

FIRST AMENDED

**Consideration of Proposed Amendments to Section 213.29, Criteria and Procedure
Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters**

House Bill 2426 amended the Nursing Practice Act to include section 301.410(b) related to Discipline of Impaired Nurses Who Commit Practice Violations. Section 301.410(b) creates the requirement that states, “A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed the practice violation.”

The amendments proposed in Rule 213.29 implement these requirements. They were presented to the Enforcement and Discipline Task Force on July 13, 2007, which recommended their approval by the Board.

Staff requests that the Board move to propose amendments to section 213.28 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*.

**RULE §213.29 Criteria and Procedure Regarding Intemperate
Use and Lack of Fitness in Eligibility and
Disciplinary Matters**

(a) A person desiring to obtain or retain a license to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule.

(b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he/she has not:

(1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or

(2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:

(1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review a chemical dependency evaluation performed by a licensed chemical dependency evaluator or other professional approved by the executive director;

(2) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain a license to practice as a nurse unless such person can demonstrate sobriety and abstinence for the preceding twelve consecutive months through verifiable and reliable evidence, or can establish eligibility to participate in a peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;

(3) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain an unencumbered license to practice nursing until the individual has attained a five-year term of sobriety and abstinence or until such person has successfully completed participation in a board-approved peer assistance program created pursuant to Chapter 467 of the Health and Safety Code.

(4) Those persons who have been diagnosed with, treated, or hospitalized for the disorders mentioned in subsection (b) of this section shall execute an authorization for release of medical, psychiatric, and treatment records.

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation by a professional approved by the executive director to determine current sobriety and fitness. The evaluation shall be limited to the conditions mentioned in subsection (b) of this section.

(e) Prior intemperate use ~~or, mental illness, or diminished mental capacity~~ is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:

(1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;

(2) close any eligibility file in which the movant has failed to respond to a request for

information or to a proposal for denial of eligibility within 60 days thereof;

(3) approve eligibility, enter eligibility orders and approve renewals, without Board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and

(4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:

(A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for the previous twelve consecutive months; and

(B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.

(g) With respect to mental illness **or diminished mental capacity** in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or **diminished mental capacity** within the past five years provided:

(1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least the previous twelve consecutive months; and

(2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.

(h) In renewal matters involving chemical dependency **or, mental illness, or diminished mental capacity**, the executive director shall consider the following information from the preceding renewal period:

(1) evidence of the licensee's safe practice;

(2) compliance with the NPA and Board rules; and

(3) written verification of compliance with any treatment.

(i) Upon receipt of items (h)(1)-(3) of this section, the executive director may renew the license.