



Texas Board of Nursing

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Katherine A. Thomas, MN, RN, FAAN
Executive Director

January 11, 2019

RQ-0263-KP

Attorney General Ken Paxton
Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-48483-19
I.D. # 48483

Re: Subsequent Request for Opinion Regarding Non-disclosure Orders

Dear Attorney General Paxton:

On April 23, 2012, the Office of the Attorney General issued the enclosed opinion, GA-0919 regarding the impact of non-disclosure orders upon the licensing operations of the Texas Board of Nursing. In particular, the request focused on whether an order of non-disclosure would prevent the Board from citing prior criminal behavior supporting the 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 later became subject to a non-disclosure order. A licensee's criminal history is often expressly mentioned and cited in disciplinary orders wherein the criminal behavior was relevant. In GA-0919, Attorney General Abbott summarized: "A court would likely find that section 411.081 of the Government Code does not require the Texas Board of Nursing to adjust its disciplinary orders to avoid disclosure of criminal history record information that is the subject of a non-disclosure order issued under that section."

The Board now seeks a subsequent opinion from the Office of the Attorney General regarding the same issue, in light of changes to Texas Government Code Chapter 411. When GA-0919 was written, §411.081 was included in the same subchapter as the other provisions related to non-disclosure orders, thereby making the exception in this section clearly applicable to non-disclosure orders. However, current Chapter 411 contains new Subchapter E-1, *Order of Nondisclosure of Criminal History Record Information*, while section 411.081 is located in Subchapter F, *Criminal History Record Information*. The language of §411.081(a), "[t]his **subchapter** does not apply to criminal history record information that is contained in"... administrative proceedings or published administrative opinions, could be interpreted to limit its applicability to Subchapter F only. As a result, are the provisions of §411.081 inapplicable to the non-disclosure provisions found in Subchapter E-1? If so, how does that affect Attorney General Opinion GA-0919?

Further, if a non-disclosure order comes to the Board's attention after the Board's disciplinary order has been entered, what action is required of Board Staff? Does the law

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require the Board to "seal" or redact criminal history record information that is subject to a non-disclosure order from the Board's disciplinary order? Does the answer depend on how the Board receives the non-disclosure order? For example, does it matter whether the Board receives the non-disclosure order from the Department of Public Safety, a court, or from a Respondent? Or is a mandatory duty triggered once the Board receives notice, regardless of the source? And if so, what is that duty? Compare Tex. Gov't Code §411.075 *with* Tex. Gov't Code §411.0765.

Your assistance and guidance in this matter is 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,

A handwritten signature in black ink, appearing to read "Katherine A. Thomas". The signature is written in a cursive, flowing style.

Katherine A. Thomas, MN, RN, FAAN
Executive Director