

**Proposed & Adopted Rules:**

**§216.3(6) Forensic Evidence Collection/Targeted CE**

**§216.3(7), §217.9(d), and §223.1(17) Volunteer Retired Nurse Authorization**

**Summary of Request:**

This report contains the recommendations of staff with regard to Proposed Rules published in the Texas Register (9/11/05) as well as response to comments received. There are two (2) attachments with this report. Adoption of both rules with responses to comments is recommended.

**Historical Perspective:**

- (1) Forensic Evidence Collection: SB39 (79<sup>th</sup> Regular Session, 2005) amended the NPA by adding Section 301.306 *Forensic Evidence Collection Component in Continuing Education*. Amendments to Rule 216.3(6) were published in the *Texas Register* (9/11/05). Two comments were received (see Attachment #1).

Though the original bill introduced to the Texas Legislature focused on the forensic area of sexual assaults, the final bill language and subsequent statute address “forensic evidence collection” broadly. Since the statute is not prescriptive to “sexual assault” content for forensic evidence collection, Board staff believe the proposed rule language is consistent with the statute, and in the best interest of nurses who may benefit from continuing education that focuses on other forensic categories. Therefore, forensic CE does not need to be limited to sexual assault evidence collection to meet the requirements of the statute or rule. Nurses whose practice settings include the ED are encouraged to seek CE offerings that are most relative to the types of patients seen in the nurse’s clinical practice.

Board staff are already receiving inquiries about this rule requirement. To provide readily accessible and consistent information, additional information in the format of Frequently Asked Questions (FAQs) on this new CE requirement will also listed on the Board’s web page under “Nursing Practice Information” and then under “Continuing Education.”

- (2) Volunteer Retired Nurse Authorization: HB2680 (79<sup>th</sup> Regular Session, 2005) amended Texas Occupations Code §112.051. This statute mandates that regulatory agencies of healthcare practitioners (including the Board) “adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care.”

In response to these new statutes, proposed rule amendments were published in the September 11, 2005 issue of the *Texas Register* as follows:

§216.3(7)	<b>Continuing Education Requirements for Retired Nurses Providing Only Voluntary Charity Care</b>
§217.9	Inactive Status. New subsection <b>(d) Volunteer Retired Nurse Authorization</b>
§223.1	Fees. Amendments to subsection (17) Licensed Vocational Nurse, Retired; Registered Nurse, Retired; <b>Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse with qualifications in a given advanced practice nurse role and specialty (e.g. VR-RN, FNP)</b>

One comment was received (see Attachment #2).

**Pros & Cons:**

**Pros:** Adoption of amended language to Rules 216.3(6) regarding forensic evidence collection and Rule 216.3(7) regarding volunteer retired nurse authorization will comply with statute and provide necessary rule guidance to nurses, employers, and the public.

**Cons:** None.

**Recommendations:**

Move to adopt proposed Rule with response to comments received for Rule **§216.3(6)** regarding **forensic evidence collection** continuing education requirements with subsequent publication of the adopted rules and responses to comments in the *Texas Register*.

Move to adopt proposed Rule with responses to comments received for Rules **§216.3(7)**, regarding **volunteer retired nurse authorization**, with subsequent publication of the adopted rules and response to comments in the *Texas Register*.

# ATTACHMENT #1

## Comments/Responses to Proposed Rule 216.3(6) Re: Forensic Evidence Collection

**(1) Comment:** [From Peter Gembol, BSN, RN/Trauma Coordinator/Christus Spohn Hospital-Corpus Christi Memorial]

Could the BNE require more than just two (2) hours of CE? (Suggest maybe 2 hours the first year, an additional 2 hours the second year, etc)? Also, the rule doesn't require nearly enough about documentation.

### Response:

Given the multitude of practice settings and procedures nurses may perform, requiring prescriptive training requirements for every task or procedure a nurse may be able to perform would be a never-ending task. Proposed Rule language [22TAC, 216.3(6)] mirror-images the language in the statute (Texas Occupations Code, §301.306). Both the statute and the rule mandate a "minimum" of 2-hours of continuing education in forensic evidence collection. There is nothing that would preclude a facility making more stringent CE requirements if the facility so chooses. The BNE has no jurisdiction over facilities.

The Board holds each licensed nurse accountable to comply with the Nursing Practice Act [Texas Occupations Code [chapters 301, 303, & 304] as well as Board Rules [22Texas Administrative Code, *et al.*]. In particular, Rule 217.11 Standards of Nursing Practice, sets forth broad requirements for a nurse, regardless of practice setting. This rule requires a nurse to act in the client's best interest, including:

- (1)(B) "maintain a safe environment for clients and others";
- (1)(G) "obtain instruction and supervision as necessary when implementing nursing procedures or practices";
- (1)(H) "make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations";
- (1)(R) "be responsible for one's own continuing competency in nursing practice and individual professional growth"; and
- (1)(T) "accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability."

With regard to broad documentation parameters of the rule: The statutes for evidence collection and documentation are contained in laws outside the jurisdiction of the BNE. The terminology "service-approved evidence collection kit and protocol" is taken directly from Chapter 420, Section 420.031 of the Government Code. The statutes in Chapter 420 may be viewed at the web site for the Texas Statutes <http://www.capitol.state.tx.us/statutes/gv.toc.htm>. Though this particular law addresses sexual assault evidence collection specifically, the term itself is generic in nature and intended to encompass evidence collection and documentation standards for any given practice situation relating to forensics, not just sexual assaults.

The Board has long maintained the position that nursing professional organizations and/or regulatory entities that focus on a specialty area of practice are far better resources for determining appropriate standards of care for a given specialty area of nursing. Given that various types of forensic evidence collection would meet rule requirements and evidence-based practice standards are always evolving are further reasons why an extensive list of prescriptive documentation requirements would not serve the best interest of protecting the public or communicating current standards of care to nurses in any given specialty area.

For example, in addition to standardized documentation required in the Sexual Assault Prevention and Crisis Services (SAPCS) Protocol, facilities providing sexual assault services to victims must also comply with other laws that involve mandatory documentation of findings and services offered to the victim for legal as well as medical purposes. As the BNE has no jurisdiction over facilities, we cannot speak to these requirements; however, the facility may be required to have policies that address specific documentation mandates that impact any nurse involved with sexual assault or other types of forensic examinations.

**(2) Comment:** [Wendy Whitehouse RN] Many aspects of forensics exist, and not all are related to sexual assault. The California Board of Nurse Examiners allows their nurses to obtain CEU's related to all types of Forensics. In the Emergency Department (ED), gunshot wounds, motor vehicle accidents, and assaults are classified under forensics. Is the Texas forensic CEU requirement only related to sexual assault evidence collection?

**Response:**

No, proposed Rule 216.3(6) does not limit appropriate CE to only sexual assault evidence collection. Nursing laws can and do vary from state-to-state. The Texas Legislature passes laws (Texas Occupations Code, Chapters 301, 303, and 304) that establish the requirements for nursing education and practice in Texas. The Board of Nurse Examiners must then create and/or amend Rules to implement the statutes as passed by the Legislature each biennial session; therefore, what is acceptable in California may or may not be acceptable to meet licensure requirements in Texas.

Proposed rule 216.3(6) specifically addresses requirements in NPA section 301.306, Forensic Evidence Collection Component in Continuing Education. While SB39 [79<sup>th</sup> Regular Session, Texas Legislature (2005)] did not include language limiting "forensic evidence collection" to only sexual assault victims, a review of the Bill analysis and history demonstrate that this was the original intent of this legislation. The Board believes the generic nature of the final bill language encompasses broader training in forensic evidence collection. Thus, nurses whose practice settings include the ED are encouraged to seek CE offerings that are relative to the types of patients seen in the nurse's clinical practice.

## ATTACHMENT #2

### Comments/Responses to Proposed Rule 216.3(7) CE Requirements for Volunteer Retired Nurses

**(1) Comment:** [CNAP/Lynda Woolbert MSN, RN, CPNP, Director of Public Policy:]

*Subparagraph 216.3(7)(B)(ii) specifies that an APN licensed as a VR-RN may not have prescriptive authority. While I completely understand that many APNs licensed as a volunteer retired RN may not meet the 400 hour biannual practice requirement, there may be some who volunteer on a regular basis and easily meet this requirement. Since the purpose of HB 2680 was to encourage retired health care providers to use the expertise in a volunteer capacity, it seems appropriate to give APNs practicing on a VR-RN license the option of meeting more rigorous standards in order to have prescriptive authority.*

*CNAP understands that these rules need to be adopted by January 1, 2006...CNAP requests that a revision in this rule be proposed as soon as possible. We think it is important that APNs practicing on a VR-RN license have the option of retaining prescriptive authority if that APN meets practice and national certification standards.*

**Response:**

The Board appreciates CNAP's comments; however, other laws both within and outside of the jurisdiction of the BNE preclude permitting non-licensed practitioners from holding prescriptive authority privileges.

Proposed Rule 217.9(d) as well as Rule 216.3(7) grant authorization to nurses who are 65 years old or older but who, rather than retaining their nursing *license*, choose to instead function in a volunteer capacity only, providing charity care in conjunction with a charitable organization as defined in §217.9(d)(5)[and as defined in §84.003 of the Texas Civil Practices and Remedies Code]. Authorization is not the same as licensure.

Rule 221.4(a)(1) requires that a person possess a "valid, current, unencumbered license as a registered nurse..." in order to seek or retain authorization as an advanced practice nurse. Rule 221.9(b) further states that "...The inactive advanced practice nurse may not utilize his/her limited prescriptive authority." These requirements are congruent with additional requirements in §222.5 and §222.6 relating to active licensure and advanced practice authorization requirements for prescribing either dangerous drugs or controlled substances. Laws outside of the jurisdiction of the BNE also preclude non-licensed practitioners from prescribing either dangerous or controlled substances [Texas Health & Safety Code: Ch. 481 Texas Controlled Substances Act, §481.002(39)(D)\*; and Ch. 483 Dangerous Drug Act, §483.001(12)(D)\*, \*Definition of Practitioner].

As an additional clarification, APNs who have authorization as volunteer retired nurses do not have to have 400 hours of active practice per biennium, nor do they have to maintain national certification in their advanced practice role and specialty.

In accordance with other Board rules, if a registered nurse with advanced practice authorization wishes to maintain full authorization to practice as well as prescriptive authority privileges, he/she must retain an active RN license, as well as active APN authorization with Prescriptive Authority, and must meet all requirements for renewal including 400 hours of practice and national certification as required by Board rule.