

Consideration of Proposed Amendments to 22 Tex. Admin. Code §217.12, relating to Unprofessional Conduct

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 *unprofessional conduct* 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 unprofessional conduct 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 unprofessional conduct 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 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 unprofessional conduct rule. However, the Committee members that were present at that meeting discussed the Board's current unprofessional conduct 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 Unprofessional Conduct rule. The proposed amendments also remove redundant or unnecessary wording from the rule.

Staff Recommendation: Move to approve the proposed amendments to 22 Texas Administrative Code §217.12, relating to *Unprofessional Conduct*, 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 §217.12, relating to *Unprofessional Conduct*, as proposed.

Attachment "A

§217.12. Unprofessional Conduct. The following unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify [~~unprofessional or dishonorable~~] behaviors [~~of a nurse~~] in the practice of nursing which [~~the board believes~~] are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

(1) Unsafe Practice--actions or conduct including, but not limited to:

(A) (No change.)

(B) Failing [~~Carelessly or repeatedly failing~~] to conform to generally accepted nursing standards in applicable practice settings;

(C) - (G) (No change.)

(2) Failure of a chief administrative nurse to follow [~~appropriate and recognized~~] standards and guidelines required by federal or state law or regulation or by facility policy in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible.

(3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the Board [~~board~~] in granting an encumbered [~~a coded~~] license or any stipulated agreement with the Board [~~board~~].

(4) Conduct [~~Careless or repetitive conduct~~] that may endanger a client's life, health, or safety. [~~Actual injury to a client need not be established.~~]

(5) (No change.)

(6) Misconduct--actions or conduct that include, but are not limited to:

(A) (No change.)

(B) Failing to cooperate with a lawful investigation conducted by the Board [board].;

(C) - (H) (No change.)

(I) Failing to answer specific questions or providing false or misleading answers in a licensure or employment matter that could reasonably affect [~~would have affected~~] the decision to license, employ, certify or otherwise utilize a nurse; or

(J) (No change.)

(7) - (8) (No change.)

(9) Dismissal from a board-approved peer assistance program for noncompliance and referral by that program to the Board [BNE].

(10) (No change.)

(11) Unlawful Practice--actions or conduct that include, but are not limited to:

(A) (No change.)

(B) Violating an order of the Board [board], or carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered or advanced practice nursing, or violating a state or federal narcotics or controlled substance law;

(C) Aiding [~~Knowingly aiding~~], assisting, advising, or allowing a nurse under Board Order to violate the conditions set forth in the Order; or

(D) (No change).

(12) (No change.)

~~[(13) Criminal Conduct--including, but not limited to, conviction or probation,~~

~~with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing.]~~