

**Consideration of Adoption of Amendments to 22 Tex. Admin. Code §217.12,
relating to *Unprofessional Conduct*, including Written Comments Received and
Results of Public Hearing, if any**

Background: Proposed amendments to §217.12 were approved by the Board at its October 2017 meeting for submission to the *Texas Register* for public comment. The proposed amendments were published in the *Texas Register* on December 8, 2017, and the comment period ended on January 7, 2018. The Board received two written comments on the proposal. The Board did not receive any requests for a public hearing. A copy of the written comments are attached hereto as Attachment "A".

The Board received a positive written comment from a representative of the Texas Nurses Association (TNA) expressing support of the proposed changes to §217.12. The Board also received one written comment from a representative of the Coalition for Nurses in Advanced Practice (CNAP) recommending a minor grammatical change to the introductory paragraph of the rule text. Staff recommends that the recommended changes be made.

A summary of the comments received and Staff's proposed responses to the written comments are attached as Attachment "B". The relevant portion of the proposed rule text, as approved by the Board and published in the *Texas Register*, is included in Attachment "C". Staff's recommended changes to the relevant portion of the rule text, with highlighted changes responsive to the written comments, are included in Attachment "D". If approved by the Board, the amendments will become effective in February 2018.

Board Action: Move to adopt the amendments to 22 Texas Administrative Code §217.12 pertaining to *Unprofessional Conduct*, with changes, as set out in Attachment "D". Further, authorize Staff to publish the summary of comments and response to comments attached hereto as Attachment "B".



January 9, 2018

James W. Johnston, General Counsel
Texas Board of Nursing
333 Guadalupe, Suite 3-460
Austin, Texas 78701

Mr. Johnston,

Thank you for taking the Texas Nurses Association's comments on changes to Board of Nursing rules as proposed in the December 8, 2017 issue of the *Texas Register*.

The Texas Nurses Association worked closely with the Legislature and the Board of Nursing during the legislative session on the bill that lead to these proposed amendments. We would like to thank the Board for their efforts to implement the policies adopted by the legislature during the 85th Legislative Session.

The changes to 213.23, *Decisions of the Board*, reflect the statutory changes regarding how the Board will consider findings of fact and conclusions of law in a proposal for decision (PFD). We feel that this is a step in the right direction for nurses' due process rights.

The Board has done an outstanding job of eliminating subjective language in 213.27, *Good Professional Character*, and 217.12, *Unprofessional Conduct*. We expect that the new, objective criteria will assist nurses in understanding their duties and responsibilities. Likewise, we appreciate the Board's changes to 213.28, *Licensure of Individuals with Criminal History*. The changes to all of these rules, taken together, will minimize administrative burdens for the state while continuing to protect the public from serious offenders.

TNA would like to thank the Board and their staff for promoting open and honest discussions between stakeholders throughout this rulemaking process. The process was inclusive and productive.

The Texas Nurses Association appreciates this opportunity to comment on the Board rules and welcome any feedback.

Sincerely,

A handwritten signature in black ink that reads "Jeff Watson". The signature is written in a cursive, flowing style.

Jeff Watson, DNP, RN-BC, NEA-BC, NE-BC, CRRN
President

Dusty & Jena,

The BON rule amendments proposed in the December 8th issue of the Texas Register looked good and CNAP supports the changes. I just have a couple of editorial recommendations.

In §213.27(b), on line 2, I suggest deleting the "s" on "indicates" and "that". Eliminating the "s" needs to be changed for subject-verb agreement. Changing "which" to that on line 1, makes a second "that" unnecessary. The changes I suggest are highlighted as follows:

(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,] indicate[s 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.

In accordance with the Legislative drafting manual, "which" should be changed to "that" as highlighted below in Subparagraph 217.2(a)(4)(E)(ii) and Section 217.12.

§217.2(a)(4)(E)(ii)

(ii) The applicant completes an educational program at an approved Texas program that [which] is designed to assess and improve clinical skills for applicants who have not completed supervised clinical experiences in their prior educational program. The applicant must seek and receive the Board's approval prior to entering into the program to ensure that the program will allow the applicant may be eligible for full licensure. The applicant must provide the Board evidence of completion of the approved program.

§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 in the practice of nursing [of a nurse] that [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:

It has been a pleasure working with you on the Board's Licensure, Eligibility and Disciplinary Advisory Committee. Please let me know if you have any questions.

Lynda

Lynda Woolbert, MS, RN, CPNP-PC, FAANP
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Attachment “B”

Summary of Comments Received

In general

Comment: A representative of the Texas Nurses Association states that it appreciates the Board’s changes to the rule.

Response: The Board appreciates the comment.

Introductory paragraph of rule text

Comment: A representative of the Coalition for Nurses in Advanced Practice suggests a grammatical change in the introductory paragraph of the rule text to replace the word “which” with the word “that”.

Response: The Board agrees and has amended the text as adopted accordingly.

Attachment "C" (relevant portion of rule text as originally proposed)

§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:

Attachment “D” (suggested changes to the relevant rule text highlighted in blue)

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