

Consideration of Guidelines for Requests for Exceptions to Board Orders

Background: Over the last several years, the Board has seen a significant increase in requests for exceptions to Board Orders. Often these orders have been agreed to by the nurse based on alleged violations at issue. What used to be a rare request appears to have become routine for any individual unhappy with his/her agreed order. More frequently, even those individuals whose exceptions have been granted seek to return to the Eligibility and Disciplinary Committee for additional modifications to the agreed order.

The Board adopted Rule 211.7(h) in 2013, which provides that the Executive Director shall establish guidelines for review and approval of requests for exceptions to existing Board orders, including how often such requests may be made. Attached hereto as Attachment "A" are proposed guidelines, establishing general parameters regarding exceptions to Board Orders .

Board Action: Move to approve the attached Guidelines for Exceptions to Existing Board Orders.

Guidelines for Exceptions to Existing Board Orders

Purpose

Pursuant to 22 Tex. Admin. Code §211.7(h), the Executive Director may grant a request for exception to a Board Order if he/she is of the opinion that the requested relief falls within, and is consistent with, public safety and the parameters of 22 Tex. Admin. Code §213.33(b), (g), and (h). Otherwise, the request may be scheduled without prejudice before the next practicable Eligibility and Disciplinary Committee meeting for review and determination.

These guidelines are intended to establish general parameters regarding exceptions to Board Orders and to inform licensees, applicants, petitioners, and the public of these parameters. These guidelines are not necessarily meant to be exhaustive and may not specifically apply in a particular case or in all situations. Although these guidelines establish general criteria for exceptions to Board Orders, each case must be considered on its own merit and unique circumstances.

Requirements

A Board Order must be final before a request for exception may be filed with the Board for consideration. No request for exception shall be entertained until the requestor has completed all remedial education requirements of the Board Order. Requests for exceptions to a Board Order must be submitted in writing and must identify with particularity the specific modifications the requestor is seeking. A requestor may only submit one request for exception to a Board Order within a calendar year. If a requestor's exception to a Board Order is denied, the requestor must wait at least one calendar year from the date of the denial before being eligible to submit a new request for exception to the Board.

Requests for exceptions to a Board Order are not intended to excuse an individual from completing the requirements of the Board Order. Rather, requests for exceptions should be limited in nature and any granted relief should be narrowly tailored. Further, the findings of fact and conclusions of law in the Board Order should not be altered, eliminated, or amended, unless required by law.

A requestor should provide documentary evidence to support his/her request for exception to a Board Order whenever possible. For example, a request for a reduction in, or elimination of random drug testing should be accompanied by documentary evidence of sobriety (i.e., letters from sponsors, AA/NA attendance logs; history of negative drug

screens; compliance with a peer assistance program/inpatient/outpatient program). A request for modification of work restrictions should include as much detailed information as possible to assist the decision maker(s) in determining if the requested relief is appropriate and in the interests of public safety (i.e., identification of the specific relief requested; identification of an alternate supervisor, if requested; letter(s) of support from an alternate supervisor; letter(s) of support from prospective/current employer).

A requestor should be in compliance with the terms of the Board Order in order to request an exception to the Order. Attempts by the requestor to comply with the requirements of the Board Order should be documented and provided with the requestor's request. Further, a Board Order should be effective for at least 6 months prior to the filing of a request for exception.

If a request for exception is scheduled before the Eligibility and Disciplinary Committee for review and determination, written instructions will be provided to the requestor within a reasonable time prior to the meeting where the Committee will consider the request. Requestors should review the instructions and these guidelines carefully. A requestor may be represented by legal counsel of his/her choosing, at his/her cost.