

**Consideration of Proposed Amendments to 22 Texas Administrative Code §213.27 (Good Professional Character), §213.28 (Licensure of Persons with Criminal Convictions), §213.29 (Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters), §213.30 (Declaratory Order of Eligibility for Licensure), and §213.33 (Factors Considered for Imposition of Penalties/Sanctions and/or Fines)**

Background:

At the January 2007 Board Meeting, the Board approved amendments and modifications to its Disciplinary Guidelines for Criminal Conduct. The modified guidelines were published in the *Texas Register* on March 9, 2007.

At the January 2008 Board meeting, the Board approved modifications to the Board's Eligibility and Disciplinary Sanction Policies pertaining to substance abuse/dependency, lying and falsification, sexual misconduct, and fraud, theft, and deception. The purpose of these policies is to address issues that arise in eligibility and disciplinary matters under Texas Occupations Code §301.452(b) and rules 213.27, 213.28, and 213.29.

The Board's policies were published in the February 22, 2008 publication of the *Texas Register*.

Because these policies and guideline are often referred to by Staff and the Board in determining appropriate eligibility and disciplinary matters, Staff believes these policies and guidelines should be referred to in the Board's rules.

Pros:

The policies and guidelines will be subject to public comment and may be given greater weight in formal disciplinary proceedings.

The general public and nurses will have a greater understanding of the Board's opinion and policies regarding licensure of nurses with crimes or other professional characters issues.

Publication and adoption by reference in Board rule may lead to a consistent application of Board precedent.

Cons:

The policies and guidelines are incorporated by reference into the Board's rules and are not expressed as a separate rule or rules

Recommendation:

Staff recommends that the Board move to propose amendments to §213.27 (Good Professional Character), §213.28 (Licensure of Persons with Criminal Convictions), §213.29 (Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters), §213.30 (Declaratory Order of Eligibility for Licensure), and §213.33 (Factors Considered for Imposition of Penalties/Sanctions and/or Fines, as attached, and have them published in the *Texas Register* for a 30-day comment period. If no negative comments are received, adopt the rules as proposed.

§213.27 Good Professional Character

(a) through (f)      no change

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating good professional character in eligibility and disciplinary matters.

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1646-1647 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1647-1649 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1649-1651 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published in the *Texas Register* at 33 *Tex.Reg.* 1651-1653 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the *Texas Register* at 32 *Tex.Reg.* 1409-1435 (March 9, 2007) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

§213.28. Licensure of Persons with Criminal Offenses

(a) through (l) no change

(m) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH) or the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published in the *Texas Register at 33 Tex.Reg. 1646-1647* (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published in the *Texas Register at 33 Tex.Reg. 1647-1649* (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published in the *Texas Register at 33 Tex.Reg. 1649-1651* (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published in the *Texas Register at 33 Tex.Reg. 1651-1653* (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the *Texas Register at 32 Tex.Reg. 1409-1435* (March 9, 2007) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

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

(a) through (i) no change

(j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH) or the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:

(1) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published in the Texas Register at 33 Tex.Reg. 1651-1653 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the Texas Register at 32 Tex.Reg. 1409-1435 (March 9, 2007) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

§213.30 Declaratory Order of Eligibility for Licensure

(a) through (h) no change

(i) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, and the State Office of Administrative Hearings (SOAH) when recommending a declaratory order of eligibility; and the Board in determining the appropriate declaratory order in eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1646-1647 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1647-1649 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1649-1651 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published in the *Texas Register* at 33 *Tex.Reg.* 1651-1653 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the *Texas Register* at 32 *Tex.Reg.* 1409-1435 (March 9, 2007) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

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

(a) -(g) no change

(h) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, and the State Office of Administrative Hearings (SOAH) when recommending a sanction; and the Board in determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1646-1647 (February 22, 2008) and available on the Board's web site at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1647-1649 (February 22, 2008) and available on the Board's web site at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published in the *Texas Register* at 33 *Tex.Reg.* 1649-1651 (February 22, 2008) and available on the Board's web site at

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published in the *Texas Register* at 33 *Tex.Reg.* 1651-1653 (February 22, 2008) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the *Texas Register* at 32 *Tex.Reg.* 1409-1435 (March 9, 2007) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.