

Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.27, relating to Good Professional Character

Background: All state agencies must undergo a legislative review by the Texas Sunset Advisory Commission (Commission) on a regular basis. The Board was last reviewed by the Commission in 2006-2007 (during the 80th Legislative cycle), and underwent its current review in 2016-2017 (during the 85th Legislative cycle). The Board is scheduled to be re-reviewed by the Commission again in 2028-2029 (during the 91st Legislative cycle).

The Commission adopted several recommendations as a result of its review of the Board. Several of these recommendations related to the Board's disciplinary processes and policies. Specifically, the Commission found that the Board's definition of *good professional character* was too subjective and that its application should be limited to the practice of nursing. The Commission found that the Board's broad standards for professional character were not consistent with the Legislature's policy to limit enforcement actions to the practice of nursing, potentially resulting in harsher sanctions. The Commission recommended that the Board revise its rules regarding good professional character to remove any subjective language or requirements not specifically related to the practice of nursing. Further, the Commission recommended that the Board seek stakeholder input to revise the rules and adopt new rules by March 1, 2018. The Commission's recommendations were codified in House Bill (HB) 2950, which became effective September 1, 2017.

At its January 2017 meeting, the Board charged its Advisory Committee on Licensure, Eligibility and Discipline (Committee) to review the Commission's recommendations and provide proposed changes to the Board. The Committee met on May 12, 2017; June 9, 2017; August 11, 2017; and September 15, 2017 to review the Commission's recommendations and comply with the Board's charge. Unfortunately, a quorum was not attained at the Committee's September 15, 2017, meeting, and the Committee was unable to make formal recommendations to the Board regarding its good professional character rule. However, the Committee members that were present at that meeting discussed the Board's current rule and provided informal comments to Staff.

In order to comply with the Commission's recommendations and the statutory requirements of HB 2950, Attachment "A" contains proposed amendments to the Board's Good Professional Character rule.

Staff Recommendation: Move to approve the proposed amendments to 22 Texas Administrative Code §213.27, relating to *Good Professional Character*, 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 Texas Administrative Code §213.27, relating to *Good Professional Character*, as proposed.

Attachment "A"

§213.27. Good Professional Character

(a) Every individual who seeks to practice nursing in Texas must have good professional character related to the practice of nursing. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

(b) The Board defines good professional character as the integrated pattern of personal, academic, and occupational behaviors that ~~[which, in the judgment of the Board,]~~ indicates that an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act, the Board's rules ~~[and regulations]~~, and generally accepted standards of nursing practice. An individual who provides satisfactory evidence that he/she has not committed a violation of the Nursing Practice Act or a rule adopted by the Board is considered to have good professional character related to the practice of nursing. ~~[An individual must maintain good professional character to ensure that he/she is able to consistently act in the best interest of patients/clients and the public. In all cases, it is the individual's burden to provide evidence of good professional character in order to obtain or retain licensure.]~~

(c) A determination that an individual does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of the Nursing Practice Act or a rule adopted by the Board and the individual's ability to effectively practice nursing. When evaluating the rationale connection between the relevant conduct and the ability to effectively practice nursing, the Board will consider the following factors: ~~[When evaluating whether an individual has demonstrated good professional character in an eligibility or disciplinary~~

matter, the Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) shall consider the following factors: }

~~[(1) the individual's age, education, experience, and behavioral history;]~~

~~[(2) whether the individual is able to distinguish right from wrong;]~~

~~[(3) whether the individual is able to think and act rationally;]~~

~~[(4) whether the individual is able to keep promises and honor obligations]~~

~~[(5) whether the individual is accountable for his/her own behavior and/or accepts responsibility for his/her actions;]~~

~~(1)~~(6) whether the individual will be ~~[is]~~ able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable;

~~(2)~~(7) whether the individual will be ~~[is]~~ able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;

~~(3)~~(8) whether the individual will be ~~[is]~~ able to make appropriate judgments and decisions that could affect patients/clients and/or the public; and

~~(4)~~(9) whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct) of this title, and generally accepted standards of nursing practice; and

~~(5)~~(10) whether the individual will be ~~[is]~~ able to promptly and fully self-

disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the health status of patients/clients or the public and/or could protect patients/clients or the public from an unnecessary risk of harm.~~[-and]~~

~~[(11) any other behaviors bearing on the individual's honesty, accountability, trustworthiness, reliability, or integrity.]~~

~~[(d) The following eligibility and disciplinary sanction policies, as applicable, and §213.28(d) of this chapter (relating to Licensure of Individuals with Criminal History) shall be used by the Executive Director, Board, and SOAH in conjunction with this section when evaluating good professional character in eligibility and disciplinary matters, as applicable]~~

~~[(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* 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 August 28, 2015, in the *Texas Register* 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 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>; and]~~

~~[(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]~~

~~(d)~~~~(e)~~ Actions from Other Jurisdictions A certified copy of the order of the denial, suspension, or revocation or other action relating to an individual's license or privilege to practice nursing in another jurisdiction or under federal law is conclusive evidence of that action.

~~[(1) A certified copy of an order of adverse action or a judgment from another jurisdiction relating to an individual's license or privilege to practice nursing in that jurisdiction is prima facie evidence of the matters contained in such order or judgment and is conclusive evidence that the disciplined individual committed the misconduct set forth in the order or judgment.]~~

~~[(2) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas during the period of discipline imposed by a disciplining jurisdiction, or, in the case of revocation or surrender, prior to licensure reinstatement in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.]~~

~~[(3) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas following the completion of the disciplinary period assessed by a disciplining jurisdiction, or, in the case of revocation or surrender, after the reinstatement of licensure in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.]~~