

Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.30, Pertaining to Declaratory Order of Eligibility for Licensure; §217.2, Pertaining to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions; §217.4, Pertaining to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction; and §217.5, Pertaining to Temporary License and Endorsement

Summary of Request: Consider proposal of amendments to 22 Tex. Admin. Code §213.30, Pertaining to *Declaratory Order of Eligibility for Licensure*; §217.2, Pertaining to Licensure by *Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions*; §217.4, Pertaining to *Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction*; and §217.5, Pertaining to *Temporary License and Endorsement*.

Board rule 213.30 contains the Board's current requirements for declaratory orders of eligibility under the Occupations Code §301.257. Staff is proposing changes to rules 213.30, 217.2(b), 217.4(d), and 217.5(e) in order to implement the requirements of HB 963 and for internal consistency among Board rules. Staff's proposed changes are attached hereto as Attachment "A".

Background:

HB 963

HB 963 was enacted by the 81st Texas Legislature and became effective on June 19, 2009. A copy of HB 963 is attached hereto as Attachment "B" for reference. HB 963 adds new Subchapter D to the Occupations Code Chapter 53. Chapter 53, unlike the Nursing Practice Act (NPA), applies to all occupational licensing agencies. HB 963 allows individuals to request "criminal history evaluation letters" from any licensing authority¹. The new subchapter also prescribes the requirements that a licensing authority must meet once it receives a request for a criminal history evaluation letter. The new subchapter was

¹ The new statute requires an individual to be enrolled or plan to be enrolled in an educational program that prepares the individual for initial licensure or to take an examination for initial licensure and to have reason to believe that he/she is ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense.

modeled after the Occupations Code §301.257², which has been part of the NPA since 1999 (added by HB 3155, 76th Regular Texas Legislature).

Although very similar in nature, there are a few major differences between the new subchapter and existing §301.257. First, §301.257 contemplates the issuance of a Board Order, while the new subchapter references a criminal history evaluation letter³. Second, while an individual may request an eligibility decision under §301.257 for any reason (mental impairment, criminal history, chemical dependency/substance abuse), an individual

² §301.257. Declaratory Order of License Eligibility.

(a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or

(2) is an applicant for a license.

(b) The petition must state the basis for the person's potential ineligibility.

(c) The board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

(d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(e) If the board determines that a ground for ineligibility does not exist, instead of issuing an order, the board shall notify the petitioner in writing of the board's determination on each ground of potential ineligibility. If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

(f) The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

(g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

(h) The information required under Subsection (g) must be submitted in a form approved by the board.

(i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

³ Staff is unaware of any other health professional licensing authority that has issued a declaratory order or an eligibility determination letter prior to the enactment of HB 963. As such, it is unclear as to how each licensing authority will interpret the term "criminal history evaluation letter". While some licensing authorities may choose to issue final orders similar to the declaratory orders issued by the Board, other authorities may choose to simply issue letters that meet the minimum requirements of HB 963. Such letters may not constitute final, appealable orders.

may only request an eligibility decision under the new subchapter for prior criminal history. Third, if the Board proposes to find that an individual is ineligible for licensure under §301.257, the individual is entitled to a hearing at the State Office of Administrative Hearings. The new subchapter provides no such right for individuals seeking eligibility decisions. Finally, §301.257 does not require the Board to issue an eligibility order within a certain amount of time. However, the new subchapter requires a licensing authority to issue an eligibility decision within 90 days after receipt of an individual's request.

The Board is subject to the requirements of both §301.257 and the new subchapter. With one exception, the Board's current processes for meeting the requirements of §301.257 simultaneously meets the requirements of the new subchapter. This is because the requirements of §301.257 are either more stringent than those of the new subchapter or provide an individual with additional due process. As such, Staff is not proposing a change in its current processes, with one sole exception.

The new subchapter imposes a 90 day deadline in which a licensing authority must render an eligibility decision. Staff estimates that it currently takes approximately 4-6 months (from the time Staff receives all necessary information from the individual) to issue a proposed declaratory order. In order to meet the 90 day deadline imposed by the new subchapter, Staff will be implementing a minor change to its current procedures. Once Staff has received all the necessary information from the requesting individual⁴ and completes its investigation and preliminary eligibility determination, Staff will issue a letter to the individual advising the individual of the preliminary eligibility determination. This letter will be issued within 90 days of Staff's receipt of the requested information from the individual. If Staff does not propose to find the individual ineligible for licensure, a proposed eligibility order will follow the initial 90 day letter within one to two weeks.

Rules 217.2(b), 217.4(d), and 217.5(e)

In reviewing the Board's current rules to ensure compliance with HB 963, Staff identified slight inconsistencies among Board rules 213.30, 217.2(b), 217.4(d), and 217.5(e).

Rules 217.2, 217.4, and 217.5 generally address applications filed by individuals for initial licensure, temporary licensure, and licensure by endorsement. Specifically, subsections 217.2(b), 217.4(d), and 217.5(e) address situations where individuals with eligibility issues filed applications for licensure instead of petitions for declaratory orders. The rules clearly state that Staff will treat such individuals' applications as petitions for declaratory orders and that the individuals will be required to pay the appropriate fee associated with the filing of a petition for declaratory order.

The intent of these rules, which were first enacted in 1999, is to ensure that an individual who files a petition for a declaratory order is treated the same as an individual who files an application, where both individuals have eligibility issues that must be resolved

⁴ For example, copies of court documents, treatment records, evaluations, etc.

prior to licensure. Both individuals should be required to pay the same fee, both individuals' information should be reviewed under the same process, and both individuals should receive a decision from the Board within approximately the same time frame. An individual should not be allowed to circumvent the eligibility review process by filing an "application" under §217.2, §217.4, or §217.5 instead of a "petition" under §213.30. The rules were originally designed to ensure a fair process for all individuals with eligibility issues.

Staff currently divides eligibility cases between "applicants", those individuals with eligibility issues who filed applications for licensure, and "petitioners", those individuals with eligibility issues who filed petitions for declaratory orders. Although Staff reviews all eligibility issues under the same process, the distinction between an "applicant" and a "petitioner" has resulted in confusion among members of the public (individuals, outside counsel, employers) regarding the difference between an "applicant" with an eligibility agreed order and a "petitioner" with a declaratory order of eligibility. In reality, there should be no substantive difference.

The proposed amendments to §217.2(b), §217.4(d), and §217.5(e) are designed to ensure consistency among Board rules and to reduce and streamline Staff workload by treating all individuals with eligibility issues as "petitioners" under Rule 213.30. Staff anticipates that these proposed changes will reduce the number of existing Board order templates by half and will ensure more consistency among final Board orders. Further, the proposed amendments provide better guidance to individuals⁵ regarding the Board's eligibility review process. Finally, the proposed amendments ensure equal treatment regarding the amount of time that must pass before a denied individual may re-petition the Board for licensure.

Staff's Recommendation: Move to approve the proposed amendments to 22 Tex. Admin. Code §213.30, Pertaining to *Declaratory Order of Eligibility for Licensure*; §217.2, Pertaining to Licensure by *Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions*; §217.4, Pertaining to *Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction*; and §217.5, Pertaining to *Temporary License and Endorsement* and authorize Staff to publish the proposals in the *Texas Register* for a 30-day comment period, with authority for General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no requests for a public hearing are received, move to adopt the proposed amendments to 22 Tex. Admin. Code §213.30, Pertaining to *Declaratory Order of Eligibility for Licensure*; §217.2, Pertaining to Licensure by *Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions*; §217.4, Pertaining to

⁵ Although applicants under §217.2, §217.4, and §217.5 have always been treated just like petitioners for declaratory orders, they have not been called "petitioners", which has resulted in much confusion. The proposed amendments clearly provide that all individuals will be referred to as "petitioners", will be required to undergo the same review process, and will be required to pay the same fee. Although this has always been the intent of 217.2(b), 217.4(d), and 217.5(e), the proposed amendments make it clear.

Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction; and §217.5, Pertaining to Temporary License and Endorsement, as proposed.

Attachment "A"

§213.30. Declaratory Order of Eligibility for Licensure.

(a) For purposes of this section only, "petitioner" means an individual who:

(1) is enrolled or planning to enroll in an educational nursing program that prepares individuals for initial licensure as a registered or vocational nurse;

(2) seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement); or

(3) seeks licensure by examination pursuant to §217.2 (relating to *Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions*) or §217.4 (relating to *Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction*) of this title.

~~[(a) A person enrolled or planning to enroll in an educational nursing program that prepares a person for an initial license as a registered or vocational nurse or an applicant who seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement) who has reason to believe that he or she may be ineligible for licensure, may petition the Board for a declaratory order or apply for a license by endorsement as to his or her eligibility.]~~

(b) An individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement may petition the Board for a declaratory order as to his or her eligibility.

~~[(b) The person must submit a petition or application on forms provided by the Board which includes:]~~

~~[(1) a statement by the petitioner or applicant indicating the reason(s) and basis of potential ineligibility;]~~

~~[(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation, if applicable;]~~

~~[(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines) and evidence of treatment;]~~

~~[(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care and support group attendance; and]~~

~~[(5) the required fee which is not refundable.]~~

(c) A petitioner must submit a petition on forms provided by the Board, which includes:

(1) a statement by the petitioner indicating the reason(s) and basis of potential ineligibility;

(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to: indictments, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, if applicable;

(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered

for Imposition of Penalties/Sanctions) and evidence of treatment;

(4) if the potential ineligibility is due to chemical dependency, including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care, and support group attendance; and

(5) the required fee, which is not refundable.

~~[(c) An investigation of the petition/application and the petitioner's/applicant's eligibility shall be conducted.]~~

(d) Once the Board has received all necessary information, including the information required by subsection (c) of this section, an investigation of the petition and the petitioner's eligibility shall be conducted.

~~[(d) The petitioner/applicant or the Board may amend the petition/application to include additional grounds for potential ineligibility at any time before a final determination is made.]~~

(e) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

~~[(e) If an applicant under §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined, or allowed to surrender in lieu of discipline, in that jurisdiction, the following provisions shall govern the eligibility of the applicant under §213.27 of this title (relating to Good Professional Character).]~~

~~[(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final~~

~~adjudication in the other jurisdiction that the applicant has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.]~~

~~[(2) An applicant disciplined for professional misconduct in the course of nursing in any jurisdiction or an applicant who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title and is therefore ineligible to file an application under §217.5 of this title during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the applicant has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.]~~

(f) If an individual seeking licensure by endorsement pursuant to §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the following provisions shall govern the eligibility of the petitioner with regard to §213.27 of this title (relating to Good Professional Character).

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the jurisdiction that the individual has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

(2) An individual who is disciplined for professional misconduct in the course of nursing in any jurisdiction or who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title, and is therefore ineligible to seek licensure by endorsement under §217.5 of this title during the period of

discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the individual has filed a petition for reinstatement in the disciplining jurisdiction and obtained a final determination on that petition.

~~[(f) If a petitioner's/applicant's potential ineligibility is due to criminal conduct and/or conviction, the following provisions shall govern the eligibility of the applicant under §213.28 of this title (relating to Licensure of Persons with Criminal Convictions):]~~

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

~~[(2) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the petitioner or applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner or applicant possesses present good professional character and fitness.]~~

(g) If a petitioner's potential ineligibility is due to criminal conduct and/or conviction, including deferred adjudication, the following provisions shall govern the eligibility of the petitioner with regard to §213.28 of this title (relating to Licensure of Persons with Criminal Convictions).

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

(2) Upon proof that a felony conviction or felony order of probation, with or without adjudication of guilt, has been set aside or reversed, the petitioner shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner possesses present good professional

character and fitness.

~~[(g) If the executive director proposes to find the petitioner or applicant ineligible for licensure, the petitioner or applicant may obtain a hearing before the State Office of Administrative Hearings. The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner or applicant. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).]~~

(h) If the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).

~~[(h) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the person's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or application for licensure until after the~~

~~expiration of three years from the date of the Board's order denying the petition or application for licensure. If the applicant or petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the E&D Committee or the executive director, the applicant or petitioner may re-petition after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this rule and §301.257, Texas Occupations Code.;~~

(i) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. If the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

~~(i) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, 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 on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

~~[(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

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

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

(j) The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this title and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and 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 on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

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

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

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

(k) If an individual seeking licensure by endorsement under §217.5 of this title or licensure by examination under §217.2 or §217.4 of this title should have had an eligibility issue settled pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order under this section, and the individual will be treated as a petitioner under this section and will be required to pay the non-refundable fee required by this section.

(l) This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.

**§217.2 Licensure by Examination for Graduates of Nursing Education Programs
Within the United States, its Territories, or Possessions.**

(a) (No change.)

(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

~~[(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable fees for determination of eligibility. Should the Board in its final determination find that the individual is not eligible for licensure, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility has been removed. In no event, may an applicant repetition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.]~~

(c) - (f) (No change.)

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.

(a)- (c) (No change.)

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

~~[(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable processing fees. Should the Board finally determine that the individual is not eligible to be admitted to the examination, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility for licensure has been removed. In no event, may an applicant re-petition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.]~~

(e) - (f) (No change.)

§217.5. Temporary License and Endorsement.

(a) - (d) (No change.)

(e) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

~~[(e) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled in accordance with Texas Occupations Code §301.257 (Declaratory Order of License Eligibility) and §§213.27, 213.28 and 213.29 (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, and Eligibility and Disciplinary Criteria Regarding Intemperate Use and Lack of Fitness), then the application will be treated and processed as a Petition for Eligibility Order for LVN or RN Endorsement and the applicant will be required to pay the appropriate processing fees which are not refundable.]~~

~~[(f) Should the Board in its final determination find that the individual is not eligible for licensure as a nurse in Texas, then that individual is precluded from again petitioning, or applying to the Board for licensure until the impediment to eligibility for licensure has been removed.]~~

1 AN ACT

2 relating to the eligibility of certain applicants for occupational
3 licenses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 53, Occupations Code, is amended by
6 adding Subchapter D to read as follows:

7 SUBCHAPTER D. PRELIMINARY EVALUATION OF LICENSE ELIGIBILITY

8 Sec. 53.101. DEFINITIONS. In this subchapter:

9 (1) "License" means a license, certificate,
10 registration, permit, or other authorization that:

11 (A) is issued by a licensing authority; and

12 (B) a person must obtain to practice or engage in
13 a particular business, occupation, or profession.

14 (2) "Licensing authority" means a department,
15 commission, board, office, or other agency of the state that issues
16 a license.

17 Sec. 53.102. REQUEST FOR CRIMINAL HISTORY EVALUATION
18 LETTER. (a) A person may request a licensing authority to issue a
19 criminal history evaluation letter regarding the person's
20 eligibility for a license issued by that authority if the person:

21 (1) is enrolled or planning to enroll in an
22 educational program that prepares a person for an initial license
23 or is planning to take an examination for an initial license; and

24 (2) has reason to believe that the person is

1 ineligible for the license due to a conviction or deferred
2 adjudication for a felony or misdemeanor offense.

3 (b) The request must state the basis for the person's
4 potential ineligibility.

5 Sec. 53.103. AUTHORITY TO INVESTIGATE. A licensing
6 authority has the same powers to investigate a request submitted
7 under this subchapter and the requestor's eligibility that the
8 authority has to investigate a person applying for a license.

9 Sec. 53.104. DETERMINATION OF ELIGIBILITY; LETTER. (a) If
10 a licensing authority determines that a ground for ineligibility
11 does not exist, the authority shall notify the requestor in writing
12 of the authority's determination on each ground of potential
13 ineligibility.

14 (b) If a licensing authority determines that the requestor
15 is ineligible for a license, the licensing authority shall issue a
16 letter setting out each basis for potential ineligibility and the
17 authority's determination as to eligibility. In the absence of new
18 evidence known to but not disclosed by the requestor or not
19 reasonably available to the licensing authority at the time the
20 letter is issued, the authority's ruling on the request determines
21 the requestor's eligibility with respect to the grounds for
22 potential ineligibility set out in the letter.

23 (c) A licensing authority must provide notice under
24 Subsection (a) or issue a letter under Subsection (b) not later than
25 the 90th day after the date the authority receives the request.

26 Sec. 53.105. FEES. A licensing authority may charge a
27 person requesting an evaluation under this subchapter a fee adopted

1 by the authority. Fees adopted by a licensing authority under this
2 subchapter must be in an amount sufficient to cover the cost of
3 administering this subchapter.

4 SECTION 2. Not later than September 1, 2010, a department,
5 commission, board, office, or other agency of the state that issues
6 a license to practice or engage in a particular business,
7 profession, or occupation shall adopt rules necessary to administer
8 Subchapter D, Chapter 53, Occupations Code, as added by this Act.

9 SECTION 3. Section 53.021(a), Occupations Code, is amended
10 to read as follows:

11 (a) A licensing authority may suspend or revoke a license,
12 disqualify a person from receiving a license, or deny to a person
13 the opportunity to take a licensing examination on the grounds that
14 the person has been convicted of:

15 (1) an offense [a felony or misdemeanor] that directly
16 relates to the duties and responsibilities of the licensed
17 occupation;

18 (2) an offense that does not directly relate to the
19 duties and responsibilities of the licensed occupation and that was
20 committed less than five years before the date the person applies
21 for the license;

22 (3) an offense listed in Section 3g, Article 42.12,
23 Code of Criminal Procedure; or

24 (4) a sexually violent offense, as defined by Article
25 62.001, Code of Criminal Procedure.

26 SECTION 4. Subchapter B, Chapter 53, Occupations Code, is
27 amended by adding Section 53.0211 to read as follows:

1 Sec. 53.0211. LICENSING OF CERTAIN APPLICANTS WITH PRIOR
2 CRIMINAL CONVICTIONS. (a) This section does not apply to an
3 applicant for a license that would allow the applicant to provide:

4 (1) law enforcement services;

5 (2) public health, education, or safety services; or

6 (3) financial services in an industry regulated by the
7 securities commissioner, the banking commissioner, the savings and
8 mortgage lending commissioner, or the credit union commissioner.

9 (b) Notwithstanding any law other than Subsection (a) and
10 unless the applicant has been convicted of an offense described by
11 Section 53.021(a), a licensing authority shall issue to an
12 otherwise qualified applicant who has been convicted of an offense:

13 (1) the license for which the applicant applied; or

14 (2) a provisional license described by Subsection (c).

15 (c) A licensing authority may issue a provisional license
16 for a term of six months to an applicant who has been convicted of an
17 offense.

18 (d) The licensing authority shall revoke a provisional
19 license if the provisional license holder:

20 (1) commits a new offense;

21 (2) commits an act or omission that causes the person's
22 community supervision, mandatory supervision, or parole to be
23 revoked, if applicable; or

24 (3) violates the law or rules governing the practice
25 of the occupation for which the provisional license is issued.

26 (e) The licensing authority shall issue the license for
27 which the applicant originally applied to a provisional license

1 holder on the expiration of the provisional license term if the
2 provisional license holder does not engage in conduct described by
3 Subsection (d).

4 (f) If the licensing authority revokes a provisional
5 license under Subsection (d), the provisional license holder is
6 disqualified from receiving the license for which the applicant
7 originally applied.

8 (g) An applicant who is on community supervision, mandatory
9 supervision, or parole and who is issued a provisional license
10 under this section shall provide to the licensing authority the
11 name and contact information of the probation or parole department
12 to which the person reports. The licensing authority shall notify
13 the probation or parole department that a provisional license has
14 been issued. The probation or parole department shall notify the
15 licensing authority if the person's community supervision,
16 mandatory supervision, or parole supervision is revoked during the
17 term of the provisional license.

18 SECTION 5. The changes in law made by this Act by the
19 amendment of Section 53.021(a), Occupations Code, and the addition
20 of Section 53.0211, Occupations Code, apply only to an application
21 for a license filed with a licensing authority, to which Chapter 53,
22 Occupations Code, applies, on or after the effective date of this
23 Act. An application filed before that date is governed by the law
24 in effect when the application is filed, and the former law is
25 continued in effect for that purpose.

26 SECTION 6. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 963

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 963 was passed by the House on March 31, 2009, by the following vote: Yeas 147, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 963 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 963 on May 31, 2009, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 963

I certify that H.B. No. 963 was passed by the Senate, with amendments, on May 25, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 963 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor