure adequate protection of patients and the public. A fine and/or restitution as authorized by the Nursing Practice Act and Board rules may also be required.

Licensure revocation, however, may be appropriate and will likely be considered by the Board in situations where an individual has knowingly falsified information upon which the individual's licensure was based. In such cases, it shall be the individual's burden to establish good professional character sufficient to justify retention of licensure. In these cases, the individual may be required to start the application process over anew, under non-deceptive means, without benefit of consideration of the individual's intervening practice as a nurse. Likewise, if an individual has knowingly falsified information on a licensure application, but has yet to be granted licensure, the Board may deny licensure based upon the individual's falsification. Upon re-application, it shall be the individual's burden to establish good professional character sufficient to justify licensure.

For additional information, please review the Nursing Practice Act (NPA), [Tex. Occ. Code Chapter 301](#); the Board's rules, located at [22 Texas Administrative Code Chapters 211 - 227](#), including §§213.27 - 213.33; and the Board's [adopted policies](#) located on the Board's web site, at www.bon.texas.gov. [Tex. Occ. Code Chapter 53](#), [22 Tex. Admin. Code](#)

[§213.28](#), and the [Board's Guidelines for Criminal Conduct](#) contain additional provisions that specifically apply to criminal behavior. The Board will also consider its adopted [Disciplinary Matrix](#), which contains recommended sanctions for violations of the Nursing Practice Act and/or Board rules and an individual's good professional character under [22 Tex. Admin. Code §213.27](#).



Disciplinary Sanctions for Lying and Falsification

The Texas Board of Nursing (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who have engaged in deception in the provision of health care. This deception includes falsifying documents related to patient care, falsifying documents related to employment, and falsifying documents related to licensure. The Board is also concerned about persons who have been convicted of a crime involving deception to the extent that such conduct may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure.

The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.
2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.
3. Critical care, pediatric, and geriatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.
4. Nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct.
5. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care (Section 213.27 of 22 Texas Administrative Code).
6. Patients have the right to expect that the nurse will always accurately report patient conditions, signs and symptoms, and the care the nurse provided.

The Board considers the following behaviors important in evaluating whether an individual possesses the integrity and honesty to practice nursing:

1. Falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future.

2. Falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity (Sections 217.12(6)(H), (6)(I), and 213.27 of 22 Texas Administrative Code).
3. Falsification of an application for licensure to the Board raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing.
4. A conviction or judicial order involving a crime of lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients at risk.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Lying and Falsification

The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, or revoke a license. A crime involving dishonesty is a crime of moral turpitude. Reliance on judicial orders is designed to avoid subsequent collateral attacks by nurses when the nurse has already been convicted or has admitted to the criminal conduct.

The Board has adopted a policy on fraud, theft, and deception that, in part, addresses the issues of lying and falsification. The crime of lying or falsification is a concern to the Board if the conduct involved defrauding a vulnerable person; if the occurrence was within a short period of time prior to the application for initial licensure; if there is a demonstration of a pattern of lying or falsification; or if the act was obviously premeditated and the individual demonstrates a lack of insight or remorse related to the conduct. The presence of these factors is evidence to the Board that the same behavior is likely to be repeated towards patients and may place their well-being at risk. Crimes involving lying and falsification will be evaluated on an individual basis considering the above factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving lying or falsification, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code § 213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Lying on or Falsification of Licensing Documents to the Board

Each licensure form or document, whether it is an initial application, application by endorsement, or a renewal application, contains questions that require a “yes” or “no” answer. These forms contain several questions that might affect the ability of an individual to function safely as a nurse. In addition, the Board asks the applicant, petitioner, or licensee to provide information to determine if he/she meets the practice requirements for nursing licensure. Answers to these questions are used by the Board to determine the applicant’s fitness for initial licensure/recognition in regards to conviction history, physical or mental condition, chemical dependency, and eligibility to renew licensure or gain initial licensure/recognition by endorsement related to meeting the continuing education (CE) and practice requirements. The Board can understand that an applicant may mark a “yes” or “no” answer in error, or misunderstand the question being asked. The Board believes, however, that supplying false information in regards to eligibility requirements for licensure is a serious matter, not only because of the lying or falsification itself, but because those false answers would allow an otherwise disqualified applicant to be licensed. Proof of falsification on initial licensure is enough to establish the Board’s right to revocation or denial of licensure. It should not be the Board’s burden to answer or overcome Respondent’s claims of current character or current practice once it is established an applicant or petitioner has knowingly falsified information upon which licensure was based. If Respondent believes he/she has good professional character, they should be required to start the application process over anew under non-deceptive means without the benefit of consideration of the intervening practice as a nurse.

The Board also asks questions on its applications for licensure to verify the individual’s identity and provide the Board with demographic information. Falsification of that information is considered serious by the Board, but not as critical as information that directly relates to eligibility for licensure unless the falsification of this information was intended to hide relevant background information of the applicant.

Each case of falsifying an application for licensure will be considered on an individual basis. The investigative process will be used to determine whether the question was answered in error, misunderstood, or purposely answered falsely to deceive the Board. Intentional falsification may result in denial of licensure or revocation of a license. The Board may show leniency towards an applicant for initial licensure because that person may be more likely to misunderstand the questions on the application. The Board believes that an applicant for renewal of licensure should understand the questions and the importance of answering them honestly. A pattern of falsification of information on an application for licensure will not be tolerated and is grounds for revocation.

Failure to cooperate during the course of a Board investigation by supplying false documents or failing to disclose information is grounds for denial or revocation of the license. Reckless disregard for the Nursing Practice Act, the Board’s rules and regulations, and/or a Board Order is also grounds for denial or revocation and will require at a minimum, the imposition of a punitive fine in addition to other stipulations.

Nurse Imposter

The Board has no jurisdiction over a person who does not have a license to practice nursing in the State of Texas yet holds him or herself out to be a nurse. The Board does have jurisdiction over an individual who has a nursing license or has had one in the past and represents him or herself as licensed for a broader scope of practice, e.g., LVN to RN, RN to APN. The Board has no tolerance for any form of impersonating and will impose the maximum dollar amount of fine allowed under Board rules and may impose a disciplinary sanction. The following factors will be considered in deliberating the level of discipline from remedial education with fine through revocation: intent, potential or actual harm to patients, length of time as an imposter, and insight/remorse. The Board believes that employers of nurses should verify licensure utilizing the Board's website and thereby avoid hiring a nurse imposter or allowing a nurse to practice beyond his/her scope. The Board may impose a disciplinary sanction to the nurse employer found responsible for hiring a nurse imposter.

Lying or Falsification within the Practice of Nursing

The safe and effective practice of nursing as a licensed vocational nurse, registered nurse, or advanced practice nurse requires integrity, accuracy, and honesty in the provision of nursing care, including:

- performing nursing assessments;
- applying the nursing process;
- reporting changes in patient condition;
- acknowledging errors in practice and reporting them promptly;
- accurate charting and reporting, whether verbal or written;
- implementing care as ordered;
- compliance with all laws and rules affecting the practice of nursing; and
- compliance with minimum nursing standards.

Failure to be accurate and honest while providing patient care and keeping accurate records related to care, is potentially harmful to the overall care patients receive because nurses who provide subsequent care do not have a complete and accurate picture of the client's care and/or condition.

Each case of lying and falsification will be considered on an individual basis. The Board will consider the following factors:

- actual harm to the patient as a result of the lying or falsification;
- the potential for harm to patients;
- the past performance record of the nurse;
- prior complaints;
- accountability for the act of falsification;
- insight;
- remorse; and

- other mitigating or aggravating factors.

The Board will also consider whether or not the nurse was unduly influenced by a more experienced or supervising licensed nurse to falsify patient records or care, in which case that nurse's conduct will be investigated by the Board. The investigative process will be used as an opportunity to educate and reinforce acceptable standards of care. Disciplinary sanctions may range from remedial education with fine to revocation. The level of sanction may be directly proportionate to the harm caused to the patient. If a nurse falsifies, alters, fabricates, back-dates records, or any other form of lying in the home health setting, the nurse will be sanctioned with stipulations, and fined. During the stipulation period, home health and any other form of independent employment settings will be prohibited. Supervision in home health will be required where circumstances do not warrant removal from that practice setting.

Lying/Falsification to an Employer, Nursing Education Program, or other Nursing Training Program

The Board believes that falsification of an application to an employer, school of nursing, or other nursing training program is generally the responsibility of the employer, school, or training program to resolve, unless the falsification involves misrepresentation of credentials, competencies or work experience. Misrepresentation of credentials to an employer will be investigated and viewed by the Board in the same way that lying or falsification within the practice is viewed. A student nurse who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that he or she will continue the same dishonest acts after licensure. If the Board is made aware of acts committed as a student, an investigation will be conducted once the student makes application for licensure. The Board will consider the same factors as described above for lying and falsification within the practice of nursing.

Petition for Reconsideration or Reinstatement of License

A person who has been denied licensure, or whose license has been surrendered, suspended, or revoked has the right to petition the Board for reconsideration or reinstatement. The burden of proof that the person no longer poses a danger for deception, lying or falsification regarding patient care, record keeping related to nursing practice, or other acts of deception remains with the petitioner.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, deletions, and modifications.)

Approved and adopted on July 26, 2002, modified on April 23, 2004 and January 18, 2008 (based on recommendations adopted by the Eligibility and Disciplinary Task Force on November 30, 2007)