

**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.33, relating to *Factors Considered for Imposition of Penalties/Sanctions***

**Background:** HB 2950 amended the Occupations Code §301.461 to prohibit the Board from imposing upon an applicant or licensee the costs of an administrative hearing. Attached as Attachment "A" are Staff's recommended changes to conform Board Rule 213.33(b)<sup>1</sup> and (e) to this new statutory mandate.

**Board Action:** Move to approve the proposed amendments to 22 Texas Administrative Code Chapter §213.33, relating to *Factors Considered for Imposition of Penalties/Sanctions*, 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 §213.33, relating to *Factors Considered for Imposition of Penalties/Sanctions*, as proposed.

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<sup>1</sup> Section 213.33(b) contains the Board's Disciplinary Matrix. The only proposed changes to the Matrix are those identified in the preamble of the document. No further changes are recommended at this time.

Attachment "A"

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) (No change.)

(b) The Disciplinary Matrix is as follows:

Attached Graphic

(c) – (d) (No change.)

(e) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:

(1) – (11) (No change.)

(12) Assessment of costs as authorized by ~~[the Occupations Code §301.461 and]~~ the Government Code §2001.177; and/or

(13) (No change.)

(f) – (m) (No change.)

Figure: 22 TAC §213.33(b)

## Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative fine/penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33(c), published at 22 Tex. Admin. Code §213.33. The Matrix lists additional aggravating or mitigating factors that should be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301. If multiple violations of the Nursing Practice Act (NPA) and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH. Further, the Board and SOAH must consider the requirements of [pursuant to] Tex. Occ. Code §301.4531 in matters involving multiple violations or individuals with prior discipline.

~~[Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.]~~

~~[If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation.]~~

~~[If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.]~~

The Board may assess administrative fines/penalties as outlined in 22 Tex. Admin. Code §213.32.

~~[Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.]~~

Further, although also not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code §213.33.

This Matrix also applies to the determination of an individual's eligibility for licensure.