

Amended Agenda Item # 7.8
Meeting Date: October 19 & 20, 2006
Prepared by: Joy Sparks/Dusty Johnston

**Proposed Amendments to 22 Texas Administrative Code § 213.33, Addressing Factors
Considered for Imposition of Penalties/Sanctions and/or Fines**

The practice of nursing requires professional character and integrity. Due to the necessity of these qualities, the Board has determined that many crimes affect the practice of nursing. Based on the nature of these crimes and the underlying conduct associated with these crimes, the Board or the Executive Director may require that nurses under investigation or nurse applicants with eligibility issues undergo a forensic psychological evaluation as prescribed by the Board to assess whether the offender may pose a risk to the public health and safety of the public as a nurse. The evaluation may offer mitigating or aggravating information to the investigation of a nurse or nurse applicant.

The proposed amendment to § 213.33 relates to a psychological/psychiatric evaluation to determine mental fitness and a more specialized evaluation that addresses the criminal element of unprofessional conduct. The underlying issues may deal with honesty, chemical dependency, and/or fitness to practice. The board has utilized the forensic evaluation for several years, so the amendment is for the purpose of placing this practice in rule 213.33, Factors Considered for Imposition of Penalties/Sanctions and/or Fines, addressing risk assessment evaluation.

This proposed rule was provided to the Board's Eligibility and Disciplinary Task Force. The recommendations by the committee have been included in the attached rule.

Staff recommends that the Board move to propose amendments to 22 Texas Administrative Code section 213.33 pertaining to Factors Considered for Imposition of Penalties/Sanctions and/or Fines, as attached, and have it published in the *Texas Register* for a 30-day comment period. If no negative comments are received, adopt the rules as proposed.

§ 213.33. Factors Considered for Imposition of Penalties/Sanctions and/or Fines

(a) The following factors shall be considered by the executive director when determining whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine. These factors shall be used by SOAH and the Board in determining the appropriate penalty/sanction in disciplinary cases:

- (1) evidence of actual or potential harm to patients, clients, or the public;
- (2) evidence of a lack of truthfulness or trustworthiness;
- (3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- (4) evidence of practice history;
- (5) evidence of present fitness to practice;
- (6) evidence of previous violations or prior disciplinary history by the Board or any other health care licensing agency in Texas or another jurisdiction;
- (7) the length of time the licensee has practiced;
- (8) the actual damages, physical, economic, or otherwise, resulting from the violation;
- (9) the deterrent effect of the penalty imposed;
- (10) attempts by the licensee to correct or stop the violation;
- (11) any mitigating or aggravating circumstances;
- (12) the extent to which system dynamics in the practice setting contributed to the problem; and
- (13) any other matter that justice may require.

(b) Each specific act or instance of conduct may be treated as a separate violation.

(c) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(d) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(e) When determining evidence of present fitness to practice, the Board or Executive Director may request an evaluation by a psychologist or psychiatrist, who is licensed by the Texas State Board of Examiners of Psychologists or the Texas Medical Board, respectively. The evaluator must be familiar with the duties appropriate to the nursing profession. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments which at a minimum are designed to test the psychological stability and veracity of the applicant or licensee. The applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board.

(f) When determining evidence of present fitness to practice by a licensee or applicant for licensure:

(1) the Board or Executive Director may request an individual risk assessment conducted by a Board-approved forensic psychologist or psychiatrist who:

(A) evaluates the criminal history of a person; and

(B) seeks to predict:

(i) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and

(ii) the continuing danger, if any, that the person poses to the community.

(C) is familiar with the duties appropriate to the nursing profession.

(D) conducts the evaluation pursuant to professionally recognized standards and methods; and

(E) utilizes objective tests and instruments that, at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the nurse applicant or licensee.

(2) The applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3) The applicant or licensee should be provided a copy of the evaluation upon completion by the evaluator, if not, the Board will provide the individual a copy.