

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

The proposed amendment to section 213.30 is for the sole purpose of deleting a subsection of the rule that is not applied and, therefore, unnecessary. (A similar statement exists in § 213.27 that is addressed in agenda item #7.6.) Although the board views all felonious conduct seriously, mitigating factors may exist that justify some individuals being allowed to practice as a nurse. The criminal conduct must be deemed to affect the practice of nursing, and consideration must be given regarding:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.
(TOC § 53.023(a) and Board rule 213.28(d))

When these factors are taken into account, it is not plausible for this rule to be in effect.

Staff requests that the Board move to propose an amendment to section 213.30 and publish it 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 amendment in the *Texas Register*.

§213.30. Declaratory Order of Eligibility for Licensure.

(a) - (e) No change.

(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) An individual guilty of a felony under this rule is conclusively deemed not to have present good professional character and fitness and should not petition the Board for a Declaratory Order of Eligibility for Licensure for a period of three years after the completion of the sentence and/or period of probation.~~

~~(2)~~(3) 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) - (h) No change.