

**Proposed Adoption of Amendments to §217.18, Registered Nurse First Assistants, and
Consideration of Comments and Board's Responses to Comments**

Summary of Request: Consider adoption of amendments to Rule 217.18, relating to nurses assisting at surgery, and response to comments.

Historical Perspective: At the October 2005 meeting, the Board voted to propose amendments to Rule 217.18 as a result of the passage of HB 1718 during the 79th Legislative Session. HB 1718 amended the Nursing Practice Act by repealing Sections 301.1525 through 301.1527 and adding Section 301.353 (HB 1718). (Please note that there are currently **two** sections of the Nursing Practice Act that bear section number 301.353—one section added by SB 1000 and the other by HB 1718). First assistant qualifications were moved to this new section. Additionally, there is now a provision for currently authorized advanced practice nurses who are not certified in perioperative nursing to first assist if they complete RNFA educational programs. The section also added provisions for nurses at any level of licensure to assist under the direct supervision of and in the physical presence of a physician, dentist or podiatrist.

The proposed rule was published in the *Texas Register* on November 11, 2005. Two comments were received in response to that publication—one from the Association of periOperative Registered Nurses (AORN) and the other from the Texas Nurses Association (TNA). The comments are included for the Board's consideration in Attachment A. Both offer suggestions for clarification of proposed rule language that are nonsubstantive in nature. Staff have reviewed the comments and prepared responses for the Board's consideration (Attachment B). Proposed language for adoption of Rule 217.18 is included in Attachment C.

Pros and Cons

Pros: The rule language as amended contains non-substantive changes that clarify the intent of the rule. Many of those special interest groups who previously expressed concern (such as advanced practice nurses and LVNs) now have the opportunity to either first assist or perform certain surgical assistant activities under supervision. Nurses and their employers will no longer need to attempt to differentiate activities that are exclusive to first assisting from those that are not.

Cons: None noted.

Staff Recommendation: Move to approve the adoption of Rule §217.18 with staff's proposed revision as specified in Attachment C and publish the adoption in the *Texas Register*. Staff may submit the summary of the comments and the responses to the comments as presented in Attachment B to the *Texas Register* for publication when the rule is published.



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Agenda Item 6.6
Attachment A

DELIVERED VIA EMAIL TO:
kathy.thomas@bne.state.tx.us

December 5, 2005

Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
333 Guadalupe 3-460
Austin, Texas 78701

Re: Proposed Amendment to Rule 217.18 (First Assisting) as published at 30 Texas Register 7351 (11/11/05)

Dear Ms. Thomas:

TNA supports adoption of the proposed changes to Rule 217.18 and believes that they accurately reflect HB 1718 as passed by the 2005 Texas Legislature. TNA would make the following nonsubstantive, editorial suggestions.

1. Subdiv. (a)(1)(C)(i) - Normally an acronym in parentheses refers to a previously described entity or item. I think the intent of listing "(CNOR)" is to convey that CNOR certification is currently the only certification by an organization recognized by the BNE. I think might be clearer if that is either a) explicitly stated or b) dealt with it in board policies and not in the rule.

2. Subdiv. (a)(2) -Except for last sentence, this language seems unnecessary since all nurses are obligated to know and conform to Nursing Practice Act, BNE rules and other laws and it is explicitly addressed in other BNE rules [Rule 217.11(1)(A)]. Unless there is some reason to believe there is a special problem with nurses who first assisting not following applicable laws and rules, it seems unnecessary to be repeated here. TNA realizes this language is in the current rule, but it still seems a bit unnecessary.

The last sentence relating to APNs, on the other hand, does seem to convey additional information since there may be question if APNs could first assist outside of the role and specialty and TNA does not believe this is dealt with explicitly in other BNE rules.

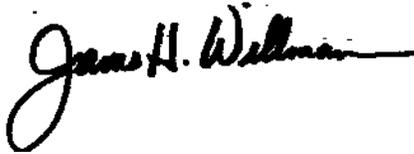
3. Subdiv. (b)(2) - The content seems somewhat out of place under (b) since it refers back to nurses that practice under (a). TNA suggest that make content a separate Subsec (c) like statute does. Another option might be to rewrite to read:

“(2) A nurse assisting in the performance of surgery under this Subsection (b) shall not use:”

This wording makes it refer to nurses described under Subsec. (b) which makes having it as a subdivision of (b) seem more appropriate.

Again, TNA is submitting these comments only as nonsubstantive, editorial suggestions and not as negative comments on the proposed rule.

Respectfully submitted,

A handwritten signature in black ink that reads "James H. Willmann". The signature is written in a cursive style with a long horizontal line extending to the right.

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

cc: Jolene Zych



Association of periOperative Registered Nurses

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December 12, 2005

Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
333 Guadalupe 3-460
Austin, Texas 78701

Re: Proposed Amendment to Rule 217.18 (First Assisting) as published at Texas Register 7351

Dear Ms. Thomas:

Thank you for your unwavering commitment to nursing excellence and enhanced patient safety. Your efforts and those of your staff to work with stakeholders to resolve difficult issues has appropriately garnered recognition from a wide range of political, academic and nursing interests.

The first assisting area of nursing is an example of your dedication to constructing fair, reasonable and lawful statute and rule. On behalf of the Association of periOperative Registered Nurses (AORN) the following is offered on the proposed amendment to Rule 217.18 (First Assisting) referenced above. The proposed rule reflects the statutory changes made by House Bill 1718. However, a provision included in the rule but not explicitly articulated in the legislation may require some clarification or modification in final rule.

At Section 217.18 (a)(2) the last sentence requires advanced practices nurses functioning as first assistants to act within "the scope of the advanced role and specialty for which they hold authorization to practice from the board." It is presumed the BNE's intent is that advanced practices nurses who qualify to first assist under Subsection (a)(1)(C)(ii) be limited to first assisting in their APN area of specialization. Registered Nurse First Assistants (RNFAs) and Certified Registered Nurse First Assistants (CRNFAs) that qualify under Subsection (a)(1)(C)(i) have extensive perioperative experience along with a practice that includes a broad range of surgical cases. Unless clarified, the advanced practice requirement might unintentionally limit the practice of a nurse that qualifies to

be an RNFA or CRNFA through the broader CNOR route and subsequently becomes an advanced practice nurse.

We respectfully request clarification. One option might be to rewrite the last sentence of (a)(2) to read:

“Advanced practice nurses functioning as first assistants under the authority of Subsection (a)(1)(C)(ii) shall function within the scope of the advanced role and specialty for which they hold authorization to practice from the board.”

Again, our organization wishes to thank you for your tireless work on behalf of all Texas nurses.

Respectfully submitted,


Cathy Sparkman
AORN

Summary of Comments and Response to Comments

The Board received comments from the Association of periOperative Registered Nurses (AORN) and the Texas Nurses Association (TNA). Both organizations offered recommendations for non-substantive changes to the proposed rule language that would provide greater clarity for readers. The Board agrees with the proposed changes and has incorporated them into the adopted rule.

Proposed Amendments for Adoption of Rule 217.18, relating to Nurse First Assistants

Legend: New Language = underlined
Deleted Language = ~~strikeout~~

<u>Rule 217.18 as Proposed in the 11/11/2005 Texas Register</u>	Proposed Language for Adoption of Rule 217.18	Staff Comments
<p>§217.18 Assisting at Surgery</p> <p>(a) Nurse First Assistants</p> <p>(1) A registered nurse who wishes to function as a first assistant (RNFA) in surgery shall meet the following requirements:</p> <p>(A) Current licensure as a registered nurse in the State of Texas or a current, valid registered nurse license with a multi-state privilege in a party state;</p> <p>(B) Completion of a nurse first assistant educational program approved or recognized by an organization recognized by the Board; and</p> <p>(C) is either:</p> <p>(i) currently certified in perioperative nursing by an organization recognized by the board (CNOR); or</p>	<p>(i) currently certified in perioperative nursing by an organization recognized by the board <u>(CNOR certification in perioperative nursing)</u>; or</p>	<p>According to page nine of the <i>CNOR Certification Certificatio /Recertification Policy Manual</i> published by the Competency and Credentialing Institute (the entity that administers the certification examination), the letters CNOR “do not in themselves stand for specific words or a title.” Therefore, staff clarified that CNOR is certification in</p>

<p>Rule 217.18 as Proposed in the 11/11/2005 <i>Texas Register</i></p>	<p>Proposed Language for Adoption of Rule 217.18</p>	<p>Staff Comments</p>
<p>(ii) currently recognized by the board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.</p> <p>(2) The registered nurse whose functions include acting as a first assistant in surgery shall know and conform to the Texas Nursing Practice Act; current Board rules, regulations, and standards of nursing practice; and all federal, state and local laws, rules, and regulations affecting the RNFA specialty area. When collaborating with other health care providers, the RNFA shall be accountable for knowledge of the statutes and rules relating to RNFAs and function within the scope of the registered nurse. Advanced practice nurses functioning as first assistants shall function within the scope of the advanced role and specialty for which they hold authorization to practice from the board.</p>	<p>(2) The registered nurse whose functions include acting as a first assistant in surgery shall know and conform to the Texas Nursing Practice Act; current Board rules, regulations, and standards of nursing practice; and all federal, state and local laws, rules, and regulations affecting the RNFA specialty area. When collaborating with other health care providers, the RNFA shall be accountable for knowledge of the statutes and rules relating to RNFAs and function within the scope of the registered nurse. Advanced practice nurses functioning as first assistants shall function within the scope of the advanced role and specialty for which they hold authorization to practice from the board.</p> <p><u>Advanced practice nurses functioning as first assistants under the authority of (a)(1)(C)(ii) of this subsection shall function within the scope of the advanced role and specialty for which they hold authorization to practice from the board.</u></p>	<p>perioperative nursing per TNA's request. Staff recommends that this reference remain in the rule as there have been many individuals who have argued for acceptance of other certifications.</p> <p>Staff agrees with the changes recommended by both TNA and AORN. Staff recommends maintaining the language that requires RNFAs to be accountable for knowledge of the laws and regulations specific to first assisting to remind RNFAs that they need to be aware of regulations related to areas such as reimbursement and credentialing.</p> <p>The change to the advanced practice section clarifies that those advanced practice nurses who first assist based on their qualifications under 217.18(a)(1)(C)(ii) must first assist on surgical cases that are within their authorized specialty area. However, there may be individuals who are qualified to first assist under 217.18(a)(1)(C)(i) that are also advanced practice nurses. In the latter situation, these individuals would be eligible to first assist in any surgical case, not just those that fall within their authorized advanced practice specialty. The alternate language will clarify that there is no intent to limit the practice of the latter group of advanced practice nurses.</p>

<p><u>Rule 217.18 as Proposed in the 11/11/2005</u> <u>Texas Register</u></p>	<p>Proposed Language for Adoption of Rule 217.18</p>	<p>Staff Comments</p>
<p>(3) A registered nurse (including an advanced practice nurse) functioning as a first assistant in surgery shall comply with the standards set forth by the AORN.</p> <p>(b) Assisting at Surgery by Other Nurses</p> <p>(1) A nurse who is not a nurse first assistant as defined in subsection (a) of this section may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:</p> <p>(A) Has current licensure as a nurse in the State of Texas or a current, valid nursing license with a multi-state privilege in a party state;</p> <p>(B) assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;</p> <p>(C) is in the same sterile field as the physician, podiatrist, or dentist;</p> <p>(D) is employed by:</p> <p>(i) the physician, podiatrist, or dentist;</p> <p>(ii) a group to which the physician, podiatrist, or dentist belongs; or</p>		

<p><u>Rule 217.18 as Proposed in the 11/11/2005 Texas Register</u></p>	<p>Proposed Language for Adoption of Rule 217.18</p>	<p>Staff Comments</p>
<p>(iii) a hospital licensed or owned by the state; and</p> <p>(E) is qualified by education, training, or experience to perform the tasks assigned to the nurse.</p> <p>(2) A nurse who is not a nurse first assistant as defined in subsection (a) of this section shall not use:</p> <p>(A) the title "nurse first assistant" or "registered nurse first assistant";</p> <p>(B) the abbreviation "R.N.F.A."; or</p> <p>(C) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under subsection (a),</p>	<p><u>(2) A nurse assisting in the performance of surgery under this subsection shall not use:</u></p>	<p>Staff recommends that subsection two remain under 217.18(b) as it applies only to those nurses who are assisting under the supervision of the physician. Staff agrees that TNA's recommendation for alternate language is clearer.</p>