

CHAPTER 436

H.B. No. 2180

AN ACT

relating to the regulation of the practice of registered nursing and to the continuation of the Board of Nurse Examiners; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 4513, Revised Statutes, is amended to read as follows:

Art. 4513. BOARD OF NURSE EXAMINERS

Sec. 1. COMPOSITION OF BOARD; PROGRAMS OF STUDY. The Board of Nurse Examiners is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color [~~ered~~], disability, sex, religion, age, or national origin of the appointees. The board [~~Board of Nurse Examiners~~] shall prescribe three programs of study to prepare professional nurse practitioners, to wit: (1) The Baccalaureate Degree Program—A program leading to a baccalaureate degree in nursing conducted by an educational unit in nursing (department, division, school, or college) which is a part of a senior college or university; (2) The Associate Degree Program—A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or a university; and (3) The Diploma Program—A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital. Six of the board members must be Registered Nurses, three of whom shall be engaged in professional nurse education and shall be representative of said three programs in that one shall be a nurse faculty member in a school of nursing pursuing the Baccalaureate Degree Program; one shall be a nurse faculty member in a school of nursing pursuing the Associate Degree Program; and one shall be a nurse faculty member in a school of nursing pursuing the Diploma Program. Three members must be members of the general public.

Sec. 2. TERMS; REQUIREMENTS OF PROFESSIONAL NURSE MEMBERS AND PUBLIC MEMBERS. (a) The members of the board shall hold office for staggered terms of six years, with the terms of one practicing registered nurse, one professional nurse engaged in nurse education, and one public member expiring on January 31 of odd-numbered years. The professional nurse members must be actually employed in the nursing profession for at least three years before their appointment.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; ~~or~~

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 3. CONFLICT OF INTEREST RESTRICTIONS. (a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a board member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the

amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 4. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a board member or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 5. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 1 of this article;

(2) does not maintain during service on the board the qualifications required by Section 1 of this article;

(3) violates a prohibition established by Section 3 or 4 of this article;

(4) cannot discharge the member's term for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Sec. 6. STANDARDS OF CONDUCT INFORMATION. The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 7. STAFF. The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

Sec. 8. ANNUAL FINANCIAL REPORT. The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 9. PERSONNEL POLICIES. (a) The executive director or the director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Sec. 10. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.

Sec. 11. **PUBLIC INTEREST INFORMATION.** (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the board;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the board; or

(3) in a bill for service provided by an individual or entity regulated by the board.

(c) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

(d) The board shall enter into memoranda of understanding with each state agency that licenses health-care facilities or agencies for the purpose of coordinating any posting or notification requirements under Subsection (b) of this section with posting or notification requirements that may be imposed on the health-care facility or agency by that state agency.

Sec. 12. **PUBLIC PARTICIPATION IN BOARD HEARINGS.** The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 13. **PROGRAM ACCESSIBILITY.** The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

Sec. 14. **TRAINING; STANDARDS OF CONDUCT INFORMATION.** (a) The board shall establish a training program for the members of the board.

(b) Before a member of a board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

(1) the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the ethics commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

Sec. 15. ~~INTERAGENCY CONTRACTS. The board may enter interagency contracts for any purpose authorized by law. [RESTRICTIONS ON MEMBERS, EMPLOYEES, AND GENERAL COUNSEL. A member or employee of the board may not be an officer, employee, or paid consultant of a national or statewide trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or within the second degree by consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a national or statewide trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of his activities on behalf of a national or statewide trade or professional association in a health-services industry may not serve as a member of the board or act as the general counsel to the board.~~

~~[Sec. 4. GROUNDS FOR REMOVAL. It is grounds for removal from the board if a member:~~

~~[(1) does not have at the time of appointment the qualifications required for appointment to the board;~~

~~[(2) does not maintain during the service on the board the qualifications for appointment to the board;~~

~~[(3) violates a prohibition imposed on members of the board; or~~

~~[(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.~~

~~[Sec. 5. VALIDITY OF ACTIONS. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.]~~

SECTION 2. Article 4513a, Revised Statutes, is amended to read as follows:

Art. 4513a. SUNSET PROVISION. The Board of Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2005 [1993].

SECTION 3. Article 4514, Revised Statutes, is amended to read as follows:

Art. 4514. ORGANIZATION OF BOARD

Sec. 1. PRESIDENT; SPECIAL MEETINGS; POWERS. *The governor shall designate one of the members of the board as presiding officer to serve in that capacity at the pleasure of the governor.* The members of the board shall elect other officers from their members [number a president]. Special meetings of said board shall be called by the presiding officer [president] acting upon the written request of any two members. The board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing and

to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

~~Sec. 2. [LEGISLATIVE DISAPPROVAL OF RULES. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.~~

[Sec. 3.] RULES RESTRICTING COMPETITIVE BIDDING OR ADVERTISING PROHIBITED. The board may not promulgate rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of *the person's* [his or her] voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Sec. 3 [4]. RECORDS; ~~[CONSUMER INFORMATION];~~ ASSISTANCE TO LEGAL AUTHORITIES. The executive *director* [secretary] shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. ~~The [board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.—Said] board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. Nothing herein shall either expand or contract the board's present powers as they relate to the regulation of nursing education.~~

Sec. 4 [5]. OPEN MEETINGS; ADMINISTRATIVE PROCEDURE. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 5 [6]. RECOMMENDATION OF RULES RELATING TO DELEGATION OF MEDICAL ACTS BY PHYSICIANS. The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to physician's delegating medical acts to *registered nurses* [persons] licensed by the board. The recommendations shall be acted on in the same manner as a petition for the adoption of a rule by an interested party under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The board in making recommendations may distinguish between nurses on the basis of special training and education. The *board* [Board of Nurse Examiners] in recommending rules and the Texas State Board of Medical Examiners in acting on recommended rules shall act, to the extent allowable under state and federal statutes and regulations, so as to permit the state to obtain its fair share of federal funds available for the delivery of health care in this state.

Sec. 6 [7]. RULES. The board shall adopt rules establishing:

- (1) any specialized education and training, including pharmacology, a registered nurse must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and
- (2) a system for assigning an identification number to a registered nurse who provides the board with evidence of completing the required specialized education and training.

Sec. 7. NURSING PRACTICE ACT. *Articles 4513-4528, Revised Statutes, collectively may be referred to as the Nursing Practice Act.*

SECTION 4. Article 4517, Revised Statutes, is amended to read as follows:

Art. 4517. EXECUTIVE DIRECTOR ~~[SECRETARY]~~ AND BONDS.

~~[Sec. 1.]~~ The board shall employ a qualified executive *director* ~~[secretary]~~, who shall not be a member of the board. Under the direction of the board, the executive *director* ~~[secretary]~~ shall perform duties required by this Act and duties designated by the board. Also, the board shall employ all other persons necessary to carry on the work of the board. The executive *director* ~~[secretary]~~ shall upon employment execute a bond in the sum of One Thousand Dollars payable to the Governor. The bond is conditioned that the executive *director* ~~[secretary]~~ shall faithfully perform the duties of *the* ~~[his or her]~~ office and shall account for funds coming into *the director's* ~~[his or her]~~ hands as executive *director* ~~[secretary]~~. The bond shall be signed by two or more sufficient sureties or by a surety company authorized to do business in this state and approved by the president of the board.

~~[Sec. 2. The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive secretary must be based on the system established under this section.]~~

SECTION 5. Sections 1, 3, and 4, Article 4518, Revised Statutes, are amended to read as follows:

Sec. 1. It shall be the duty of the Board ~~[of Nurse Examiners]~~ to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) academic years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered *and approved by the Board*, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

Sec. 3. Every applicant for registration *as a registered nurse* ~~[under this law]~~ shall present to the Board ~~[of Nurse Examiners]~~ evidence of successful completion of an accredited program of professional nursing education and a sworn application and shall upon payment of required fees be entitled to take the examination prescribed by the Board. Upon ~~[making a]~~ *passing the examination* ~~[grade]~~, the applicant shall be entitled to receive from said Board a certificate attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas. The Board shall determine the *criteria* ~~[score]~~, not to exceed *the criteria* ~~[a score]~~ required by a majority of the states, that constitutes ~~[a]~~ *passing* ~~[grade on]~~ the examination.

Sec. 4. Any person practicing or offering to practice professional nursing in this state for compensation, shall hereafter be required to submit evidence to the Board ~~[of Nurse Examiners]~~ that *the person* ~~[he or she]~~ is qualified to practice and shall be registered as provided by this law.

SECTION 6. Article 4519, Revised Statutes, is amended to read as follows:

Art. 4519. EXAMINATION ~~[AND FEE]~~. (a) *An applicant that wishes to take a licensing examination must submit to the board an application demonstrating the appli-*

cant's qualifications under this chapter. If the board determines that the applicant meets the qualifications, the applicant may take the licensing examination [Upon filing application for examination each applicant shall pay an examination fee which shall in no case be returned to the applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right to stand a second examination].

(b) The examination shall be given in various cities throughout the State and shall be of such character as to determine the fitness of the applicant to practice professional nursing. *A written examination prepared, approved, or offered by the board, including a standardized national examination, shall be validated by an independent testing professional. Not later than the 30th day [Within 30 days] after the date on which a licensing examination is administered under this article, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day [within two weeks] after the date the board receives the results from the testing service. If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president of the board, and executive director [secretary] and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State.*

(c) *The board by rule shall establish the conditions under which an applicant who fails the licensing examination may retake the examination. After twice failing the examination, the board may require an applicant to fulfill additional educational requirements and, after twice failing an examination, may deny an applicant who failed the examination the opportunity to retake the examination.*

SECTION 7. Article 4521, Revised Statutes, is amended to read as follows:

Art. 4521. **TEMPORARY LICENSE; ENDORSEMENT [CERTIFICATE FROM ANOTHER STATE].** (a) *To qualify for a temporary license to practice as a registered nurse by endorsement, an applicant for licensing must:*

(1) *submit to the board an endorsement fee as determined by the board and a completed application given under oath, in the form prescribed by the board;*

(2) *have possessed at the time of initial licensing as a registered nurse other qualifications necessary to have been eligible for licensing at that time in this state; and*

(3) *have presented to the board proof of initial licensing by examination and proof that the license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason.*

(b) *A holder of a temporary license under this section shall receive a permanent license if the applicant:*

(1) *has verified the academic and professional credentials of the applicant; and*

(2) *satisfies any other requirement set by statute.*

(c) *The board shall either grant or deny an application for a permanent license within 180 days after the date of the board's receipt of all required forms or information. The board may extend the 180-day time limit to allow for the receipt and tabulation of examination results.*

(d) *Any applicant who holds a registration certificate as a registered nurse from a [another state, district,] territory or possession of the United States, or from a foreign country, may be issued a license to practice as a registered nurse in the State of Texas by endorsement and without examination upon the payment of a fee established by the board, provided in the opinion of the Board of Nurse Examiners such other board issuing such other certificate in its examination required the same general degree of fitness required by this state.*

SECTION 8. Article 4523, Revised Statutes, is amended to read as follows:

Art. 4523. TEMPORARY PERMIT. (a) ~~[Any nurse who has graduated from an accredited school of nursing, who holds a registration certificate as a Registered Nurse from another state or from a possession of the United States, and who is actually engaged in the pursuit of his or her profession, shall be permitted to practice in the state under a permit issued by the board of nurse examiners, upon the payment of a fee established by the board.~~

(b) The board may issue a permit to practice professional nursing under the direct supervision of a Registered Nurse to graduates of approved educational programs pending the results of the licensing examination. The permit expires on receipt of a permanent license or on receipt of a notice of failing the examination from the board. The permit may not be issued to any applicant who has previously failed an examination administered by the board or by another state.

(c) ~~(e)~~ To allow a nurse to satisfy a requirement imposed under Article 4526, Revised Statutes, to renew *an expired* [a] license ~~[expired for two years or more]~~ or a requirement imposed under Article 4526b, Revised Statutes, to reactivate a nursing license from inactive status, the board may issue a temporary permit to practice professional nursing for the limited purpose of satisfying the requirement. A permit issued under this subsection expires on the earlier of the receipt of a permanent license or six months from the date of issuance.

(d) A person who holds a temporary permit under this article is a licensed professional registered nurse for all purposes except to the extent of any stipulations or limitations on practice imposed by the board as a condition of issuing the permit.

SECTION 9. Chapter 7, Title 71, Revised Statutes, is amended by adding Articles 4524A–4524D to read as follows:

Art. 4524A. RECORDS OF COMPLAINTS. (a) *The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:*

- (1) *all persons contacted in relation to the complaint;*
- (2) *a summary of findings made at each step of the complaint process;*
- (3) *an explanation of the legal basis and reason for a complaint that is dismissed; and*
- (4) *other relevant information.*

(b) *If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.*

(c) *The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.*

(d) *The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.*

Art. 4524B. COMPLAINT INVESTIGATION AND DISPOSITION. (a) *The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:*

- (1) *distinguish between categories of complaints;*
- (2) *ensure that complaints are not dismissed without appropriate consideration;*
- (3) *require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*
- (4) *ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and*
- (5) *prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.*

(b) *The board shall dispose of all complaints in a timely manner. The board shall establish a timeline for conducting each phase of a complaint that is under the control of the*

board not later than the 30th day after the date the complaint is received by the board. The timeline shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the timeline must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive director of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Art. 4524C. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this article must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the board's legal staff or of the office of the attorney general to advise the board or the board's employees.

Art. 4524D. MONITORING OF LICENSEE. The board by rule shall develop a system for monitoring licensees' compliance with the requirements of this chapter. Rules adopted under this article shall include procedures for monitoring a licensee who is ordered by the board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.

SECTION 10. Article 4525, Revised Statutes, is amended by amending Subsections (a), (b), and (e) and adding Subsection (k) to read as follows:

(a) The board [~~of nurse examiners~~] may refuse to admit persons to its examinations, may refuse to issue a license or certificate of registration or to issue a certificate of *renewal* [~~re-registration~~], may refuse to issue a temporary permit, *license by endorsement*, or *license*, may issue a warning or reprimand with or without stipulations, may suspend for any period not to exceed 5 years, or may revoke the license or certificate of any practitioner of professional nursing, for any of the following reasons:

(1) The violation of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereinunder.

(2) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude, or any conduct resulting in the revocation of probation imposed pursuant to such conviction.

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of or any other action relating to the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, revocation, or any other action shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs that the board determines endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the board, is likely to deceive, defraud, or injure patients or the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public.

(12) Failing to care adequately for patients or to conform to the minimum standards of acceptable professional nursing practice that, in the opinion of the board, exposes a patient or other person unnecessarily to risk of harm.

(b) Proceedings under this article shall be begun by filing a written complaint with the board [~~of nurse examiners~~]. Such complaint may be made by any person or filed by the board on its own initiative. Unless it would jeopardize an investigation, the board shall notify the registered nurse that a complaint has been filed and the nature of the complaint *after a determination of the identity of the subject of the complaint*. [~~An information file about each complaint filed relating to a licensee shall be maintained by the board. If a written complaint is filed with the board relating to a licensee, the board at least as frequently as quarterly and until final disposition of the complaint, shall notify the party that filed the complaint of the status of the file unless notice would jeopardize an investigation.~~] The board shall make a timely and appropriate preliminary investigation of the complaint and may issue a warning or reprimand to the person against whom the complaint was filed. If the investigation reveals probable cause to take further disciplinary action, the board shall *either attempt an informal disposition of the complaint or file formal charges* against the registered nurse stating the provisions of this chapter or the board's rules that are alleged to have been violated and a brief description of the acts or omissions that constituted the violation. If the board proposes to refuse to admit a person to its examination, to refuse to issue a temporary permit, license, certificate of registration, certificate of re-registration, or to suspend or revoke a person's permit, license, or certificate, the person is entitled to a hearing before the *State Office of Administrative Hearings* [~~board. The hearing may be before a subcommittee of the board, a majority of which is composed of registered nurses. The person shall on request be granted a hearing before the entire board~~]. Proceedings for a disciplinary action are governed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The board may assess a person found to have violated any provision of this chapter the administrative costs of conducting a hearing to determine that violation. If a licensed professional nurse voluntarily surrenders his or her license to the board and executes a sworn statement that he or she no longer desires to be licensed, the board may revoke his or her license without the necessity of formal charges, notice, or opportunity of hearing.

(c) The board [~~of nurse examiners~~] is charged with the duty of aiding in the enforcement of the provisions of this chapter, and may retain legal counsel to represent the board, but prior to retaining outside legal counsel, the board shall request the attorney general to perform such services and may only retain outside counsel if the attorney general so certifies to the board that the attorney general cannot provide such services. The board shall have the power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the board may present to a prosecuting officer complaints relating to violations of any of the provisions of this chapter, and the board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

(k) *The schedule of sanctions adopted by the board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.*

SECTION 11. Section 1, Article 4525a, Revised Statutes, is amended to read as follows:

Sec. 1. REGISTERED NURSES; DUTY TO REPORT VIOLATIONS. (a) Each registered nurse having reasonable cause to suspect that a registered nurse has exposed or is likely to expose a patient or other person unnecessarily to a risk of harm because of unprofessional conduct, failure to care adequately for a patient, failure to conform to the minimum standards of acceptable professional nursing practice, or impaired status shall

report in a signed, written report to the board the name of the nurse committing the violation or suspected violation and any other pertinent information within the nurse's knowledge as the board may require. A registered nurse without personal knowledge of the nurse's actions is not required to report under this section if she or he has reasonable cause to believe the nurse has already been reported.

(b) *The board shall adopt rules governing reporting required under this article to minimize unnecessary duplicative reporting and the reporting of minor incidents. A "minor incident" means conduct that does not indicate the nurse's continuing to practice professional nursing poses a risk of harm to a client or other person.*

SECTION 12. Chapter 7, Title 71, Revised Statutes, is amended by adding Article 4525c to read as follows:

Art. 4525c. MEMORANDUM OF UNDERSTANDING. The board shall sign a memorandum of understanding with state agencies that license, register, or certify a facility required by law to have a registered nurse peer review committee. The memorandum of understanding shall:

- (1) *state the actions the board and agency shall take to encourage compliance with the requirement to have a registered nurse peer review committee; and*
- (2) *be adopted as a rule of the board and the agency.*

SECTION 13. Chapter 7, Title 71, Revised Statutes, is amended by adding Article 4525e to read as follows:

Art. 4525e. TEMPORARY SUSPENSION OF LICENSE. If the majority of the board or a three-member committee of board members designated by the board determines from the evidence or information presented to it that a registered nurse by continuation in practice would constitute a continuing and imminent threat to the public welfare, the board or the three-member committee shall temporarily suspend the license of the registered nurse. The license may be suspended under this article without notice or hearing on the complaint, provided institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under this chapter and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments. The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if probable cause exists that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of temporary suspension.

SECTION 14. Article 4526, Revised Statutes, is amended to read as follows:

Art. 4526. LICENSE RENEWAL [RE-REGISTRATION]. The board by rule may [shall] adopt a system under which licenses expire on various dates during the year [issued by the board shall be renewed each biennium]. [For the year in which the expiration date is changed, registration fees payable on or before March 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the re-registration fee that is allocable to the months in which the registration is valid. On the new expiration date, the total re-registration fee is payable. The board shall notify each licensee at least 30 days in advance of the date of expiration of the license. The application for re-registration shall be mailed by United States mail to the address shown in the board's records. Any application received after the expiration date shall be charged a late fee.] If a person's license has been expired for [not more than] 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half the amount charged by the board or a designee for examination [fee] for the license. If a license has been expired for [more than] 90 days but less than one year [two years], the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the amount charged by the board or a designee for examination [fee] for the license. The board shall by rule set a length of time beyond which an expired license may not be renewed. The board may establish by rule additional requirements that shall apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the board beyond which a license may not be renewed [If a license has been expired for two years or more, the person may renew

the license on meeting the requirements that the board considers necessary]. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the initial fee for the license and the renewal fee. At least 30 days before the expiration of the person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the board. If any registered nurse continues to practice professional nursing beyond the time for which the nurse is registered [or re-registered], the nurse shall be considered to be an illegal practitioner and the license may be revoked or suspended.

SECTION 15. Article 4527, Revised Statutes, is amended to read as follows:

Art. 4527. FEES

Sec. 1. The board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this chapter. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993. [The Board of Nurse Examiners shall establish reasonable and necessary fees for the administration of its functions in amounts not to exceed:

[Admission fee to examination	\$200
[Duplicate or substitute of current certificate	25
[Duplicate or substitute of permanent certificate	25
[Duplicate permits	15
[Endorsement with or without examination	150
[Re-registration	50
[Issuance of a temporary permit under Art. 4523	25
[Reactivating from inactive status	30
[Accreditation of new schools and programs	150
[Filing of affidavits in re change of name	10
[Verification of records	50
[Bad checks	25
[Advanced Nurse Practitioner initial credentials	50
[Advanced Nurse Practitioner renewal of credentials	25
[Issuance of declaratory order of eligibility for license	25]

Sec. 2. The board may receive gifts, grants, or other funds or assets [The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement. The Board shall set and collect a sales charge for copies of any paper or record in the office of the Board and for any printed material published by the Board. The charges are to be in an amount considered sufficient to reimburse the Board for its actual expenses].

Sec. 3. All fees received by said Board under this law shall be placed in the State Treasury to the credit of a special fund to be known as the "Professional Nurse Registration Fund" and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, all fees collected by the Board and deposited in the Professional Nurse Registration Fund shall be expended as specified by itemized appropriation in the General Appropriations Act and shall be used by the Board, and under its directions, only for purposes of carrying out this Act. [The Board may use any of the fees and charges collected by it, as necessary, to retain, hire, or contract for additional prosecutors, hearing examiners, investigators, and support staff as necessary to aid in the investigation of complaints and the prosecution of persons subject to the Board's jurisdiction. This provision shall apply to all fees of whatsoever nature as permitted by law. The financial transactions of the Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.]

SECTION 16. Article 4527b, Revised Statutes, is amended to read as follows:

Art. 4527b. PENALTIES [PENALTY]. (a) A person who violates any provision of Article 4527a, Revised Statutes, commits an offense. Except as provided by this section, an offense

under that article is a Class A misdemeanor. If it is shown in the trial of a person allegedly in violation of that article that the person has once before been convicted of a violation of Article 4527a, on conviction the person shall be punished for a third degree felony. Each day of violation constitutes a separate offense. On final conviction of an offense under that article, a person forfeits all rights and privileges conferred by virtue of licensure under this chapter.

(b) A person who violates Article 4527a, Revised Statutes, is liable to the state for a civil penalty that does not exceed \$1,000 a day. The civil penalty may be collected in a suit initiated by the board.

SECTION 17. Chapter 7, Title 71, Revised Statutes, is amended by adding Article 4527d to read as follows:

Art. 4527d. ADMINISTRATIVE PENALTIES. (a) The board may impose an administrative penalty against a person licensed or regulated under this article who violates this article or a rule or order adopted under this article.

(b) The penalty for each violation may be in an amount not to exceed \$2,500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The executive director who determines that a violation has occurred may issue to the board a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law. The administrative law judge shall promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) *Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:*

(1) *pay the amount of the penalty;*

(2) *pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or*

(3) *without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.*

(k) *Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:*

(1) *stay enforcement of the penalty by:*

(A) *paying the amount of the penalty to the court for placement in an escrow account, or*

(B) *giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or*

(2) *request the court to stay enforcement of the penalty by:*

(A) *filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and*

(B) *giving a copy of the affidavit to the executive director by certified mail.*

(l) *The executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.*

(m) *If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.*

(n) *Judicial review of the order of the board:*

(1) *is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(2) *is under the substantial evidence rule.*

(o) *If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.*

(p) *When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.*

(q) *A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.*

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

SECTION 18. Article 4516, Revised Statutes, is repealed.

SECTION 19. The changes in law made by this Act in the qualifications of members of the Board of Nurse Examiners do not affect the entitlement of a member appointed before September 1, 1993, to continue to hold office to the term to which the member was appointed. The change in qualifications applies only to a member appointed on or after September 1, 1993.

SECTION 20. This Act takes effect September 1, 1993.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 13, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2180 on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 22, 1993, by a viva-voce vote.

Approved June 6, 1993.

Effective Sept. 1, 1993.