

**Proposed Adoption of 22 Tex. Admin. Code §216.3, Pertaining to *Requirements*,
Written Comment Received, Oral Comments Received at Public Hearing Held on
September 13, 2013, and Board Responses to Comments**

Background: Proposed amendments to §216.3 were approved by the Board at its July 2013 meeting for submission to the *Texas Register* for public comment. The proposed amendments were published in the *Texas Register* on August 16, 2013, and the comment period ended on September 16, 2013. The Board received one written comment from a commenter who commented on both proposed new Chapter 222 (regarding continuing education requirements) and proposed amended §216.3. A public hearing was held on September 13, 2013, to receive public comment on proposed new Chapter 222.

A copy of the written comment received is attached as Attachment "A". A summary of the written comment and comments received at the public hearing regarding the proposed continuing education requirements, along with Staff's proposed responses to those comments, are attached as Attachment "B". Staff's proposed revisions to §216.3 based upon comments received are attached as Attachment "C". Section 216.3, as proposed, is attached as Attachment "D", for comparison purposes.

Board Action: Move to adopt amendments to 22 Tex. Admin. Code §216.3, pertaining to *Requirements*, with changes, as set out in Attachment "C". Further, authorize Staff to publish the summary of comments and response to comments attached hereto as Attachment "B".



COALITION FOR NURSES IN ADVANCED PRACTICE

P. O. Box 86 • Cedar Park, TX 78630

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September 10, 2013

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

Re: Proposed rules at 22 TAC §§216.3
(*Texas Register* – August 16, 2013)

Delivered via e-mail: dusty.johnston@bon.texas.gov

Dear Mr. Johnston:

At its July 26, 2013, board meeting, the Coalition for Nurses in Advanced Practice (CNAP) reviewed the Board of Nursing's (BON) proposed new rules at 22 TAC §216.3, as well as the proposed rules at 22 TAC §§222.1 - 222.10. CNAP will submit comments to the BON in support of the proposed rule at 22 TAC §§222.3 (b) requiring an additional three hours of continuing education relating to prescribing controlled substances within the preceding biennium.

The CNAP Board also supports the BON's proposed rule at 22 TAC §216.3 (c) (3) that requires APRNs with prescriptive authority who prescribe controlled substances to complete at least three additional contact hours of continuing education relating to prescribing controlled substances. CNAP thinks the additional three hours of continuing education is consistent with the discussions among legislators during the 83rd Texas Legislature as they debated and passed Senate Bill 406. As a supporter of SB 406, CNAP believes the additional three hours of continuing education helps APRNs continue to treat patients with the utmost care and safety.

CNAP requests that the implementation of the new rules requiring an additional three hours of continuing education become effective no earlier than January 1, 2015. This will give APRNs time to identify and complete the coursework necessary to comply with this new requirement.

Thank you for considering these comments on these proposed rules. Please do not hesitate to contact me at 512-917-8782 if you have any questions.

Sincerely,

Trish Conradt

Trish Conradt
Public Policy Director
CNAP

Cc: Jolene Zych
Kathy Hutto
Jennifer Fontana
CNAP Board



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September 13, 2013

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

Re: Proposed rules at 22 TAC §§222.1 - 222.10
(*Texas Register* – August 9, 2013)

Delivered via e-mail: dusty.johnston@bon.texas.gov

Dear Mr. Johnston:

At its July 26, 2013, board meeting, CNAP reviewed the Board of Nursing's (BON) proposed new rules at 22 TAC §§222.1 - 222.10. CNAP offers the following comments on the proposed rules based on that discussion:

- At proposed §222.3 (b) (*Renewal of Prescriptive Authority*), the proposed rules add a sentence requiring APRNs with prescriptive authority to prescribe controlled substances to attest "to completing at least three additional contact hours of continuing education related to prescribing controlled substances within the preceding biennium." CNAP supports the proposal to require an additional three hours of continuing education for APRNs who have the prescriptive authority to prescribe controlled substances. However, some minor changes are recommended so APRNs are clear as to the requirements for continuing education and when the new requirement takes effect.

Proposed §222.3 (b) has two components: requiring an APRN to attest to (1) five hours of continuing education related to pharmacotherapeutics, a requirement that already exists in §216.3(c)(3), and (2) three hours of continuing education related to controlled substances, a requirement being added to §216.3(c)(3) by rules proposed by the Board on August 16, 2013. An effective date for the additional three hours needs to be added to the rules. It is not reasonable to expect APRNs seeking to maintain their prescriptive authority will have the necessary three hours when this rule is adopted. Also, proposed §222.3(c) states that the above requirements are in addition to the continuing education required under Chapter 216, a statement that is true if it applies only to §216(c)(1) and (2) pertaining to the twenty hours of continuing education that all APRNs must have. For clarity, we recommend §222.3 (b) and (c) be amended as highlighted in red below:

- §222.3 (b) The APRN seeking to maintain prescriptive authority shall attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium, as required in §216.3(c)(3). After January 1, 2015, those APRNs seeking to maintain prescriptive authority who order or prescribe controlled substances shall attest, on forms provided by the Board, to completing at least three additional contact hours of continuing education related to prescribing controlled substances within the preceding biennium, as required in §216.3(c)(3).
(c) The continuing education requirements in subsection (b) of this section shall be in addition to continuing education required under §216(c)(1) and (2) of this title (relating to Continuing Competency).
- At proposed §222.4 (*Minimum Standards for Prescribing or Ordering Drugs and Devices*), the rule at subsection (a)(2) and (3) should be amended to reflect that APRNs must comply with the chart review requirements in the prescriptive authority agreement or the requirements in the facility-based written protocols or other written authorization, not both. We suggest this section now read as highlighted in red below:
 - §222.4 (a) The APRN with a valid prescription authorization number shall:
 - (1) order or prescribe only those drugs or devices that are:
 - (A) authorized by a prescriptive authority agreement or, if practicing in a facility-based practice, authorized by either a prescriptive authority agreement or protocols or other written authorization; and
 - (B) ordered or prescribed for patient populations within the accepted scope of professional practice for the APRN's license; and
 - (2) comply with the requirements for chart reviews specified in the prescriptive authority agreement and periodic face to face meetings set forth in this chapter; and or
 - (3) comply with the requirements set forth in protocols or other written authorization if ordering or prescribing drugs or devices under facility-based protocols or other written authorization.
- At proposed §222.5 (*Prescriptive Authority Agreement*), subsection (a) of the rule states that the “prescriptive authority agreement is “the” mechanism by which an APRN is authorized to order or prescribe drugs or devices.” CNAP recommends that “the” be changed to an “a” to reflect the intent of SB 406 that APRNs in facility-based practices can also use protocols or other written authorizations in lieu of a prescriptive authority agreement (PAA). The lack of changes to §157.058 and the minimal changes to §157.054, Occupations Code, in SB 406 were intended to ensure a mechanism for CRNAs and other hospital-based APRN practices to continue as they currently practice. This is also recognized in the preamble to these rules where a prescriptive authority agreement is described as “a mechanism”. This proposed change is highlighted in red below:

- §222.5. Prescriptive Authority Agreement. (a) The prescriptive authority agreement is ~~the a~~ mechanism by which an APRN is delegated the authority to order or prescribe drugs or devices by a physician.
- CNAP recommends amending proposed §222.5(b)(1) (*Prescriptive Authority Agreement*) by striking the definition of “good standing,” as proposed and substituting the definition below. As proposed, the definition of “good standing” would prohibit an APRN from being a party to a prescriptive authority agreement if the BON opened an investigation involving the APRN. This, in effect, would prohibit the APRN from prescribing or ordering drugs except in facility-based practices. Since most complaints do not result in a finding that the APRN violated the Nursing Practice Act, and the majority of complaints do not relate to the APRN's competence in prescribing, it would be inappropriate to prohibit an APRN from prescribing before the Board actually took any disciplinary action against the APRN and determined that the APRN was not competent to prescribe or order drugs and medical devices. The following better accomplishes the intent of SB 406.
 - §222.5 (b) An APRN with prescriptive authority and a physician are eligible to enter into or be parties to a prescriptive authority agreement only if the APRN:
 - (1) holds an active license to practice in this state that is in good standing. For purposes of this Chapter, "good standing" means that the advanced practice registered nurse's license has not been suspended and the Board of Nursing has not taken disciplinary action that prohibits the nurse from executing a prescriptive authority agreement.
- At proposed §222.5 (c)(8), CNAP recommends a change in the order of the words to more closely reflect the statute so the reader knows immediately that designating an alternate physician or physicians is not required. This proposed change is highlighted in red below:
 - (8) if an alternate physician arrangement is to be utilized, designate one or more alternate physicians who may participate in the execution of the prescriptive authority agreement in accordance with the rules of the Texas Medical Board if an alternate physician arrangement is to be utilized; and .
- At proposed §222.5 (f), the rule appears to limit the participation of alternate physicians in quality assurance meetings to those in physician group practices. Although Section 157.0512(h) is limited to a physician group practice, Section 157.0512(e)(8) is more broadly written. Therefore, CNAP recommends the proposed change as highlighted in red below:
 - §222.5 (f) The APRN shall participate in quality assurance meetings with an alternate physician in a physician group practice if the an alternate

physician has been designated ~~to conduct and document the meeting in the prescriptive authority agreement.~~

- At proposed §222.6 (*Prescribing at Facility-Based Practice Sites*), we recommend deleting “sites” in the title and the text of subsection (a) as that definition has been removed from statute and your proposed rules.

Also, at proposed §222.6(a)(1), we recommend deleting the language that a prescriptive authority agreement must meet the requirements of “this section” as it is the APRN who must meet the requirements, not the document. Also, if it is the Board’s intent that any written authorization used for prescriptive authority is in accordance with facility policy and reviewed annually, a modification in formatting would add clarity. These proposed changes are highlighted in red below:

- §222.6 Prescribing at Facility-Based Practice Sites.
 - (a) When ordering or prescribing a drug or device at a facility-based practice site, the APRN with prescriptive authority shall:
 - (1) maintain either a prescriptive authority agreement that meets the requirements of this section or protocols or other written authorization:
 - (A) developed in accordance with facility medical staff policies; and
 - (B) reviewed the authorizing documents with the appropriate medical staff at least annually;

- At proposed §222.7 (*Orders and Prescriptions for Non-prescription Drugs, Dangerous Drugs, and Devices*) we recommend deleting the last sentence as it deals with prescribing controlled substances and appears inappropriate in this section. This proposed change is highlighted in red below:

- §222.7. Orders and Prescriptions for Non-prescription Drugs, Dangerous Drugs, and Devices. APRNs with full licensure and valid prescription authorization numbers are eligible to order or prescribe non-prescription drugs, dangerous drugs, and devices, including durable medical equipment, in accordance with the standards and requirements set forth in this chapter. ~~APRNs with full licensure and valid prescription authorization numbers are not eligible to order or prescribe controlled substances unless they meet the applicable requirements of this rule.~~

- At proposed §222.8 (*Orders and Prescriptions for Controlled Substances*), subsections (a) and (d) seem redundant. CNAP suggests that (d) be deleted in favor of (a).
- At proposed §222.10 (*Enforcement*), subsection (c) refers to the BON notifying Texas Medical Board (TMB) and Texas Physician Assistant Board (TPAB) when

an APRN becomes the subject of an investigation regarding delegation of prescriptive authority. CNAP suggests that a new subsection (d) be added, as highlighted in red below, to require notification of the TPAB only when a PA is a party to a PAA involving an APRN subject to investigation. If there is not a PA included in the PAA, notification by the BON of the TPAB appears to be unnecessary paperwork for both agencies with no benefit to the public.

- (c) The Board shall immediately notify the Texas Medical Board and the Texas Physician Assistant Board:
 - (1) when an APRN licensed by the Board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority; and
 - (2) upon the final disposition of an investigation involving an APRN licensed by the Board and the delegation and supervision of prescriptive authority.
- (d) If no physician assistant is party to the prescriptive authority agreement of an advanced practice registered nurse, the Board is not required to notify the Texas Physician Assistant Board.
- Also, at proposed §222.10 (*Enforcement*), subsection (f) references “sign prescription drug orders” and this should be “order or prescribe” to be consistent with SB 406. This proposed change is highlighted in red below:
 - (f) The practice of the APRN approved by the Board to ~~sign prescription drug orders~~ order and prescribe is subject to monitoring by the Board on a periodic basis.
- In the rules proposed by the Texas Medical Board, the term “authorizing physician” was defined in §193.2(2) to include a physician delegating prescriptive authority. For consistency, CNAP recommends this term be used to replace “collaborating physician” in Sections 222.1(23) and 222.4(b)(10) and “delegating physician” in Sections 222.6 and 222.8(b)(2) and (3).

Thank you for considering these comments and suggested changes to these proposed rules. We appreciate the hard work by the Board, staff and Advanced Practice Nursing Advisory Committee to develop these rules and look forward to working with you as they progress. Please do not hesitate to contact me at 512-917-8782 if you have any questions.

Sincerely,



Trish Conradt
Public Policy Director
CNAP

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§216.3

Comment: A commenter representing CNAP supports requiring three additional hours of continuing education relating to prescribing controlled substances. The commenter believes the additional continuing education is consistent with discussions among legislators during the 83rd Texas Legislature as they debated and passed SB 406. The commenter believes the additional hours of continuing education helps APRNs continue to treat patients with the utmost care and safety. However, the commenter requests that the implementation of the new requirements become effective no earlier than January 1, 2015 to give APRNs time to identify and complete the coursework necessary to comply with the new requirements.

Agency Response: The Board agrees that requiring additional hours of continuing education is in the best interests of patients and the public and that APRNs who prescribe controlled substances should be educated regularly regarding the potential for controlled substance abuse and diversion and appropriate safeguards, regulations, and standards of care. Further, the Board agrees that the rule as adopted should establish a compliance date and has amended subsection (c) of the rule text as adopted in this regard.

Amended Text (changes in yellow highlight)

§216.3. Requirements.

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

(c) Requirements for the Advanced Practice Registered Nurse. The licensee authorized by the board as an advanced practice registered nurse (APRN) is required to obtain 20 contact hours of continuing education or attain, maintain or renew the national certification recognized by the board as meeting the certification requirement for the advanced practice registered nurse's role and population focus area of licensure within the previous two years of licensure. National certification as discussed in this section will only meet the requirement for licensure renewal.

(1) - (2) (No change.)

(3) The APRN who holds prescriptive authority must complete, in addition to the requirements of this subsection, at least five additional contact hours of continuing education in pharmacotherapeutics. In every licensure cycle after January 1, 2015, the APRN who holds prescriptive authority and prescribes controlled substances must complete, in addition to the requirements of this subsection, at least three additional contact hours of continuing education related to prescribing controlled substances.

(4) (No change.)

(d) - (f) (No change.)

Proposed Text

§216.3. Requirements.

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

(c) Requirements for the Advanced Practice Registered Nurse. The licensee authorized by the board as an advanced practice registered nurse (APRN) is required to obtain 20 contact hours of continuing education or attain, maintain or renew the national certification recognized by the board as meeting the certification requirement for the advanced practice registered nurse's role and population focus area of licensure within the previous two years of licensure. National certification as discussed in this section will only meet the requirement for licensure renewal.

(1) - (2) (No change.)

(3) The APRN who holds prescriptive authority must complete, in addition to the requirements of this subsection, at least five additional contact hours of continuing education in pharmacotherapeutics. The APRN who holds prescriptive authority and prescribes controlled substances must complete, in addition to the requirements of this subsection, at least three additional contact hours of continuing education related to prescribing controlled substances.

(4) (No change.)

(d) - (f) (No change.)