

**Consideration of Proposed New 22 Tex. Admin. Code §213.27,
Pertaining to *Good Professional Character***

Background: The Eligibility & Disciplinary Advisory Committee (Committee) is one of the Board's standing advisory committees and was created to advise the Board on regulatory matters, either as specifically charged by the Board or on a continuous basis¹. Attachment "A" contains a rewrite of current Rule 213.27, as recommended by the Committee after review and discussion at meetings in August 2014 and January, May, and June 2015².

The proposed new rule:

- is re-organized for clarity;
- eliminates a presumption of lack of good professional character in matters involving an action from another jurisdiction; and
- clarifies that it is the individual's burden to demonstrate good professional character.

Staff recommends repealing current Rule 213.27 and proposing new Rule 213.27, as set out in Attachment "A", in its place.

Board Action: Move to approve the proposed repeal of 22 Tex. Admin. Code §213.27, pertaining 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 repeal of 22 Tex. Admin. Code §213.27, pertaining to *Good Professional Character*, as proposed.

Further, move to approve proposed new 22 Tex. Admin. Code §213.27, pertaining to *Good Professional Character*, as set out in Attachment "A", 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 new 22 Tex. Admin. Code §213.27, pertaining to *Good Professional Character*, as proposed.

¹ See 22 Tex. Admin. Code §211.6.

² The Board issued a charge to the Committee at its April 2012 meeting to review its Criminal Guidelines and Sanction policies. The Committee also reviewed related rules.

Attachment “A”

§213.27. Good Professional Character.

(a) Every individual who seeks to practice nursing in Texas must have good professional character. 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 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 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) 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;
- (6) whether the individual 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;

(7) whether the individual is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;

(8) whether the individual is able to make appropriate judgments and decisions that could affect patients/clients and/or the public;

(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 of this title (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct), and generally accepted standards of nursing practice;

(10) whether the individual 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 XXXXX in the Texas Register (XX TexReg XXXX) 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 XXXXX in the Texas Register (XX TexReg XXXX) 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 XXXXX in the Texas Register (XX TexReg XXXX) 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 XXXXX in the Texas Register (XX TexReg XXXX) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(e) Actions from Other Jurisdictions.

(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.