

SUBJECT: Allowing record expunction and revising nursing disciplinary procedures

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Klick, Campos, Jetton, A. Johnson, J. Jones, V. Jones,
Oliverson, Price, Smith

2 nays — Collier, Tinderholt

WITNESSES: For — Jack Frazee, Tracey Ramsey Abbott, Texas Nurses Association;
Sheila Hemphill, Texas Right To Know

Against — None

On — Mark Majek, Texas Board of Nursing

BACKGROUND: Some have suggested that amending certain disciplinary processes and ensuring equal application of state law to Texas-based nurses and out-of-state nurses practicing under a waiver or emergency declaration could help ensure fairness in the nursing profession.

DIGEST: **Record expunction.** CSHB 2726 would require the Texas Board of Nursing to adopt procedures to expunge records related to the discipline of a nurse under certain conditions. To be eligible for expunction of records, a nurse would be required to:

- successfully complete the requirements of any disciplinary order that the board imposed on the nurse and any agreed settlement or alternative dispute resolution that the board approved; and
- not have committed an additional or repeated violation within the five years preceding a request for record expunction.

In determining a nurse's eligibility for record expunction, the board would consider the seriousness of previous violations of statute or board rule, as demonstrated by the sanctions imposed on the nurse. The board could not expunge a record related to a violation that directly harmed a patient.

A disciplinary order expunged under the bill would be void. A disciplinary order and any related investigatory document expunged from a nurse's record would not be public information and would not be subject to disclosure, except by appropriate court order or subpoena.

The board would report the expunction of a nurse's disciplinary record to the National Practitioner Data Bank. A nurse whose disciplinary record had been expunged could state that the expunged disciplinary record did not exist in response to an inquiry.

The board could establish a fee for record expunction in an amount reasonable and necessary to cover the cost of administration. The board would be required to adopt the necessary rules by December 1, 2023.

Practicing under emergency declaration. A person practicing nursing in the state under the authority of a waiver or emergency declaration issued by the governor would be subject to the board's jurisdiction and to state law related to the practice of nursing disciplinary action.

Disclosure of certain records. A complaint, filing of formal charges, final board order, and disciplinary proceeding related to a nurse's ordered participation in a board-approved pilot program for innovative applications in the practice and regulation of nursing would be subject to disclosure only under certain conditions.

The bill would take effect September 1, 2023, and would apply only to a person practicing nursing on or after the effective date.

NOTES:

According to the Legislative Budget Board, CSHB 2726 would have a positive impact of \$12,832 on general revenue related funds for fiscal 2024-25.