

Proposed Adoption of Amendments to 22 Texas Administrative Code § 211.6, Regarding Committees of the Board Addressing Board Committees' Structure and Operating Criteria

In September 2006, the Staff of the Sunset Commission recommended in its report that the Board adopt “rules regarding the purpose, structure, and use of its advisory committees, including:

- the purpose, role, responsibility, and goal of the committees;
- size and quorum requirements of the committees;
- composition and representation provisions of the committees;
- qualifications of the members, such as experience or geographic location;
- appointment procedures for the committees;
- terms of service;
- training requirements, if needed;
- the method the Board will use to receive public input on issues acted upon by the advisory committees; and
- the requirement that the Board comply with the requirements of the Open Meetings Act.”

The original proposal of the amendments were published in the November 10, 2006, Texas Register (attachment #3). The adopted amendments to rule 211.6 will comply with chapter 2110 of the Government Code pertaining to State Agency Advisory Committees. One comment was received from the Texas Nurses Association (TNA). TNA’s letter (attachment #2) and the response to the comments are attached and underlined. Staff recommends the Board adopt one suggestion by TNA and also remove “Texas Primary Care Educators” from the Advisory Committee on Education (ACE) membership as this organization has never been a member of the ACE.

Staff recommends that the Board move to adopt amendments with changes and the responses to comments to 22 Texas Administrative Code section 211.6 pertaining to the Board’s advisory committees, as attached (attachment #1). The amendments are to be effective 20 days after filing with the *Texas Register*.

Agenda Item: 6.3 (Attachment #1)

The Board of Nurse Examiners adopts amendments with changes to 22 Texas Administrative Code § 211.6 pertaining to General Provisions. Section 211.6 specifically addresses the Committees of the Board. The original proposed amendment was in the November 10, 2006, edition of the <eti>Texas Register<et> at 31 TexReg 9194. The Board of Nurse Examiners is currently under "Sunset" review. In September 2006, the Staff of the Texas Sunset Advisory Commission recommended in its report that the Board adopt "rules regarding the purpose, structure, and use of its advisory committees, including: the purpose, role, responsibility, and goal of the committees; size and quorum requirements of the committees; composition and representation provisions of the committees; qualifications of the members, such as experience or geographic location; appointment procedures for the committees; terms of service; training requirements, if needed; the method the Board will use to receive public input on issues acted upon by the advisory committees; and the requirement that the Board comply with the requirements of the Open Meetings Act."

The adopted amendments to § 211.6 will comply with chapter 2110 of the Government Code pertaining to State Agency Advisory Committees. The main effect on the Board's existing practice is the "liaison" role of the Board members. Board members have served as chairpersons of some of the standing committees, but this rule amendment will revert their roles to "liaison" status. The organizations who comprise committee membership are substantially the same. One recommended change made by Staff is the removal of "Texas Primary Care Educators" from the Advisory Committee on Education (ACE) due to its inadvertent inclusion on this committee. Texas Primary Care Educators have never been members of the ACE. Subsequent subclauses will be renumbered to correct the numbering.

One comment to the proposed amendments was received from the Texas Nurses Association (TNA). TNA recommended three non-substantive changes as follows:

Comment: Subdivision (f)(6) requires each committee to provide notice of meetings on the Secretary of State's website. TNA believes this may be a more appropriate role for the BNE staff appointed to support the committee.

Response: The Board does not agree that a change is needed to the proposed amendments to clarify whose specific responsibility it is to post the meetings on the Secretary of State's web site. The Board agrees that the BNE Staff is in the better position to submit the notice of meetings to the Secretary of State's web site; however, the committee is in the best position to determine the time and agenda of the meeting. The Board's position is that once that decision is made, the Staff person assigned by the Executive Director to support the committee will then take the appropriate steps to make sure sufficient notice is provided to the public. The committee members would not have the ability to access the necessary web site to publicize the meeting.

Comment: Subdivision (f)(9) authorizes the committee chair to remove members for lack of attendance. TNA is not sure it is feasible to charge a volunteer chair with the responsibility to remove a committee member. The members are appointed by the Board and it would seem more appropriate and practical for the Board or Executive Director to remove a member.

Response: The Board agrees with this comment and will change the paragraph to incorporate this comment.

Comment: Subdivision (f)(2) states the Board may amend the committee membership as needed. TNA assumes the intent is that any change would occur by amending Subdivision (f)(1) that sets out the membership for the various advisory committees but this is not entirely clear from the wording of (f)(2).

Response: The Board disagrees that a change is needed to the currently proposed amendments. The Board's advisory committees must maintain a certain amount of fluidity to allow for the changes that occur in membership organizations. These organizations may cease to exist, may choose not to participate, may change names, etc. Paragraph (f)(2) is for the purpose of allowing for the unforeseen changes that occur with committee memberships and to make a quorum possible; therefore, the paragraph is not for the purpose of allowing the Board the opportunity to engage in arbitrary committee changes. Any permanent changes to committee membership would be incorporated in a rule amendment as soon as possible.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§ 211.6. Committees of the Board

(a) The following are standing and permanent committees of the board, as established by the board in accordance with the Nursing Practice Act. The responsibilities and authority of these committees include those duties and powers as set forth including other responsibilities and charges which the board may from time to time delegate to these committees.

(b) Eligibility and Disciplinary Committee.

(1) Members of the committee shall be appointed by the president and shall consist of one consumer member and two nurse members. The President shall have authority to substitute committee members when necessary to establish a quorum due to absences of standing members.

(2) The chair shall be named by the president.

(3) Duties and powers. The disciplinary committee shall have the authority to determine matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, and administrative and civil penalties.

(4) Quorum. Two eligible voting members shall establish a quorum of the Committee of which at least one member is a nurse.

(5) Tele-conference. A meeting by the Committee may be held by telephone conference call or video conference call as authorized by Texas Government Code chapter 551.

(c) Education Liaison. The three board members representing nursing educational programs shall serve as advisory to the staff on matters pertaining to faculty waivers, proposed curriculum revisions and other issues that may arise between regular board meetings. The recommendations of the liaison members are presented to the board at the next regular meeting for consideration.

(d) Advanced Practice Liaison. Three members shall be designated by the president to serve as advisory to the staff on matters pertaining to advanced practitioner waivers and other issues that may arise between regular board meetings. The recommendation of the liaison members are presented to the board at the next regular meeting for consideration.

(e) Other standing or ad hoc committees. The board may designate other standing or ad hoc committees as deemed necessary. Such committees shall have and exercise such authority as may be granted by the board.

(f) Advisory Committees. The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) The board has established the following committees that advise the board on a continuous basis or as charged by the Board:

(A) the Advanced Practice Nursing Advisory Committee (APNAC) advises the Board on practice issues and regulations that have or may have an impact on advanced practice nursing. The APNAC is comprised of representatives from the following:

- (i) Texas Association of Nurse Anesthetists (TANA);
- (ii) Coalition for Nurses in Advanced Practice (CNAP);
- (iii) Texas Nurse Practitioners (TNP);
- (iv) Consortium of Texas Certified Nurse-Midwives (CTCNM);
- (v) Texas Clinical Nurse Specialists (TXCNS);
- (vi) Texas Organization of Nurse Executives (TONE);
- (vii) Texas Nurses Association (TNA);
- (viii) CRNA Educator;
- (ix) CNS Education;
- (x) CNM Education;
- (xi) NP Educator; and
- (xii) other members approved by the Board.

(B) the Advisory Committee on Education (ACE) advises the Board on education and practice issues that have or may have an impact on the regulation of nursing education in Texas. The ACE is comprised of representatives from the following:

- (i) Licensed Vocational Nurses Association of Texas (LVNAT);
- (ii) Texas Association of Vocational Nurse Educators (TAVNE);
- (iii) Texas Organization of Baccalaureate and Graduate Nursing Education (TOBGNE);
- (iv) Texas Organization of Associate Degree Nursing (TOADN);
- (v) Texas League for Vocational Nursing (TLVN);
- (vi) Texas Organization of Nurse Executives (TONE);
- (vii) Texas Nurses Association (TNA);
- ~~(viii) Texas Primary Care Educators;~~
- (viii)~~(ix)~~ Texas Association of Deans and Directors Professional Nursing Programs (TADDPNS);
- (ix)~~(x)~~ various educators in Texas nursing programs;
- (x)~~(xi)~~ interested state agencies; and
- (xi)~~(xii)~~ other members approved by the Board.

(C) the Nursing Practice Advisory Committee (NPAC) reviews and analyzes issues that affect the practice of nursing. The NPAC is comprised of representatives from the following:

- (i) Licensed Vocational Nurses Association of Texas (LVNAT);
- (ii) Texas Association of Vocational Nurse Educators (TAVNE);
- (iii) Texas League for Vocational Nursing (TLVN);
- (iv) Texas Organization of Nurse Executives (TONE);
- (v) Texas Nurses Association (TNA);

- (vi) Texas School Nurses Organization (TSNO);
- (vii) Texas Department of Aging and Disability Services (DADS);
- (viii) Texas Association for Home Care (TAHC);
- (ix) Texas Department of State Health Services (DSHS);
- (x) Texas Association of Homes and Services for the Aging (TAHSA);
- (xi) Texas Hospital Association (THA); and
- (xii) other members approved by the Board.

(2) The Board may amend the committee memberships as needed.

(3) A board member or members appointed by the President of the board or the board may serve as a liaison(s) to a committee and report to the Board the recommendations of the committee for consideration by the Board.

(4) Each committee shall select from among its members a presiding officer who shall report to the agency or Board as needed.

(5) Each committee's work and usefulness shall be evaluated annually.

(6) The committees will provide notice of meetings, as feasible, on the Secretary of State's web site to allow the public an opportunity to participate.

(7) The Executive Director shall appoint staff to support the committee.

(8) The committee may consult with the board liaison(s) to authorize the committee to investigate identified topics or issues pending the development and communication of a formal charge by the Board.

~~(9) Committee members will be expected to attend meetings. The chairperson has the discretion to dismiss a member who does not regularly attend.~~

(9) Committee members will be expected to attend meetings. The chairperson has the discretion to recommend the dismissal of a member who does not regularly attend. The Board or Executive Director has the authority to approve the dismissal of a member.

(10) Advisory committees chairs may invite individuals as expert resources to participate in committee discussions and deliberations. Invited experts serve as ad hoc members and do not have voting privileges.

(11) The committees will meet on a schedule established by the chair of each committee.

(12) The decisions of the committee are advisory only.



7600 Burnet Road, Suite 440
Austin, Texas 78757-1292
Telephone 512.452.0645
Fax 512.452.0648
www.texasnurses.org

DELIVERED VIA EMAIL

December 8, 2006

Katherine A. Thomas
Executive Director
Board of Nurse Examiners
333 Guadalupe, Suite 3-460
Austin, TX 78701

Re: Proposed Amendments to Rule 211.6 (Advisory committees) 31 TexReg 9194 (11/10/06)

Dear Ms. Thomas:

The Texas Nurses Association (TNA) supports adoption of the proposed amendments to Rule 211.6 (relating to BNE advisory committees) but would suggest two non-substantive changes for the Board's consideration and pose one question for clarification.

1. Subdivision (f)(6) requires each committee to provide notice of meetings on the Secretary of State's website. TNA believes this may be a more appropriate role for the BNE staff appointed to support the committee.
2. Subdivision (f)(9) authorizes the committee chair to remove members for lack of attendance. TNA is not sure it is feasible to charge a volunteer chair with the responsibility to remove a committee member. The members are appointed by the Board and it would seem more appropriate and practical for the Board or Executive Director to remove a member.
3. Subdivision (f)(2) states the Board may amend the committee membership as needed. TNA assumes the intent is that any change would occur by amending Subdivision (f)(1) that sets out the membership for the various advisory committees but this is not entirely clear from the wording of (f)(2).

Respectfully submitted,

James H. Willmann, JD
General Counsel and Director Governmental Affairs

TITLE 22.EXAMINING BOARDS

Part 11. BOARD OF NURSE EXAMINERS

Chapter 211. GENERAL PROVISIONS

22 TAC §211.6

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §211.6 pertaining to General Provisions. Section 211.6 specifically addresses the Committees of the Board. The Board of Nurse Examiners is currently under "Sunset" review. In September 2006, the Staff of the Texas Sunset Advisory Commission recommended in its report that the Board adopt "rules regarding the purpose, structure, and use of its advisory committees, including: the purpose, role, responsibility, and goal of the committees; size and quorum requirements of the committees; composition and representation provisions of the committees; qualifications of the members, such as experience or geographic location; appointment procedures for the committees; terms of service; training requirements, if needed; the method the Board will use to receive public input on issues acted upon by the advisory committees; and the requirement that the Board comply with the requirements of the Open Meetings Act."

The proposed amendments to §211.6 will comply with chapter 2110 of the Government Code pertaining to State Agency Advisory Committees. The main effect on the Board's existing practice is the "liaison" role of the Board members. Board members have served as chairpersons of some of the standing committees, but this rule amendment will revert their roles to "liaison" status. The organizations who comprise committee membership are substantially the same.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the amendments will provide greater consistency with chapter 2110 of the Government Code. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of this proposed amendment.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

No statutes, articles, or codes are affected by this proposed amendment.

§211.6. Committees of the Board.

(a) - (b) (No change.)

(c) Education Liaison. The three board members representing nursing educational programs shall serve

as advisory to the staff on matters pertaining to faculty waivers, proposed curriculum revisions and other issues that may arise between regular board meetings. The recommendations of the liaison members are presented to the board at the next regular meeting for consideration. [~~ratification.~~]

(d) Advanced Practice Liaison. Three members shall be designated by the president to serve as advisory to the staff on matters pertaining to advanced practitioner waivers and other issues that may arise between regular board meetings. The recommendation of the liaison members are presented to the board at the next regular meeting for consideration. [~~ratification.~~]

(e) (No change.)

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(10) Advisory committees chairs may invite individuals as expert resources to participate in committee discussions and deliberations. Invited experts serve as *ad hoc* members and do not have voting privileges.

(11) The committees will meet on a schedule established by the chair of each committee.

(12) The decisions of the committee are advisory only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605908

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: December 10, 2006

For further information, please call: (512) 305-6823

Chapter 213. PRACTICE AND PROCEDURE