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Texas Board of Nursing

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OPINION COMMITTEE

September 16, 2011

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Katherine A. Thomas, MN, RN  
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RQ-0997-CA

FILE # ML-46826-11

I.D. # 46826

Attorney General Greg Abbott  
Office of the Attorney General  
Opinion Committee  
PO Box 12548  
Austin, TX 78711-2548

Via Certified Mail

No. 91 7108 2133 3934 2194 2404

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Re: Non-Disclosure Orders - Request for Opinion from the Office of the Attorney General

Dear Attorney General Abbott:

The Board herein request an opinion concerning the impact of non-disclosure orders upon the operational licensing operations of the Texas Board of Nursing. Particularly, whether an order of non-disclosure prevents the Board from citing the previous criminal behavior that supports disciplinary action under Texas Occupation Code §301.452(b)(3) and whether previously cited criminal behavior must be redacted from a disciplinary order if that criminal history record is later subject to a non-disclosure order. The criminal history is often expressly mentioned and cited in these disciplinary orders wherein the criminal behavior was relevant.

Non-disclosure orders issued pursuant to the Texas Government Code, Section 411.081, prohibit criminal justice agencies from disclosing criminal history record information to the public, which relates to an offense giving rise to deferred adjudications. There is, however, an exception in Section 411.081(i) in that a criminal justice agency may disclose criminal history record information that is the subject of an order of non-disclosure to "the following noncriminal justice agencies or entities only: . . . (15) the Texas Board of Nursing; . . ." Thus, the Board is explicitly entitled to receive this information and presumably may use it for regulatory purposes. In fact, the Board is authorized to take disciplinary action against a licensee based on criminal history that may later be subject to a non-disclosure order. See Texas Occupations Code §301.452(b)(3) (disciplinary action may be based on deferred order).

If, however, the non-disclosure order comes to the Board's attention after order is entered what action is required of Board Staff? Section 411.081 (g-1b) states that "not later than 30 days after receipt of relevant criminal history information . . . an individual or entity described by Subsection (g-1)(l) shall seal any criminal history record information maintained by the individual or entity that is the subject of the order." The Board would be included in Section (g-1)(l)'s definition as "law

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Page 2

enforcement agencies . . . and other officials and agencies or other entities of this state . . . .” Does the nondisclosure law require the Board to “seal” or attempt to redact the applicable text from public records often agreed to by the licensee upon receipt of a non-disclosure order?

Your assistance and guidance in this matter would be greatly appreciated.

Should you have any questions, please contact me at (512) 305-6811, or Dusty Johnston, General Counsel, at (512) 305-6821.

Very truly yours,



Katherine A. Thomas, MN, RN  
Executive Director

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