

Proposed Amendments to 22 Tex. Admin. Code § 213.27, Good Professional Character

The proposed amendment to section 213.27 is for the sole purpose of deleting a subsection of the rule that is not applied and, therefore, unnecessary. (A similar statement exists in § 213.30 that is addressed in agenda item #7.7.) Although the board views all felonious conduct seriously, mitigating factors may exist that justify some individuals being allowed to practice as a nurse. The criminal conduct must be deemed to affect the practice of nursing, and consideration must be given regarding:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person. (TOC § 53.023(a) and Board rule 213.28(d))

When these factors are taken into account, it is not plausible for this rule to be in effect or applicable.

Staff requests that the Board move to propose amendments to section 213.27 and publish them in the *Texas Register* for a 30-day comment period, and if negative comments are not received in the 30 day comment period, adopt and publish the amendments in the *Texas Register*.

§ 213.27 Good Professional Character

(a) - (b) No change.

(c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.

~~(2) An individual guilty of a felony under this rule is conclusively deemed not to have present good professional character and fitness and should not file a Petition for Declaratory Order or Application for Endorsement for a period of three years after the completion of the sentence and/or period of probation.~~

~~(2)(3)~~ In addition to the disciplinary remedies available to the Board pursuant to Tex. Occ. Code Ann. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and rule 213.28, a licensee guilty of a felony under this rule is conclusively deemed to have violated Tex. Occ. Code Ann. § 301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

(d) No change.

(e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in ~~(c)(2) above~~ and subsection (f) of this rule, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) above shall be required to prove, by a preponderance of the evidence:

(1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice nursing; and

(2) that (s)he is of present good professional character and fitness.

(f) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after a negative determination based on a felony conviction, felony probation with or without an adjudication of guilt, or professional misconduct, or voluntary surrender in lieu of disciplinary action and whose application or petition is denied and not appealed is not eligible to file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the preceding petition for licensure.