

Agenda Item: 7.7
April 16-17, 2014
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**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.34,
Pertaining to *Deferred Disciplinary Action Pilot Program***

Background: Senate Bill (SB) 1415, enacted by the 81st Texas Legislature, Regular Session, effective September 1, 2009, authorized the Board to conduct a pilot program designed to evaluate the efficacy and effect of deferring disciplinary actions against individuals. In compliance with the bill's mandates, on July 12, 2010, the Board adopted rules establishing the parameters of the pilot program and creating a deferred disciplinary action pilot program advisory committee to assist the Board in overseeing and evaluating the pilot program. The pilot program began on February 1, 2011.

At its October 2012 meeting, the Board considered the committee's recommendations regarding the success of the pilot program and recommendations for its continuation. In October, 2012, the Board filed its final report regarding the pilot program and its recommendations regarding the program's continuance with the Executive and Legislative branches. Like the committee, the Board recommended that deferred discipline be made a permanent part of the Nursing Practice Act.

During the last legislative session, the Legislature enacted SB 1058, effective September 1, 2013, which made deferred discipline a permanent part of the Nursing Practice Act. The proposed rule amendments are necessary for consistency with the bill's provisions and to implement deferred discipline as a permanent part of the Board's rules. A copy of the proposed amendments are attached hereto as Attachment "A".

Board Action: Move to approve the proposed amendments to 22 Tex. Admin. Code §213.34, pertaining to *Deferred Disciplinary Action Pilot Program*, 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 proposed amendments to 22 Tex. Admin. Code §213.34, pertaining to *Deferred Disciplinary Action Pilot Program*, as proposed.

§213.34. Deferred Discipline [~~Disciplinary Action Pilot Program~~].

(a) Deferred discipline may be imposed by the Board as specified in this rule.

~~[(a) This section implements the deferred disciplinary action pilot program authorized by the Occupations Code §301.1607. The pilot program will commence on February 1, 2011, and will conclude no later than January 1, 2014.]~~

~~(b)~~(c) The opportunity to enter into a deferred disciplinary order [~~under the pilot program~~] is at the sole discretion of the Executive Director as a condition of settlement by agreement and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

~~(b)~~ The purpose of the pilot program is to evaluate the efficacy and effect of Board deferral of final disciplinary actions against individuals for violations of the Nursing Practice Act and/or Board rules.;

~~(c)~~(d) Deferred discipline [~~A deferred disciplinary action under the pilot program~~] will be available for:

(1) [~~for~~] individuals with no prior disciplinary history with the Board or any other licensing board and/or disciplinary authority in another jurisdiction or under federal law;

(2) [~~for~~] violations of the Nursing Practice Act and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or a Fine; and

~~[(3) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings;]~~

~~[(4) only if the probationary stipulations outlined in the deferred disciplinary order are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and]~~

~~(3)[(5)] [for] violations of the Nursing Practice Act and/or Board rules that were pending with the Board on September 1, 2009, or after.~~

~~(d)[(e)] Violations of the Nursing Practice Act and/or Board rules involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, or substance use disorder ~~[chemical dependency, or substance abuse]~~ will not be eligible for resolution through [a] deferred discipline ~~[disciplinary action under the pilot program].~~~~

~~(e)[(f)] Deferred discipline [A deferred disciplinary action under the pilot program] will not be available to:~~

(1) - (3) (No change.)

~~(f)[(g)] A deferred disciplinary order will be available to the public for a minimum of five years and until such time as an individual successfully completes all of the conditions ~~[probationary stipulations]~~ required by the deferred disciplinary order and the originating complaint is dismissed by the Board. After such time, the deferred disciplinary order will become confidential to the same extent that a complaint is confidential under the Occupations Code §301.466 ~~[not be available to the public].~~~~

~~(g)[(h)] If an individual fails to comply with a condition ~~[probationary stipulation]~~ required by a deferred disciplinary order or if a subsequent complaint is filed against an~~

individual during the pendency of the deferred disciplinary order, the Board will stay the dismissal of the originating complaint pending the resolution of the subsequent complaint. If the subsequent complaint is proposed for resolution through a disciplinary action under the Occupations Code Subchapter J, the Board will not dismiss the originating complaint, and the Board may treat the deferred disciplinary order [~~action~~] as prior discipline [~~disciplinary action~~] when considering the imposition of a disciplinary sanction.

~~[(i) The outcome and effectiveness of the pilot program will be evaluated by the Board on a regular basis.]~~