

**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.30,
Pertaining to *Declaratory Order of Eligibility for Licensure***

Background: The Eligibility & Disciplinary Advisory Committee (Committee) is one of the Board's standing advisory committees and was created to advise the Board on regulatory matters, either as specifically charged by the Board or on a continuous basis¹. Attachment "A" contains proposed amendments to current Rule 213.30, as recommended by the Committee after review and discussion at meetings in August 2014 and January, May, and June 2015².

The proposed amendments:

- re-organize the section for clarity and consistency with other proposed changes to Rules 213.27, 213.28, and 213.29 and Board policies; and
- include language that is consistent with the recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM-V).

Staff recommends adopting the proposed amendments to Rule 213.30, as set out in Attachment "A".

Board Action: Move to approve the proposed amendments to 22 Tex. Admin. Code §213.30, pertaining to *Declaratory Order of Eligibility for Licensure*, with authority for the 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 request for a public hearing are received, move to adopt the amendments to 22 Tex. Admin. Code §213.30, pertaining to *Declaratory Order of Eligibility for Licensure*, as proposed.

¹ See 22 Tex. Admin. Code §211.6.

² The Board issued a charge to the Committee at its April 2012 meeting to review its Criminal Guidelines and Sanction policies. The Committee also reviewed related rules.

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.

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

(c) A petitioner must submit a petition₁ on forms provided by the Board, and the following information [~~which includes~~]:

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

(2) if the potential ineligibility is due to the petitioner's criminal history [~~criminal conduct and/or conviction~~], all [~~any~~] court documents₁ including, but not limited to: indictments, agreements for pre-trial diversion or deferred prosecution, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, as

[if] applicable;

(3) if the potential ineligibility is due to the petitioner's mental health condition or diminished capacity [~~mental illness~~], verifiable and reliable evidence of controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, as applicable [~~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 the petitioner's substance use disorder and/or the abuse/misuse of alcohol or drugs, verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance [~~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; and [-];

(6) an evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions), as applicable.

(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. The investigation will be based upon an evaluation of the individualized factors of the case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the petitioner's ability to meet the

requirements of §§213.27 (relating to Good Professional Character), 213.28 (relating to Licensure of Individuals with Criminal History), and 213.29 (relating to Fitness to Practice) of this chapter, as applicable. Based upon the individualized facts of the case, the Board may approve licensure without encumbrance, impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, or deny licensure.

(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.

(f) If an individual is seeking licensure by endorsement pursuant to §217.5 of this title and has been licensed to practice nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the provisions of §213.27(e) of this chapter will apply to [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.]~~

(g) If a petitioner's potential ineligibility is due to his/her criminal history ~~[conduct and/or conviction, including deferred adjudication]~~, the ~~[following]~~ provisions of [shall govern the eligibility of the petitioner with regard to] §213.28 of this chapter will apply to the eligibility of the petitioner ~~[(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.]~~

(h) If a petitioner's potential ineligibility is due to a substance use disorder and/or the abuse/misuse of alcohol or drugs, a mental health condition or diminished capacity, or another issue relating to the individual's fitness to practice, the provisions of §213.29 of this chapter will apply to the eligibility of the petitioner.

~~(i)[(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 chapter (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 chapter (relating to Decision of the Board).

~~(j)~~~~(+)~~ 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.

~~(k)~~~~(g)~~ The following eligibility and disciplinary sanction policies, as applicable, [and guidelines] shall be used by the Executive Director, SOAH, and the Board in evaluating an eligibility matter under this section ~~[and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters]:~~

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available

on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>;

(3) Sanctions for Sexual Misconduct approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

~~[The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this chapter 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 May 17, 2013 in the Texas Register (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.]~~

~~(l)[(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 addressed ~~[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 and §223.1 of this title (relating to Fees).

~~(m)[(t)]~~ This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.