

Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.35, relating to Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program

Background: In October 2013, the Board approved a two-year pilot program with the Texas A&M Rural and Community Health Institute (RCHI) and the College of Nursing (CON) to offer the KSTAR Nursing Pilot Program to nurses with practice violations as an alternative to traditional discipline. In July 2014, the Board adopted Rule 213.35, which establishes minimum requirements and criteria for evaluating the effectiveness of the KSTAR program, or an equivalent, as an alternative discipline. In November 2014, the KSTAR Nursing Pilot Program enrolled its first cohort of nurses. In October 2015, the Board approved a two year extension of the pilot to continue through October 2017. Further, at the July 2017 meeting, the Board approved KSTAR as a permanent disciplinary option for nurses meeting the eligibility criteria set out in Board rule 213.35.

Board Rule 213.35 currently refers to the KSTAR pilot program and appears to be an exclusive rule for the current KSTAR program only. However, other pilot program providers may wish to seek Board approval to provide a similar assessment and remediation program to nurses. While the Board anticipates that KSTAR will continue to provide its assessment and remediation program to Board licensees as an alternative to traditional discipline, the proposed amendments, attached as Attachment "A", are necessary to allow other qualified program providers to seek Board approval for similar purposes.

Board Action: Move to approve the proposed amendments to 22 Texas Administrative Code §213.35, relating to *Knowledge, Skills, Training, Assessment and Research (KSTAR) 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 amendments to 22 Texas Administrative Code §213.35, relating to *Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program*, as proposed.

Attachment "A"

§213.35. Targeted Assessment and Remediation [~~Knowledge, Skills, Training, Assessment and Research (KSTAR)~~] Pilot Program.

(a) This section is authorized by Texas Occupations Code §301.1605(a) and §301.453 [~~and implements the Knowledge, Skills, Training, Assessment and Research (KSTAR) pilot program approved by the Texas Board of Nursing on October 17, 2014~~]. Any [~~The~~] pilot program approved by the Board [~~will commence~~] after the final adoption of this rule [~~and~~] will continue for a period not to exceed two years from the approval [~~implementation~~] date. The pilot program approved by the Board may be extended upon an approval of a written application submitted to the Board.

(b) The purpose of this rule is to evaluate the effectiveness of innovative remediation programs that are designed to target deficiencies in nurse practice competencies of licensed practitioners and provide effective and efficient remediation as [~~the KSTAR program, or an equivalent, as~~] an alternative method of discipline. An applicant for approval is encouraged [~~The pilot will~~] to develop a comprehensive and individualized assessment of nurse practice competency based on identified violations of the Nursing Practice Act (NPA) and [~~use~~] targeted remedial education to correct identified deficiencies in order to ensure minimum competency. Additionally, the pilot program may wish to [~~will~~] develop an alternative extensive orientation program consistent with §217.6(b) of this title (relating to Failure to Renew License) and §217.9(g) of this title (relating to Inactive and Retired Status) of this title that will evaluate and remediate nurses who wish to re-enter practice after prolonged absences. The design of any [~~an~~] alternative extensive orientation will focus on [~~provide~~] evidence-based assurance of minimum nurse

competency before returning to practice.

(c) (No change).

(d) Any [The KSTAR pilot program] order issued in association with an approved pilot program will be considered a method of discipline pursuant to Texas Occupations Code §301.453 or §301.6555[;] and will be considered public information subject to all reporting requirements of disciplinary actions under federal and state laws.

(e) Participation in an approved [the KSTAR] pilot program will only be through an agreed order and the opportunity to enter into a [KSTAR] pilot program order is at the sole discretion of the Executive Director.

(f) Each nurse will be responsible for the entire cost of participation in the [KSTAR] pilot program. Each nurse subject to a pilot program [KSTAR] order must:

(1) enroll in the pilot program within 45 days of the date of the order unless otherwise agreed [agree];

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

(4) successfully complete the pilot program [KSTAR] order within one year from the effective date of the agreed order; and

(5) provide written proof of successful completion of the [KSTAR] pilot program to the Board.

(g) The [KSTAR] pilot program provider approved under this rule should be capable of meeting the following requirements:

(1) - (6) (No change).

(h) Every [KSTAR] pilot program order shall require the person subject to the order to participate in a program of education and study that will include a course in nursing

jurisprudence and ethics.

(i) (No change).

(j) In order for a nurse to be eligible to participate in a pilot program order, the individual shall have no prior disciplinary history with the Board.

~~[A KSTAR pilot program action under the pilot program will be available:]~~

~~[(1) for individuals with no prior disciplinary history with the Board;]~~

~~[(2) for violations of the NPA 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 any deferred order issued pursuant to §213.34 of this title (relating to Deferred Discipline);]~~

~~[(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 KSTAR pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and]~~

~~[(5) for violations of the NPA and/or Board rules that were pending with the Board on January 1, 2014, or after.]~~

(k) A pilot program order will only be available:

(1) for violations of the NPA 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 any deferred order issued pursuant to §213.34 of this title (relating to

Deferred Discipline);

(2) as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings; and

(3) if the probationary stipulations outlined in the pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness.

~~(l)(k)~~ Violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a [KSTAR] pilot program action under the pilot program.

~~[(l) KSTAR pilot program action under the pilot program will not be available to:]~~

~~[(1) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure);]~~

~~[(2) an individual whose application under §217.2 of this title (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 of this title (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or]~~

~~[(3) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.]~~

(m) If an individual fails to comply with a probationary stipulation required by the [KSTAR] pilot program order or if a subsequent complaint is filed against an individual

during the pendency of the [KSTAR] pilot program order, the Board may treat the [KSTAR] pilot program action as prior disciplinary action when considering the imposition of a disciplinary sanction.

(n) The outcome and effectiveness of any [the] pilot program will be monitored and evaluated by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

(o) The Board may contract with a third party to perform the monitoring and evaluation of any [the KSTAR pilot] program approved under this rule.