TEXAS BOARD OF NURSING

RULES AND REGULATIONS

relating to

NURSE EDUCATION,

LICENSURE AND PRACTICE

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FOREWORD

This manual, based on statutory authority as provided for in Chapters 301, 303, and 304 of the Texas Occupations Code Annotated (Nursing Practice Act), has been prepared by the Texas Board of Nursing. It sets forth the rules and regulations established by the Board to regulate nursing education and the practice of nursing in the state. Members of the Board of Nursing have sought input from interested groups and individuals in developing and revising these rules and regulations.

PREFACE

During the 19th century, the public became aware of the value of nursing as an indispensable ally of the medical arts and sciences and as an occupation predicated upon formal education. The first nursing laws were enacted in the United States in 1903.

The original Nursing Practice Act of Texas was passed March 28, 1909. The passage of this Act marked a milestone in the health care of the citizens of the State of Texas as nursing was formally recognized as a vital service to society. The purpose of the Act is to provide that the privilege and responsibility of practicing nursing be entrusted only to those persons duly licensed and practicing under the provisions of the Act. The Act provides for the creation of a Board of Nursing (Board) empowered with the responsibility and legal authority for ensuring competent practitioners of nursing. The Board fulfills this responsibility by licensing qualified practitioners, controlling the practice of nursing in the interest of society by licensure, by investigation of violations of the Act, by initiating appropriate legal action when necessary, and by establishing minimum standards for educational programs in nursing. Without legal regulation of nursing practices, the public has no assurance that the nurses who provide nursing care as a part of the total health care plan are qualified to do so. The Board meets regularly to execute its responsibilities for administering the law governing nurse practice. Professional and nonprofessional personnel are employed to carry out the provisions of the law, and the policies and regulations established by the Board. Legal counsel is retained by the Board as provided by the law, to represent it in matters pertaining to the implementation of the law.

It is the responsibility of the Board to establish standards for nursing education in the State of Texas. The Board shall approve such nursing education programs that meet its requirements, and shall deny or withdraw approval from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards. The intent of the approval process is to improve the educational programs and stimulate continuous self-study, evaluation, innovation, and appropriate changes within the programs. The Board provides guidance to nursing programs so that a high quality education for the preparation of practitioners is ensured. The preparation of a practitioner competent to practice, however, is the responsibility of the school. The services of the Board are available to the faculty of educational programs, to staff of health agencies utilizing nursing services, and to practitioners of nursing as the need may arise.

The Board conducts regularly scheduled meetings which are open to the public. The notice of the meeting including agenda items, and the time and place of the meeting is posted with the Secretary of State's office approximately two weeks in advance. Special meetings of the Board shall be called by the President acting upon the written request of any two members.

MISSION STATEMENT

The mission of the Texas Board of Nursing is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of nursing and the approval of nursing education programs. This mission, derived from the Nursing Practice Act, supersedes the interest of any individual, the nursing profession, or any special interest group.

PHILOSOPHY

Acting in accordance with the highest standards of ethics, accountability, efficiency, effectiveness, and openness, the Texas Board of Nursing approaches its mission with a deep sense of purpose and responsibility and affirms that the regulation of nursing is a public and private trust. The Board assumes a proactive leadership role in regulating nursing practice and nursing education. The Board serves as a catalyst for developing partnerships and promoting collaboration in addressing regulatory issues. The public and nursing community alike can be assured of a balanced and responsible approach to regulation.

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TITLE 22. EXAMINING BOARDS
PART 11. TEXAS BOARD OF NURSING
CHAPTER 211. GENERAL PROVISIONS

§211.1. Introduction.

(a) Name. The entity is the Board of Nurse Examiners for the State of Texas, hereafter referred to as the board. It is a decision-making board appointed by the Governor of the State of Texas in compliance with the Texas Occupations Code.

(b) Location. The administrative offices shall be located in Austin, Texas.

(c) Legal Authority. The board is established and functions under the authority of Chapters 301, 303 and 304 of the Texas Occupations Code.

(d) Composition. The board shall be composed of those persons appointed by the Governor with the advice and consent of the Senate.

(e) Fiscal year. For all fiscal and administrative purposes, the reporting year of the board shall be identical to that of the State of Texas.

The provisions of this §211.1 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective May 17, 2004, 29 TexReg 4884.

§211.2. Purpose and Functions.

(a) Purpose. The purpose of the board is to protect and promote the welfare of the people of Texas. This purpose supersedes the interest of any individual, the nursing profession, or any special interest group. The board fulfills its mission through two principle areas of responsibility:
  (1) regulation of the practice of professional and vocational nursing, and
  (2) accreditation of schools of nursing.

(b) Functions. The board shall perform the following functions as outlined in Texas Occupations Code chapters 301, 303, and 304.
  (1) Establish standards of nursing practice and regulate the practice of professional and vocational nursing.
  (2) Interpret the Nursing Practice Act and the Rules and Regulations Relating to Nurse Education, Licensure and Practice to nurses, employers, and the public to ensure informed professionals, allied health professionals, and consumers.
  (3) Receive complaints and investigate possible violations of the Nursing Practice Act and rules and regulations.
  (4) Discipline violators through appropriate legal action to enforce the Nursing Practice Act and rules and regulations.
  (5) Provide a mechanism for public comment with regard to the rules and regulations and the Nursing Practice Act and review and modify the rules and regulations when necessary and appropriate.
  (6) Examine and license qualified applicants to practice professional and vocational nursing and recognize qualified applicants to practice advanced practice nursing in the state of Texas in a manner that ensures that applicable standards are maintained and that practitioners are minimally competent.
  (7) Grant licensure by endorsement to vocational and registered nurses and grant recognition of advanced practice nurses from other states to ensure standards are maintained and applicable practices are consistent.
  (8) Recommend to legislature appropriate changes in the Nursing Practice Act to ensure that the act is current and applicable to changing needs and practices.
  (9) Establish standards for nursing education and accredit or deny accreditation to schools of nursing and educational programs which fail to meet or maintain the prescribed course of study or other applicable standards to ensure that high levels of education are achieved.
  (10) Monitor the examination results of licensure applicants to determine variances in the level of educational effectiveness.
  (11) Provide consultation and guidance to nurse education institutions to facilitate self-study, evaluation, and the development of effective nurse education programs.
  (12) Provide advice and counsel to the faculty of educational programs, to staff of health agencies utilizing nursing services, and to practitioners of nursing to continually improve professional service delivery.
  (13) Implement and manage all other programs and responsibilities as authorized and mandated from time to time by the Texas Legislature.

The provisions of this §211.2 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective May 17, 2004, 29 TexReg 4884.

§211.3. Organization and Structure.

(a) General. In accordance with Texas Occupations Code §§301.051 through 301.059, the board shall consist of members appointed by the Governor with the advice and consent of the Senate.

(b) Terms of office. The terms of board members shall be six years in length and shall be staggered so that the terms of as near to one-third of the members as possible shall expire on January 31 of each odd-numbered year. Upon completion of a term, a member may continue to serve until a successor has been appointed. A member may be reappointed to successive terms at the discretion of the Governor.

(c) Eligibility. Board member eligibility is governed by the Texas Occupations Code §§301.052 and 301.053.

(d) Compensation. Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and Board of Nurse Examiners' travel policies.

The provisions of this §211.3 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective May 17, 2004, 29 TexReg 4884.

§211.4. Officers.

(a) Selections and appointments. In accordance with the Texas Occupations Code §301.057, the Governor shall designate one of the members of the board as presiding officer. During the last meeting of the calendar year in even years, the board shall elect from among its membership a vice president. The term of the vice president shall be for two years. If the office of vice president becomes vacant during a two-year term, the members of the board shall elect a new vice president from among its membership to serve for the remainder of the term. All elections and any other issues requiring a vote of the board shall be decided by a simple majority of the members present and voting.

(b) Duties of the officers.
  (1) The president shall:
    (A) preside at all meetings of the board;
    (B) represent the board in legislative matters and in meetings with related groups;
    (C) appoint standing, ad hoc, and advisory committees;
    (D) perform such other duties as pertain to the office of the president; and,
    (E) designate a member of the board to coordinate the annual performance reviews of the executive director and evaluation of the board.
  (2) The vice president shall function in the absence of the president and shall perform such other duties that are from time to time assigned by the board. If the office of president becomes vacant, the vice president will serve as president until another member is elected by the board or named by the Governor.

The provisions of this §211.4 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective May 17, 2004, 29 TexReg 4884; amended to be effective July 10, 2013, 38 TexReg 4319.

§211.5. Meetings.

The board shall meet at least four times a year. It shall consider such matters as may be necessary. Special meetings shall be called by the president of the board or upon written request signed by three members of the board in accordance with Texas Occupations Code §301.058.

(1) Agenda. An agenda shall be posted in accordance with the Texas Government Code chapter 551 and copies shall be sent to the board members.

(2) Meetings of the board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to state law.

(3) Quorum. A majority of the members of the board, at least three of whom shall be nurses, shall constitute a quorum for the transaction of all business at any regular or special meeting.

(4) Voting. The board may act only by majority vote of a quorum of members present and eligible to vote, with each eligible member entitled to one vote. A member is not eligible to vote if a conflict of interest exists as described in §211.8 of this title (relating to Conflict of Interest). No proxy vote shall be allowed.

(5) Presiding officer. In the absence of the president and the vice president, a presiding officer shall be chosen by a majority of the board members present.

(6) Meeting held by tele-conference call. A meeting by the Board of Nurse Examiners may be held by telephone conference call or video conference call only as authorized by Texas Government Code chapter 551.

The provisions of this §211.5 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective May 17, 2004, 29 TexReg 4884.

§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 Association of Deans and Directors Professional Nursing Programs (TADDPNS);
      (ix) various educators in Texas nursing programs;
      (x) interested state agencies; and

(xi) 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.

(D) the Eligibility and Disciplinary Advisory Committee (EDAC) gives analysis and advises the Board regarding regulatory matters. The EDAC is comprised of representatives from the following:
- (i) Texas Association of Vocational Nurse Educators (TAVNE);
- (ii) Licensed Vocational Nurses Association of Texas (LVNAT);
- (iii) Texas League of Vocational Nurses (TLVN);
- (iv) Texas Organization of Associate Degree Nursing (TOADN);
- (v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE);
- (vi) Texas Nurses Association (TNA);
- (vii) Texas Organization of Nurse Executives (TONE);
- (viii) Coalition for Nurses in Advanced Practice; and
- (ix) other members approved by the Board.

(E) the Deferred Disciplinary Action Pilot Program Advisory Committee (DDAPPAC) assists the Board in overseeing and evaluating the deferred disciplinary action pilot program under §213.34 of this title (relating to Deferred Disciplinary Action Pilot Program). The DDAPPAC shall be abolished when the deferred disciplinary action pilot program under §213.34 of this title comes to an end, but in no event later than January 1, 2014. The DDAPPAC is comprised of representatives from the following:
- (i) Texas Association of Vocational Nurse Educators (TAVNE);
- (ii) Licensed Vocational Nurses Association of Texas (LVNAT);
- (iii) Texas League of Vocational Nurses (TLVN);
- (iv) Texas Organization of Associate Degree Nursing (TOADN);
- (v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE);
- (vi) Texas Nurses Association (TNA);
- (vii) Texas Organization of Nurse Executives (TONE);
- (viii) Coalition for Nurses in Advanced Practice; and
- (ix) other members approved by the Board, including members of public advocacy organizations.

(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 chairperson 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 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 as needed. Meeting times will be scheduled by the chairperson of each committee who shall determine whether a majority of the members will be in attendance to establish a quorum.

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

The provisions of this §211.6 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective May 17, 2004, 29

TexReg 4884; amended to be effective March 14, 2007, 32 TexReg 1302; amended to be effective September 26, 2007, 32 TexReg 6519; amended to be effective January 4, 2009, 33 TexReg 10432; amended to be effective July 12, 2010, 35 TexReg 6072.

§211.7. Executive Director.

(a) The board shall determine qualifications for and retain an executive director who shall be the chief executive officer of the agency.

(b) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. As chief executive of the board the executive director shall manage all aspects of the agency, including personnel, financial and other resources, in support of the NPA, rules and policies, the board's mission and strategic plan. The executive director shall attend all meetings of the board and may offer recommendations to the board, but shall not vote on matters brought before the board.

(c) The executive director shall have the authority to dismiss a complaint if an investigation demonstrates that a violation did not occur, or the subject of the complaint is outside the board's jurisdiction. At each public meeting of the board, the executive director shall report to the board each complaint dismissed since the board's last public meeting.

(d) The Executive Director, or the Executive Director's designee, is authorized to offer proposed disciplinary orders upon evaluation of the investigation findings. Such an offer may be made:
  (1) by mail at the conclusion of an investigation; or
  (2) in person following an informal conference.

(e) The Executive Director is authorized to accept the voluntary surrender of a license. Board ratification is not required. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

(f) The Executive Director is authorized to accept the following orders on behalf of the Board and ratification by the Board is not necessary. The Executive Director will report summaries of dispositions to the Board at its regular meetings.
  (1) Orders issued under §213.32(2) and (5) of this title (relating to Corrective Action Proceedings and Schedule of Administrative Fines).
  (2) Orders requiring a licensee to comply with a peer assistance program.
  (3) Orders issued under subsection (i) of this section.

(g) The Executive Director may grant any motion for rehearing if he/she is of the opinion that the motion has merit based on the criteria of §213.16(j) of this title (relating to Respondent's Answer in a Disciplinary Matter). Otherwise, any motion considered untimely or without merit under the criteria of §213.16(j) of this title, would be scheduled without prejudice before the next practicable full Board or Eligibility and Disciplinary meeting for review and determination.

(h) The Executive Director may grant a request for a limited license or negotiate an agreed order to return a limited licensee back to direct patient care. The Executive Director may negotiate an agreed resolution to a request for an exception to a stipulation contained in an existing order of the Board. The Executive Director shall not grant a request for exception under this subsection unless he/she is of the opinion that the requested relief falls within, and is consistent with, public safety and the parameters of §213.33(b), (g), and (h) of this title (relating to Factors Considered for Imposition of Penalties/Sanctions). Otherwise, a request for exception to an existing order of the Board may be scheduled without prejudice before the next practicable Eligibility and Disciplinary Committee meeting for review and determination. The Executive Director shall establish guidelines for review and approval of requests for exceptions to existing Board orders, including how often such requests may be made. The Executive Director shall report summaries of decisions related to requests for exceptions to existing Board orders to the Board at its regularly scheduled meetings.

(i) Following the temporary suspension of an individual's license pursuant to the Occupations Code §301.455 or §301.4551, the Executive Director may approve and accept on behalf of the Board an agreed order resolving the contested case if he/she is of the opinion that the agreed order falls within, and is consistent with, public safety and the parameters of §213.27 of this title (relating to Good Professional Character); §213.29 of this title (relating to Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters); and §213.33 of this title. The Executive Director shall report summaries of dispositions under this subsection to the Board at its regularly scheduled meetings.

The provisions of this §211.7 adopted to be effective March 31, 2002, 27 TexReg 2236; amended to be effective September 26, 2007, 32 TexReg 6519; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective November 15, 2009, 34 TexReg 7810; amended to be effective April 17, 2013, 38 TexReg 2359; amended to be effective October 7, 2013, 38 TexReg 6917.

§211.8. Conflict of Interest.

When matters to be discussed by or before the board concern a school and/or agency with which the board member is affiliated, the board member shall not enter into the discussion unless questioned by a member of the board and shall not vote on the matter.

The provisions of this §211.8 adopted to be effective March 31, 2002, 27 TexReg 2236.

§211.9. General Considerations.

(a) Parliamentary procedure. Board and committee meetings shall be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Minutes. Minutes of all board meetings will be prepared and transmitted to board members for their review prior to subsequent board meetings and shall be filed with the Legislative Reference Library and the Texas State Library. Proceedings of standing and ad hoc committee meetings and advisory committee meetings shall be recorded, distributed and filed in accordance with parliamentary procedure.

(c) Video Tape. All or any part of the proceedings of a public board meeting may be recorded by any person in attendance by means of a tape recorder, video camera, or any other means of sonic or visual reproduction.
  (1) The executive director shall direct any individual wishing to record or videotape as to equipment location, placement, and the manner in which the recording is conducted.
  (2) The decision will be made so as not to disrupt the normal order and business of the board.

(d) Executive Session.
  (1) The Board of Nurse Examiners may meet in executive session to consider the following items as provided by law:
    (A) involving the appointment, employment evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, unless such officer or employee requests a public hearing;
    (B) with respect to the purchase, exchange, lease, value of real property and negotiated contracts for prospective gift or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiating position of the board as between the board and a third person, firm, or corporation;
    (C) regarding the deployment, or specific occasions for implementation of security personnel or devices;
    (D) in private consultation between a governmental body and its attorney, in instances in which the board seeks the attorney's advice with respect to pending or contemplated litigation, settlement offer, and matters where the duty of board's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with applicable statutory provisions; or
    (E) any other matter as may relate to board business that is authorized by state law.
  (2) An executive session of the board shall not be held unless a quorum of the board has first been convened in open meeting. If during such open meeting, a motion is passed by the board to hold an executive session, the presiding officer shall publicly announce that an executive session will be held by stating the appropriate authority under which such executive session is being convened.
  (3) The presiding officer of the board shall announce the date and time at the beginning and end of the executive session.
  (4) The presiding officer of the board shall make a tape recording of the executive session which shall include the announcement made by the presiding officer at the beginning and end of the executive session.
  (5) In lieu of a tape recording, the presiding officer shall prepare an agenda of the executive session which shall be certified by the presiding officer as being a true and correct record of the proceedings. The certified agenda shall:
    (A) include an announcement of the date and time by the presiding officer at the beginning and end of the executive session; and
    (B) state the subject matter of each deliberation and include a record of any further action taken.
  (6) At the conclusion of the executive session, the presiding officer shall place the certified agenda or tape in an envelope, seal and date the envelope and deliver the envelope to the executive director.
  (7) The executive director or his or her designee will place the envelope containing the tape or agenda in the agency's safe.
  (8) The certified agenda or tape shall be maintained at the board office for at least two years from the date of the executive session. If an action involving the executive session commences during such two year period, the certified agenda shall be maintained until the final disposition of such action.
  (9) The certified agenda or tape shall be available for inspection by the judge of a district court as specified in Government Code, §555.104, if litigation has been initiated involving a violation of this section.

(e) Contracts with Historically Underutilized Businesses (HUBs).

(1) A Historically Underutilized Business (HUB) is a business that meets the definition of HUBs as defined in the rules of the Texas Building and Procurement Commission.
(2) The Board shall make a good faith effort to utilize HUBs in contracts for construction, services, including professional and consulting services, and commodities purchases.
(3) The board shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts awarded by the board in accordance with the percentage goals established by the Texas Building and Procurement Commission.

The provisions of this §211.9 adopted to be effective March 31, 2002, 27 TexReg 2236.

CHAPTER 213. PRACTICE AND PROCEDURE

§213.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act—The Nursing Practice Act or NPA, Texas Occupations Code Annotated §§301.001 - 301.607; 303.001 - 304.014.

(2) Address of record—The address of each licensee as provided to the Board of Nurse Examiners (as required by Board rules relating to Change of Name and/or Address) and currently found in §217.7 of this title (relating to Change of Name and/or Address).

(3) Administrative Law Judge or judge—An individual appointed by the chief administrative law judge of the State Office of Administrative Hearings to preside over administrative hearings pursuant to Texas Government Code Annotated, Chapter 2003, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Texas Government Code Annotated §2003.043.

(4) Adverse licensure action—Any action to fine, reprimand, warn, limit, probate, revoke, suspend, or otherwise discipline a license or multistate licensure privilege. The term includes an order accepting a voluntary surrender in lieu of disciplinary action.

(5) Answer—A responsive pleading.

(6) APA—Administrative Procedure Act, Texas Government Code Annotated Chapter 2001.

(7) Attorney of record—A person licensed to practice law in Texas who has provided the staff with written notice of representation.

(8) Board—The Board of Nurse Examiners appointed pursuant to Texas Occupations Code Annotated §301.051. For purposes of this section, "Board" also includes a three member standing committee designated by the Board to determine matters of eligibility for licensure and discipline of licensees.

(9) Client—See Patient.

(10) Complaint—Written accusations made by any person, or by the Board on its own initiative, alleging that a licensee's conduct may have violated the NPA.

(11) Contested case—A proceeding including, but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(12) Conviction—The result of a criminal proceeding wherein an individual, based on a plea or verdict, is adjudged guilty of the offense charged, or has been placed on probation with or without an adjudication of guilt, or has received an order of deferred adjudication.

(13) Declaratory order—An order, issued by the Board pursuant to Texas Occupations Code Annotated §301.257, determining the eligibility of an individual for initial licensure as a registered or vocational nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(14) Default proceeding—The issuance of a proposal for decision or an order in which the factual allegations against the respondent in a contested case are deemed admitted as true upon the respondent's failure to appear at a properly noticed hearing, or failure to file a response to the Formal Charges.

(15) Eligibility and Disciplinary Committee—A three member committee organized in accordance with §211.6 of this title (relating to Agreements in Writing) and authorized by the Board to make a final disposition of licensure eligibility and disciplinary matters including temporary suspension.

(16) Eligibility matter—A proceeding by which an individual requests licensure (such as by Petition for Declaratory Order, Application for Examination, Application for Endorsement), Reinstatement, Reissuance, or Renewal.

(17) Executive director—The executive director of the Board of Nurse Examiners.

(18) Formal charges—Pleading of the staff publicly alleging the reasons for disciplinary actions against a registered or vocational nurse created in accordance with Texas Occupations Code Annotated §301.458.

(19) Hearing—A public adjudicative proceeding at the State Office of Administrative Hearings.

(20) Informal conference—A non-public settlement meeting conducted by the executive director or designee to resolve a disciplinary or eligibility matter pending before the Board.

(21) Initial licensure—The original grant of permission to practice nursing in Texas, regardless of the method through which licensure was sought.

(22) License—Includes the whole or part of any Board permit, certificate, approval, registration, or similar form of permission required by law to practice professional or vocational nursing in the State of Texas. For purposes of this subchapter, the term includes a multistate licensure privilege.

(23) Licensee—A person who has met all the requirements to practice as a registered or vocational nurse pursuant to the Nursing Practice Act and the Rules and Regulations relating to Nurse Education, Licensure and Practice and has been issued a license to practice professional or vocational nursing in Texas. For purposes of this subchapter, the term includes a person who practices pursuant to a multistate licensure privilege.

(24) Licensing—Includes the Board's process with respect to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, amendment of a license, or multistate licensure privilege.

(25) Minor Incident—Conduct in violation of the Nursing Practice Act, which after a thorough evaluation of factors enumerated under §217.16 of this title (relating to Minor Incidents), indicates that the nurse's continuing to practice professional or vocational nursing does not pose a risk of harm to a client or other person and, therefore, does not need to be reported to the Board or peer review committee.

(26) Multistate Licensure Privilege—See Texas Occupations Code Annotated §304.001, article 1(h) (definition of Multistate Licensure Privilege). For purposes of this subchapter, the multistate licensure privilege means the privilege to practice as a professional or vocational nurse in the state of Texas based on the current, official authority to practice as a nurse in another state that has enacted the Nurse Licensure Compact, Texas Occupations Code Annotated Chapter 304.

(27) Order—A written decision of the Board, regardless of form, signed by the Board or the executive director on its behalf.

(28) Party—A person who holds a license issued by the Board of Nurse Examiners or multistate licensure privilege, a person who seeks to obtain, retain, modify his or her license, or a multistate licensure privilege, or the Board of Nurse Examiners.

(29) Patient—An individual under the care and treatment of a health care professional either at a health care facility or in his/her own home.

(30) Person—Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government.

(31) Petitioner—A party, including the staff, who brings a request or action and assumes the burden of going forward with an administrative proceeding, e.g., the staff in an action to discipline a licensee, the person who seeks reinstatement of a license, or the person who seeks a determination of eligibility for licensure.

(32) Pleading—A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(33) Reinstatement—The process of reissuing and restoring a license to active status that has been previously suspended, revoked, or voluntarily surrendered.

(34) Respondent—A party, including the staff, to whom a request is made or against whom an action is brought, e.g., the licensee in a disciplinary action by the staff, the person who holds a multistate licensure privilege in a disciplinary action by the staff, the Board in a reinstatement action, or the Board in an action to determine eligibility for licensure.

(35) Rule—Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of a state agency. The term includes the amendment or repeal of a prior rule, and does not include statements regarding only the internal management or organization of any agency and not affecting private rights or procedures.

(36) SOAH—The State Office of Administrative Hearings.

(37) Staff—The staff of the Board, not including the executive director. For purposes of these rules, the staff may act through the legal counsel.

(38) Technical error—A judge's misinterpretation or misapplication of sound nursing principles or minimum nursing practice standards in a proposal for decision that must be corrected to sufficiently protect the public.

The provisions of this §213.1 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884.

§213.2. Construction.

(a) Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine, or neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) These rules apply to all contested cases within the Board's jurisdiction and shall control practice and procedure before the Board and SOAH, unless pre-empted by rules promulgated by SOAH.

(c) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed otherwise.

(d) A reference in statute revised by the Texas Occupations Code is considered to be a reference to the part of the Texas Occupations Code that revises that statute or part of statute.

(e) A reference in a rule or part of a rule revised by this subchapter is considered to be a reference to the part of this subchapter that revises that rule or part of that rule.

The provisions of this §213.2 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.3. Pleading.

(a) In licensure matters:
  (1) In actions by the staff as petitioner against a licensee, the staff's pleading shall be styled "Formal Charges."
  (2) Except in cases of temporary suspension and injunction, the Board may not take disciplinary action unless notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the APA, Texas Government Code §2001.054(c). Notice of hearing or amended notice of hearing constitutes institution of agency proceedings for purposes of §2001.054(c).

(b) In eligibility matters:
  (1) In actions by the staff as petitioner, the staff's pleading shall ordinarily be styled "Petition of the Board of Nursing."
  (2) In actions by a person as petitioner, e.g., an individual seeking a determination of eligibility for licensure, examination or licensure applicant, or an individual petitioning to return to direct patient care or seeking reinstatement of a surrendered, revoked, or suspended license, the person's pleading shall be styled "Petition of NAME." The person shall have the burden of initiating the action, going forward with the administrative proceeding and proving the allegations contained in the pleading. The Board, at its discretion, may initiate proceedings before SOAH without relieving petitioner of the burden of proof as out-lined herein. If the Board has provided the petitioner with written notice of the basis of its refusal or denial of license, permit, application or petition, the Board may file an answer incorporating this notice and may rely on the notice as a responsive pleading.

The provisions of this §213.3 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective October 7, 2013, 38 TexReg 6918.

§213.4. Representation.

(a) A person may represent himself/herself or be represented by an attorney licensed to practice law in Texas.

(b) A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and an order of the judge approving the request.

(c) Notwithstanding the above, a party may expressly waive the right to assistance of counsel.

The provisions of this §213.4 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.5. Appearance.

(a) Any person appearing before the Board in connection with a contested case shall prefile written testimony at least 21 days prior to the appearance.

(b) In disciplinary and eligibility matters, appearances in contested cases may be made only by a party.

(c) In disciplinary and eligibility matters, a non-party may file an amicus brief with the executive director, with contemporaneous filing at SOAH if SOAH has acquired jurisdiction. Non-parties who file under this provision must disclose:

(1) their identities including name, address, telephone number, licensure, certification status;
(2) their interest in the disciplinary or eligibility matter;
(3) the identity of their members, subscribers, clients, constituents;
(4) the identity of the persons or entities that may be benefitted by the position taken by the amicus;
(5) the identity of the persons or entities that may be injured or disadvantaged by the position taken by the amicus; and
(6) the financial impact of the position taken by the amicus.

The provisions of this §213.5 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.6. Agreements in Writing.

Unless otherwise provided by the NPA or these rules, no agreement between attorneys or parties concerning any action or matter pending before the Board will be enforced unless it is in writing, signed, and filed with the papers as a part of the record, or unless it is made in open hearing and entered on record.

The provisions of this §213.6 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.7. Final Disposition.

Except for matters expressly delegated to the executive director, no agreed order regarding eligibility or discipline shall be final or effective until approved by the Board.

The provisions of this §213.7 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.8. Filing of Documents.

(a) The original of all applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the Board shall be filed with the executive director or designee. The date of filing is the date of actual receipt at the office of the Board.

(b) The original of all documents are to be filed at SOAH only after it acquires jurisdiction. (See §213.22(a) of this title (relating to Formal Proceedings) and SOAH rules, 1 TAC §155.7 (relating to Jurisdiction)). Filings and service to SOAH shall be directed to: Docket Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. Copies of all documents filed at SOAH must be contemporaneously served on the Board.

The provisions of this §213.8 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.9. Computation of Time.

(a) In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event, or default which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, an official State holiday, or another day on which SOAH or the Board office is closed, in which case the time period will be deemed to end on the next day that SOAH or the Board office is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided for by these rules, applicable law, SOAH rules, or judge order. However, if the period specified is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted.

(b) Extension. When by these rules, SOAH rules, or judge order, an act is required or allowed to be done at or within a specified time, the executive director or judge (if SOAH has acquired jurisdiction) may, for cause shown, order the period enlarged if application is made before the expiration of the specified period. In addition, where good cause is shown for the failure to act within the specified time period, the executive director or the judge may permit the act to be done after the expiration of the specified period.

The provisions of this §213.9 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.10. Notice and Service.

(a) Notice must be in writing and addressed to the party. Notice to a licensee is effective and service is complete when sent by certified or registered mail, return receipt requested, to the licensee's address of record at the time of the mailing.

(b) Notice to a party holding a multistate licensure privilege is effective and service is complete when sent by certified or registered mail, return receipt requested, to the privilege holder's address of record maintained with the home state nurse licensing agency at the time of the mailing.

(c) Notice to a non-licensee is effective and service is complete when sent by certified or registered mail, return receipt requested, to the person's address as stated on his/her petition, application, or other pleading.

(d) Notice to any person other than the Board is effective and service is complete when sent by certified or registered mail, return receipt requested, to the person's attorney of record.

(e) Notice of a hearing in a contested case must comply with Texas Government Code §2001.052 (Texas Administrative Procedure Act). Service is complete when made pursuant to 1 TAC §155.25 (SOAH).

The provisions of this §213.10 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884.

§213.11. Non-SOAH Motion for Continuance.

(a) No continuance shall be granted except for sufficient cause supported by affidavit as detailed in subsection (b) of this section, by consent of the parties, or by operation of law. A party that files a motion for continuance fewer than 10 days before the date of the event specified in any non-SOAH notice, must contact the other party and indicate in the motion whether there is any opposition to the motion.

(b) The motion shall be supported by a sworn affidavit detailing the reasons for the continuance. The affidavit shall also set forth the specific grounds upon which the party seeks the continuance and that the continuance is not sought for delay, but so that justice may be served.
   (1) If the ground of such application is the need for testimony, the party requesting the continuance shall make an affidavit stating that such testimony is material, shall show the materiality thereof, shall state that he or she has used due diligence to procure such testimony, stating such diligence, and shall state the cause of failure, if known, and shall state that such testimony cannot be procured from any other source.
   (2) If it be for the absence of a witness, the party requesting the continuance shall state the name and residence of the witness, and what the party requesting the continuance expects to prove by such witness.
   (3) If it be for the reason of a conflicting setting, the party requesting the continuance shall identify the conflict by style, cause number, court, agency, nature of setting, and date the conflicting setting was made.

The provisions of this §213.11 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.12. Witness Fees and Expenses.

A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the subpoena as set by the legislature in the APA, Texas Government Code Annotated §2001.103. In addition, a subpoenaed witness is entitled to thirty dollars ($30) for each day or part of a day that the person is necessarily present, and to mileage reimbursement. The mileage reimbursement rate shall be equal to the maximum fixed mileage allowance specified in the revenue rulings issued by the Internal Revenue Service under the federal income tax regulations as announced by the Texas Comptroller for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence, and the person uses the person's personally owned or leased motor vehicle for the travel.

The provisions of this §213.12 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective January 8, 2008, 33 TexReg 179; amended to be effective June 24, 2008, 33 TexReg 4884.

§213.13. Complaint Investigation and Disposition.

(a) Complaints shall be submitted to the Board in writing and should contain at least the following information: Nurse/Respondent Name, License Number, Social Security Number, Date of Birth, Employer, Dates of Occurrence(s), Description of Facts or Conduct, Witnesses, Outcome, Complainant Identification (Name, Address, and Telephone Number), and Written Instructions For Providing Information to the Board. Complaints may be made on the agency's complaint form.

(b) A preliminary investigation shall be conducted to determine the identity of the person named or described in the complaint.

(c) Complaints shall be assigned a priority status:
   (1) Priority 1—those indicating that credible evidence exists showing a guilty plea, with or without an adjudication of guilt, or conviction of a serious crime involving moral turpitude; a violation of the NPA involving actual deception, fraud, or injury to clients or the public or a high probability of immediate deception, fraud or injury to clients or the public;
   (2) Priority 2—those indicating that credible evidence exists showing a violation of the NPA involving a high probability of potential deception, fraud, or injury to clients or the public;
   (3) Priority 3—those indicating that credible evidence exists showing a violation of the NPA involving a potential for deception, fraud, or injury to clients or the public; and

(4) Priority 4—all other complaints.

(d) Not later than the 30th day after a complaint is received, the staff shall place a time line for completion, not to exceed one year, in the investigative file and notify all parties to the complaint. Any change in time line must be noted in the file and all parties notified of the change not later than seven days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:
(1) staff determines insufficient evidence exists to substantiate the allegation of a violation of the NPA, Board's rules, or a Board order; or
(2) staff determines sufficient evidence exists to demonstrate a violation of the NPA, Board's rules, or a Board order and drafts proposed formal charges.

(e) Staff shall conduct a criminal background search of the party described in the complaint.

(f) The staff shall provide summary data of complaints extending beyond the complaint time line to the executive director.

The provisions of this §213.13 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884.

§213.14. Preliminary Notice to Respondent in Disciplinary Matters.

(a) Except for proceedings conducted pursuant to the authority of Texas Occupations Code Annotated §301.455 (Temporary Suspensions) or unless it would jeopardize the investigation, prior to commencing disciplinary proceedings under §213.15 of this title (relating to Commencement of Disciplinary Proceedings), the staff shall serve the respondent with written notice in accordance with Texas Government Code §2001.054(c).

(b) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse licensure action. The notice shall invite the respondent to show compliance with all requirements of the law for retention of the license.

(c) Respondent shall file a written response within 20 days after service of the notice specified in subsection (a) of this section.

The provisions of this §213.14 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.15. Commencement of Disciplinary Proceedings.

(a) If a complaint is not resolved informally, the staff may commence disciplinary proceedings by filing formal charges.

(b) The formal charges shall contain the following information:
(1) the name of the respondent and his or her license number;
(2) a statement alleging with reasonable certainty the specific act or acts relied on by the Board to constitute a violation of a specific statute, Board rule, or Board order; and
(3) a reference to the section of the Act or to the Board's rule, regulation, or order which respondent is alleged to have violated.

(c) When formal charges are filed, the executive director shall serve respondent with a copy of the formal charges. The notice shall state that respondent shall file a written answer to the formal charges that meets the requirements of §213.16 of this title (relating to Respondent's Answer in a Disciplinary Matter).

(d) The staff may amend the formal charges at any time permitted by the APA. A copy of any formal amended charges shall be served on the respondent. The first charges filed shall be entitled "formal charges," the first amended charges filed shall be entitled "first amended formal charges," and so forth.

(e) Formal charges may be resolved by agreement of the parties at any time.

The provisions of this §213.15 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.16. Respondent's Answer in a Disciplinary Matter.

(a) The respondent in a disciplinary matter shall file an answer to the formal charges and to every amendment thereof.

(b) The answer shall admit or deny each of the allegations in the charges or amendment thereof. If the respondent intends to deny only a part of an allegation, the respondent shall specify so much of it is true and shall deny only the remainder. The answer shall also include any other matter, whether of law or fact, upon which respondent intends to rely for his or her defense.

(c) If the Respondent fails to file a response to the Formal charges, the matter will be considered as a default case.

(d) In a case of default, the Respondent will be deemed to have
  (1) admitted all the factual allegations in the Formal charges;
  (2) waived the opportunity to show compliance with the law;
  (3) waived the opportunity for a hearing on the Formal charges; and
  (4) waived objection to the recommended sanction in the Formal charges.

(e) The Executive Director may recommend that the Board enter a default order, based upon the allegations set out in the Formal charges, that adopts the sanction that was recommended in the Formal charges.

(f) Upon consideration of the case, the Board may:
  (1) enter a default order under §2001.056 of the APA; or
  (2) order the matter to be set for a hearing at SOAH.

(g) The respondent may amend his or her answer at any time permitted by the APA or SOAH rules.

(h) The first answer filed shall be entitled "answer," the first amended answer filed shall be entitled "first amended answer," and so forth.

(i) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice, and upon proof of proper notice to the Respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §2001.054 and §213.10 of this title (relating to Notice and Service). Such notice shall also include the following language in capital letters in 12 point boldface type: FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL CHARGES, EITHER PERSONALLY OR BY LEGAL REPRESENTATIVE, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

(j) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if movant proves by the preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference, but due to accident or mistake—provided that movant has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will occasion no delay or otherwise work an injury to the Board.

The provisions of this §213.16 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.17. Discovery.

(a) Parties to administrative proceedings shall have reasonable opportunity and methods of discovery described in the Texas Administrative Procedure Act (APA), Chapter 2001, Texas Government Code, the Texas Nursing Practice Act (NPA), and SOAH rule, 1 TAC §155.31 (relating to Discovery). Matters subject to discovery are limited to those which are relevant and material to issues within the Board's authority as set out in the NPA. Subject to prior agreement of parties or unless explicitly stated in Board rules, responses to discovery requests, except for notices of depositions, shall be made within 20 days of receipt of the request.

(b) Parties may obtain discovery by: request for disclosure, as described by Texas Revised Civil Procedures 194, oral or written depositions, written interrogatories to a party; requests of a party for admission of facts and the genuineness of identity of documents and things; requests and motions for production, examination, and copying of documents and other tangible materials; motion for mental or physical examinations; and requests and motions for entry upon and examination of real property.

(c) Parties are encouraged to make stipulations of evidence where possible and to agree to methods and time lines to expedite discovery and conserve time and resources.

The provisions of this §213.17 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.18. Depositions.

(a) The deposition of any witness may be taken upon a commission issued by the executive director upon the written request of any party, a copy of which shall be served on the non-requesting party.

(b) The written request shall contain the name, address, and title, if any, of the witness; a description of the books, records, writings, or other tangible items the requesting party wishes the witness to produce at the deposition; the date and location where the requesting party wishes the deposition to be taken; and a statement of the reasons why the deposition should be taken and the items produced.

(c) Depositions may be taken by telephone and by non-stenographic recording. The recording or transcript thereof may be used by any party to the same extent as a stenographic deposition, provided all other parties are supplied with a copy of the recording and the transcript to be used. The witness in a telephonic or non-stenographic

deposition may be sworn by any notary. The transcript of such deposition shall be submitted to the witness for signature in accordance with Texas Government Code Annotated §2001.099.

(d) Not withstanding any other provisions of these sections, the executive director may issue a commission to take a deposition prior to the filing of charges under §213.15 of this title (relating to Commencement of Disciplinary Proceedings) if, in the opinion of the executive director, such a commission is necessary for either party to preserve evidence and testimony or to investigate any potential violation or lack of compliance with the Act, the rules and regulations, or orders of the Board. The commission may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and to compel the production of books, records, papers or other objects.

(e) A deposition in a contested case shall be taken in the county where the witness:
(1) resides;
(2) is employed; or
(3) regularly transacts business in person.

The provisions of this §213.18 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.19. Subpoenas.

(a) Upon the written request of any party, the executive director may issue a subpoena to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is sought. If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date on which and the location at which the items are sought to be produced. Each request, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that a party has shown good cause for the issuance of the subpoena, the executive director shall issue the subpoena in the form described in Texas Government Code §2001.089.

(d) Notwithstanding any other provisions of these sections, the executive director may issue a subpoena prior to the filing of formal charges under §213.15 of this title (relating to Commencement of Disciplinary Proceedings), if, in the opinion of the executive director, such a subpoena is necessary to preserve evidence and testimony to investigate any potential violation or lack of compliance with the NPA, the rules and regulations, or orders of the Board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

The provisions of this §213.19 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.20. Informal Proceedings and Alternate Dispute Resolution (ADR).

(a) The Board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes such as informal proceedings or alternative dispute resolution. Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, agreed order, dismissal, or default. These matters may also be resolved using any ADR procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code.

(b) In disciplinary matters, the Board shall offer the complainant and the licensee the opportunity to be heard. The offer may be made at any time prior to disposition and may be included on the Board's complaint form, on any notice required by statute or these rules, or otherwise.

(c) Informal proceedings may be conducted in person, by attorney, or by electronic, telephonic, or written communication.

(d) Informal proceedings shall be conducted pursuant to the following procedural standards:
(1) Respondent shall have a right to be represented by an attorney of record. At any time, should respondent choose to obtain representation by an attorney and advises staff of such choice, the conference will be discontinued;
(2) Respondent will be expected to answer questions concerning the allegations contained in notice of complaint or formal charges, but may decline to answer any questions posed during the conference;
(3) Respondent and staff participation in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. Respondent will be expected to cooperate

fully with the Enforcement Staff to ensure that it has all pertinent information relating to the complaint or formal charges against respondent; and

(4) Although, a verbatim transcript is not being kept of the informal conference, party admissions and outline notes may be used at a formal hearing if this matter is docketed as a formal complaint at the State Office of Administrative Hearings.

(e) Informal conferences may be conducted at any time by the executive director or designee.

(f) The Board's counsel or assistant attorney general shall participate in informal proceedings.

(g) Disposition of matters considered informally may be made at any time in an agreed order containing such terms as the executive director may deem reasonable and necessary. Except as to matters delegated to the executive director for ratification, said agreed order shall not be final and effective until the Board, or an eligibility and disciplinary committee, votes to accept the proposed disposition.

(h) Referral to peer assistance after report to the Board.

(1) A nurse required to be reported under Texas Occupations Code Annotated §§301.401 - 301.409, may obtain informal disposition through referral to a peer assistance program as specified in Texas Occupations Code Annotated §301.410, as amended, if the nurse:

(A) makes a written stipulation of the nurse's impairment by dependency on chemicals or by mental illness;

(B) makes a written waiver of the nurse's right to administrative hearing and judicial review of:

(i) all matters contained in the stipulation of impairment;

(ii) any future modification or extension of the peer assistance contract;

(iii) the future imposition of sanctions under Texas Occupations Code Annotated §301.453 in the event the executive director should determine the nurse has failed to comply with the requirements of the peer assistance program; and

(C) makes a written contract with the Board of Nursing through its executive director promising to:

(i) undergo and pay for such physical and mental evaluations as the peer assistance program determines to be reasonable and necessary to evaluate the nurse's impairment; to plan, implement and monitor the nurse's rehabilitation; and, to determine if, when and under what conditions the nurse can safely return to practice;

(ii) sign a participation agreement with the peer assistance program;

(iii) comply with each and every requirement of the peer assistance program in full and timely fashion for the duration of the contract and any extension(s) thereof; and

(iv) waive confidentiality and privilege and authorize release of information about the nurse's impairment and rehabilitation to the peer assistance program and the executive director of the Board of Nurse Examiners.

(2) Disposition of a complaint by referral to a peer assistance program is not a finding which requires imposition of a sanction under Texas Occupations Code Annotated §301.453.

(3) In the event the nurse fails to comply with the nurse's contract with the Board of Nurse Examiners or the nurse's participation agreement with the peer assistance program, such non-compliance will be considered by the executive director at an informal proceeding after notice to the nurse of the non-compliance and opportunity to respond. At the informal proceeding, the executive director may consider facts relevant to the alleged non-compliance, modify or extend the contract or participation agreement, declare the contract satisfied or impose §301.453 sanctions on the nurse which will result in public discipline and reporting to the National Council of State Boards of Nursing's Disciplinary Data Bank.

(i) ADR shall be conducted pursuant to the following procedural standards:

(1) Any ADR procedure used to resolve disputes before the Board shall comply with the requirements of the NPA, chapter 2009 of the Government Code, and any model guidelines for the use of ADR issued by the State Office of Administrative Hearings, which may be found at: http://www.soah.state.tx.us.

(2) The Board's general counsel or his designee shall be the Board's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(A) coordinate the implementation of the Board's ADR policy;

(B) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(C) collect data to evaluate the effectiveness of ADR procedures implemented by the Board.

(3) The Board, a committee of the Board, a respondent in a disciplinary matter pending before the Board, the executive director, or a Board employee engaged in a dispute with the executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding, the executive director shall determine if the Board will participate in ADR or proceed with the Board's normal disciplinary processes. The matter may be submitted to ADR only upon approval by all concerned parties.

(4) Any costs associated with retaining an impartial third party mediator, moderator, facilitator, or arbitrator, shall be borne by the party requesting ADR.
(5) Agreements of the parties to ADR must be in writing and are enforceable in the same manner as any other written contract. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by §154.073 of the Civil Practice and Remedies Code.
(6) If the ADR process does not result in an agreement, the matter shall be referred to the Board for other appropriate disposition.

(j) If eligibility matters are not resolved informally, the petitioner may obtain a hearing before SOAH by submitting a written request to the staff.

(k) If disciplinary matters are not resolved informally, formal charges may be filed in accordance with §213.15 of this title (relating to Commencement of Disciplinary Proceedings) and the case may be set for a hearing before SOAH in accordance with §213.22 of this title (relating to Formal Proceedings).

(l) Pre-docketing conferences may be conducted by the executive director prior to SOAH acquiring jurisdiction over the contested case. The executive director, unilaterally or at the request of any party, may direct the parties, their attorneys or representatives to appear before the executive director at a specified time and place for a conference prior to the hearing for the purpose of:
(1) simplifying the issues;
(2) considering the making of admissions or stipulations of fact or law;
(3) reviewing the procedure governing the hearing;
(4) limiting the number of witnesses whose testimony will be repetitious; and
(5) doing any act that may simplify the proceedings, and disposing of the matters in controversy, including settling all or part of the issues in dispute pursuant to §213.20 and §213.21 of this title (Informal Proceedings and Agreed Disposition).

The provisions of this §213.20 adopted to be effective August 15, 2002, 27 TexReg 7170; amended to be effective October 10, 2007, 32 TexReg 7058; amended to be effective November 15, 2009, 34 TexReg 7812.

§213.21. Agreed Disposition.

Informal proceedings, complaints and formal charges may be resolved by stipulation, agreed settlement, agreed order, or dismissal pursuant to Texas Occupations Code Annotated §301.463.

The provisions of this §213.21 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.22. Formal Proceedings.

(a) Formal administrative hearings in contested cases shall be conducted in accordance with the APA and SOAH rules. Jurisdiction over the case is acquired by SOAH when the staff or respondent files a Request to Docket Case Form accompanied by legible copies of all pertinent documents, including but not limited to the complaint, petition, application, or other document describing the agency action giving rise to a contested case.

(b) When a case has been docketed before SOAH, Board staff or respondent shall provide a notice of hearing to all parties in accordance with §2001.052, Texas Government Code, and applicable SOAH rules.

(c) In disciplinary cases, the respondent shall enter an appearance by filing a written answer or other responsive pleading with SOAH, with a copy to staff, within 20 days of the date on which the notice of hearing is served to the respondent.

(d) For purposes of this section, an entry of an appearance shall mean the filing of a written answer or other responsive pleading.

(e) The failure of the respondent to timely enter an appearance as provided in this section shall entitle the staff to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the judge.

(f) The notice of hearing provided to a respondent for a contested case shall include the following language in capital letters in 12-point bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL CHARGES WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED, SHALL ENTITLE THE STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

(g) If a respondent fails to appear in person or by attorney on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the judge, pursuant to SOAH's rules, shall, upon adequate proof that proper notice under the APA and SOAH rules was served upon the defaulting party, enter a default judgment in the matter adverse to the respondent. Such notice shall have included in 12-point, bold faced

type, the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and the relief sought in the proposed recommendation by the staff shall be granted by default.

(h) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice of hearing, and upon proof of proper notice to the respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §§2001.051, 2001.052 and 2001.054, as well as §213.10 of this title (relating to Notice and Service). Such notice of hearing also shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

(i) A motion to vacate a default judgment rendered by the judge must be filed within 10 days of service of notice of the default judgment.
  (1) The motion to vacate the default judgment shall be granted if movant proves by the preponderance of the evidence that the failure to attend the hearing was not intentional or the result of conscious indifference, but due to accident or mistake, provided that respondent has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will occasion no delay or otherwise work an injury to the Board.
  (2) If the motion to vacate the default judgment is granted, it shall be the responsibility of the parties to either settle the matter informally or to request a rehearing on the merits. Whenever possible, the rehearing of the case shall occur with the judge that heard the default matter.

(j) Because of the often voluminous nature of the records properly received into evidence by the judge, the party introducing such documentary evidence may paginate each such exhibit or flag pertinent pages in each such exhibit in order to expedite the hearing and the decision-making process.

(k) The schedule of sanctions set out in the NPA is adopted by the Board, and the judge shall use such sanctions as well as any sanctions adopted by the Board by rule.

(l) Within a reasonable time after the conclusion of the hearing, the judge shall prepare and serve on the parties a proposal for decision that includes the judge's findings of fact and conclusions of law and a proposed order recommending a sanction to be imposed, if any.

(m) Each hearing may be recorded by a court reporter in accordance with the APA and SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript and said request shall be sent directly to the court reporter and the requesting party shall notify the other party in writing of the request.

(n) A party who appeals a final decision of the Board shall pay all of the costs of preparation of the original and any certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.
  (1) The record in a contested case shall consist of the following:
    (A) all pleadings, motions, intermediate rulings;
    (B) all evidence received or considered by the judge;
    (C) a statement of the matters officially noticed;
    (D) questions and offers of proof, objections, and rulings thereon;
    (E) proposed findings and exceptions;
    (F) any decision, opinion, or report by the judge presiding at the hearing;
    (G) all staff correspondence submitted to the judge in connection with his or her consideration of the case; and
    (H) the transcribed statement of facts (Q & A testimony) from the hearing unless the parties have stipulated to all or part of the statement of facts.
  (2) Calculation of costs for preparation of the record shall be governed by the same procedure utilized by the Board in preparing documents responsive to open records requests pursuant to the Public Information Act. These costs shall include, but not be limited to, the cost of research, document retrieval, copying, and labor.

The provisions of this §213.22 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.23. Decision of the Board.

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties.

(b) Prior to the issuance of a proposal for decision, a party may submit proposed findings of fact and conclusions of law to the judge. The judge shall issue a ruling on each proposed finding of fact and conclusion of law and shall set forth the specific reason for not adopting a particular proposed finding of fact or conclusion of law.

(c) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file with the judge exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with 1 TAC §155.507. The proposal for decision may be amended by the judge in accordance with 1 TAC §155.507 without again being served on the parties.

(d) The proposal for decision may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with this section, after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(e) Following the issuance of a proposal for decision, parties shall have an opportunity to file written exceptions and/or briefs with the Board concerning a proposal for decision. An opportunity shall be given to file a response to written exceptions and/or briefs. The following requirements govern the submission of written exceptions and/or briefs to the Board:
   (1) Individuals wishing to file written exceptions and/or briefs with the Board, but not wishing to make an oral presentation to the Board concerning a proposal for decision. A Respondent wishing to file written exceptions and/or briefs with the Board concerning a proposal for decision must do so no later than 10 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. The Board will not consider any written exceptions and/or briefs submitted in violation of this requirement.
   (2) Individuals wishing to make an oral presentation to the Board concerning a proposal for decision. An individual wishing to make an oral presentation to the Board must file written exceptions and/or briefs with the Board. If no modification is proposed to the proposal for decision, an individual must file written exceptions and/or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. If a modification is proposed to the proposal for decision, an individual must file a written response to the proposed modification, written exceptions, and/or briefs with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. An individual will not be permitted to make an oral presentation to the Board if the individual does not comply with these requirements.

(f) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the Board determines:
   (1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;
   (2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or
   (3) that a technical error in a finding of fact should be changed.

(g) If the Board modifies, amends, or changes the recommended proposal for decision or order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to subsection (f) of this section.

(h) An order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.

(i) A copy of the order shall be mailed to all parties and to the party's last known employer as a nurse.

(j) The decision of the Board is immediate, final, and appealable upon the signing of the written order by the executive director on behalf of the Board where:
   (1) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and
   (2) the order states it is final and effective on the date rendered.

(k) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (j) of this section.

(l) Motions for rehearing under this section are controlled by Texas Government Code §2001.145.

The provisions of this §213.23 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884; amended to be effective November 15, 2009, 34 TexReg 7818; amended to be effective August 19, 2012, 37 TexReg 6028.

§213.24. Rescission of Probation.

(a) At least 20 days prior to a hearing to rescind probation, the probationer shall be served with written notice of the allegations supporting rescission of the probation.

(b) The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings), and the decisions of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).

(c) After giving the probationer notice and an opportunity to be heard, the Board may set aside the stay order and impose the stayed discipline (revocation/suspension) of the probationer's license.

(d) If during the period of probation, an additional allegation, accusation, or petition is reported or filed against the probationer's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

(e) The Board may determine as part of probation that the public may be better protected if probationer is suspended from the practice of nursing for a specific time period in order to correct deficiencies in skills, education, or personal rehabilitation and to assure documented proof of rehabilitation. Prior to the lifting of the actual suspension of license, the probationer will provide documentation of completion of educational courses or treatment rehabilitation.

The provisions of this §213.24 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.25. Monitoring.

(a) The Board shall identify and monitor licensees who present a risk to the public and who are subject to Board orders. The monitoring system shall track at least the name, license number, address, employer, and any other information necessary to demonstrate compliance or non-compliance with an order of the Board.

(b) Monitored licensees will pay a monthly fee as stated in the Board order. Said fee shall be paid on or before the 5th of each month.

The provisions of this §213.25 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.26. Reissuance of a License.

(a) A person whose license to practice nursing in this state has been revoked, suspended, or surrendered may apply for reinstatement of the license. In the case of revocation, petition shall not be made prior to one year after the effective date of the revocation. The Board may approve or deny a petition. In the case of denial, the Board may set a reasonable time that must elapse before another petition may be filed. The Board may impose reasonable conditions that a petitioner must satisfy before reinstatement of an unencumbered license.

(b) A petition for reinstatement shall be in writing and in the form prescribed by the Board.

(c) Petitioner's appearance at any hearing concerning reinstatement of a license shall be in person unless otherwise approved by the executive director.

(d) The burden of proof is on the petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender, or suspension. A license may be reissued with a limited practice designation or with stipulations. If petition for reinstatement is denied, Petitioner may request a hearing before SOAH.

(e) In considering reinstatement of a surrendered, suspended, or revoked license, the Board will evaluate:
  (1) the conduct which resulted in voluntary surrender, suspension, or revocation of the license;
  (2) the conduct of the petitioner subsequent to the suspension, revocation, or acceptance of surrender of license;
  (3) the lapse of time since suspension, revocation, or acceptance of surrender;
  (4) compliance with all conditions imposed by the Board as a prerequisite for issuance of the license; and
  (5) the petitioner's present qualification to practice nursing based on his or her history of nursing-related employment or education.

The provisions of this §213.26 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884.

§213.27. Good Professional Character.

(a) Good professional character is 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 or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:
  (1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education, and

experience necessarily affect the nature and extent of behavioral history and, therefore, shall be considered in each evaluation.

(2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that the person:
   (A) is able to distinguish right from wrong;
   (B) is able to think and act rationally;
   (C) is able to keep promises and honor obligations;
   (D) is accountable for his or her own behavior;
   (E) is able to practice nursing in an autonomous role with patients/clients, their families, significant others, and members of the public who are or who may become physically, emotionally, or financially vulnerable;
   (F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
   (G) 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 or could protect patients/clients or the public from unnecessary risk of harm.

(3) Any conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.

(4) Any revocation, suspension, or denial of, or any other adverse action relating to, the person's license or privilege to practice nursing in another jurisdiction.

(c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.
   (1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.
   (2) In addition to the disciplinary remedies available to the Board pursuant to Tex. Occ. Code Ann. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and §213.28, a licensee guilty of a felony under this rule is conclusively deemed to have violated Tex. Occ. Code Ann. §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

(d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.
   (1) A certified copy of the order, judgment of discipline, or order of adverse licensure action from the jurisdiction is prima facie evidence of the matters contained in such order, judgment, or adverse action and is conclusive evidence that the individual in question has committed professional misconduct as alleged in such order of judgment.
   (2) An individual disciplined for professional misconduct in the course of practicing nursing in any jurisdiction or an or an individual who resigned in lieu of disciplinary action (disciplined individual) is deemed not to have present good professional character and fitness and is, therefore, ineligible to file an Application for Endorsement to the Texas Board of Nursing during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the disciplined individual has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.
   (3) The only defenses available to a Petitioner, Applicant, or Licensee under section (d) are outlined below and must be proved by clear and convincing evidence:
      (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
      (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.
      (C) The deeming of lack of present good professional character and fitness by the Board during the period required under the provisions of section (d) would result in grave injustice.
      (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.

(4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.

(e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in subsection (f) of this section, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) of this section shall be required to prove, by a preponderance of the evidence:
(1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice nursing; and
(2) that (s)he is of present good professional character and fitness.

(f) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after a negative determination based on a felony conviction, felony probation with or without an adjudication of guilt, or professional misconduct, or voluntary surrender in lieu of disciplinary action and whose application or petition is denied and not appealed is not eligible to file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the preceding petition for licensure.

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating good professional character in eligibility and disciplinary matters:
(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html.

The provisions of this §213.27 adopted to be effective September 1, 1998, 23 TexReg 6444; amended to be effective November 14, 2002, 27 TexReg 10594; amended to be effective May 17, 2004, 29 TexReg 4884; amended to be effective October 10, 2007, 32 TexReg 7058; amended to be effective July 2, 2008, 33 TexReg 5007; amended to be effective July 10, 2013, 38 TexReg 4320.

§213.28. Licensure of Persons with Criminal Offenses.

(a) This section sets out the considerations and criteria in determining the effect of criminal offenses on the eligibility of a person to obtain a license and the consequences that criminal offenses may have on a person's ability to retain or renew a license as a registered nurse or licensed vocational nurse. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of or received a deferred disposition for a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation.

(b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:
(1) offenses against the person similar to those outlined in Title 5 of the Texas Penal Code.
(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:
(i) Abandonment/Endangerment of a Child {TPC §22.041}
(ii) Agree to Abduct Child for Remuneration: Younger than Eighteen {TPC §25.031}
(iii) Aiding Suicide: Serious Bodily Injury/Death {TPC §22.08}

(iv) Assault, Aggravated {TPC §22.02}
(v) Capital Murder {TPC §19.03}
(vi) Child Pornography, Possession or Promotion {TPC §43.26(a), (e) (Texas Rules of Criminal Procedure Ch. 62)}
(vii) Indecency with a Child {TPC §21.11 (TRCP Ch. 62)}
(viii) Indecent exposure (2 or more counts and/or required to register as sex offender) {TPC §21.08 (TRCP Ch. 62)}
(ix) Injury to Child, Elderly, Disabled {TPC §22.04}
(x) Kidnapping {TPC §20.03, §20.04 (TRCP Ch. 62)}
(xi) Manslaughter {TPC §19.04}
(xii) Murder {TPC §19.02}
(xiii) Online Solicitation of a Minor {TPC §33.021(b), (c), (f); (TRCP Ch. 62)}
(xiv) Prostitution, Compelling {TPC §43.05 (TRCP Ch. 62)}
(xv) Protective Order, Violation {TPC §25.07, §25.071}
(xvi) Sale or Purchase of a Child {TPC §25.08}
(xvii) Sexual Assault {TPC §22.011 (TRCP Ch. 62)}
(xviii) Sexual Conduct, Prohibited {TPC §25.02 (TRCP Ch. 62)}
(xix) Sexual Assault, Aggravated {TPC §22.021 (TRCP Ch. 62)}
(xx) Sexual Performance by Child {TPC §43.24 (d), §43.25(b) (TRCP Ch. 62)}
(xxi) Unlawful Restraint {TPC §0.02}
(xxii) Assault {TPC §22.01(a)(1), (b), (c)}
(xxiii) Criminally negligent homicide {TPC §19.05}
(xxiv) Improper Relationship between Educator and Student {TPC §21.12}
(xxv) Improper photography {TPC §21.15}
(xxvi) Obscenity, Wholesale promotion {TPC §43.23(a), (h)}
(xxvii) Prostitution (3 or more counts) or Aggravated Promotion {TPC §43.02, §43.04}
(xxviii) Resisting Arrest, Use of Deadly Weapon {TPC §38.03(d)}
(xxix) Stalking {TPC §42.072(b)}
(xxx) Harassment {TPC §42.07}
(xxxi) Prostitution or Promotion of {TPC §43.02}
(xxxii) Protective Order, Violation {TPC §25.07, §38.112}
(xxxiii) Resisting Arrest {TPC §38.03(a)}
(xxxiv) Deadly conduct {TPC §22.05(a)}
(xxxv) Obscenity, Participates {TPC §43.23(c), (h)}
(xxxvi) Terroristic Threat {TPC §22.07}
(xxxvii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:
(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may be subject to harm by similar criminal behavior;
(iii) nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients who are vulnerable to exploitation both physically and emotionally;
(iv) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability; and
(v) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and raises concerns regarding the individual's ability to provide safe, competent care to patients.

(2) offenses against property, e.g., robbery, burglary and theft, etc.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:
(i) Burglary (if punishable under Penal Code §30.02(d)) {TRCP Ch. 62 (§62.001(5)(D))}
(ii) Robbery {TPC §29.02}
(iii) Robbery, Aggravated {TPC §29.03}
(iv) Arson {TPC §28.02(d)}
(v) Burglary {TPC §30.02}
(vi) Criminal Mischief {TPC §28.03}
(vii) Money Laundering >= $1500 {TPC §34.02(e)(1) - (4)}
(viii) Theft >= $1500 {TPC §31.03(e)(4) - (7)}

(ix) Theft < 9 {TPC §31.03(e)(1) - (3)}
(x) Vehicle, Unauthorized Use {TPC §31.07}
(xi) Criminal Trespass {TPC §30.05(a),(d)}
(xii) Cruelty to Animals {TPC §42.091}
(xiii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:
(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may provide easy opportunity to be victimized;
(iii) nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility with no security to prevent theft or exploitation;
(iv) nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse;
(v) nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and
(vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and, therefore, place patients' property at risk.
(vii) certain crimes involving property, such as cruelty to animals and criminal trespass, may also concern the safety of persons and, as such, raise concerns about the propensity of the nurse to repeat similar conduct in the workplace, placing patients at risk.

(3) offenses involving fraud or deception.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:
(i) Attempt, Conspiracy, or Solicitation of Ch. 62 offense {TRCP Ch. 62}
(ii) Tampering with a Government Record {TPC §37.10}
(iii) Insurance Fraud: Intent to Defraud {TPC §35.02(a-1), (d)}
(iv) Insurance Fraud: Claim > $500 {TPC §35.02(c)}
(v) Insurance Fraud: Claim < 0 {TPC §35.02 (c)(1) - (3)}
(vi) Medicaid Fraud > $1500 {TPC §35A.02(b)(4) - (7)}
(vii) Medicaid Fraud < $1500 {TPC §35A.02(b)(2) - (3)}
(viii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crime relate to the practice of nursing because:
(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;
(iii) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability;
(iv) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;
(v) the nurse-patient relationship is of a dependent nature; and
(vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and, therefore, place patients at risk.

(4) offenses involving lying and falsification.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:
(i) False Report or Statement {TPC §32.32, §42.06}
(ii) Forgery {TPC §32.21(c), (d), (e)}
(iii) Tampering with a Governmental Record {TPC §37.10}

(B) These crimes are related to nursing because:
(i) nurses have access to persons who are vulnerable by virtue of illness or injury;
(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;
(iii) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(iv) honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;
(v) falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future;
(vi) falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;
(vii) falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and
(viii) a crime of lying or falsification raises concerns about the nurse's propensity to engage in similar conduct while practicing nursing and place patients at risk.

(5) offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance.
(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:
(i) Drug Violations under Health and Safety Code Chs. 481, 482, 483; or
(ii) Driving While Intoxicated (2 or more counts) {TPC §49.09}
(B) These crimes relate to the practice of nursing because:
(i) nurses have access to persons who are vulnerable by virtue of illness or injury;
(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;
(iii) nurses provide care to critical care, geriatric, and pediatric patients who are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition;
(iv) nurses are able to provide care in private homes and home-like setting without supervision;
(v) nurses who are chemically dependent or who abuse drugs or alcohol may have impaired judgment while caring for patients and are at risk for harming patients; and
(vi) an offense regarding delivery, possession, manufacture, or use of, or dispensing , or prescribing a controlled substance, dangerous drug or mood altering drug raises concern about the nurse's propensity to repeat that same misconduct in the workplace.
(vii) DWI offenses involve the use and/or abuse of mood altering drugs while performing a state licensed activity affecting public safety; repeated violations suggest a willingness to continue in reckless and dangerous conduct, or an unwillingness to take appropriate corrective measures, despite previous disciplinary action by the state.

(c) In considering whether a criminal offense renders the individual ineligible for licensure or renewal of licensure as a registered or vocational nurse, the Board shall consider:
(1) the knowing or intentional practice of nursing without a license issued under the NPA;
(2) any felony or misdemeanor involving moral turpitude;
(3) the nature and seriousness of the crime;
(4) the relationship of the crime to the purposes for requiring a license to engage in nursing practice;
(5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
(6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
(7) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision; and
(8) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude.

(d) Crimes listed under subsections (b)(1)(A)(i) - (xxi), (b)(2)(A)(i) - (iii), and (b)(3)(A)(i) of this section are offenses identified under §301.4535 of the NPA. As such, these offenses require the board to suspend a nurse's license, revoke a license, or deny issuing a license to an applicant upon proof of initial conviction.

(e) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of or received a deferred order for a crime, shall consider:
(1) the extent and nature of the person's past criminal activity;
(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;
(4) the conduct and work activity of the person before and after the criminal activity;
(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
(6) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) It shall be the responsibility of the applicant, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order.

(g) If requested by staff, it shall be the responsibility of the individual seeking licensure to ensure that staff is provided with legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional. Failure to provide complete, legible and accurate documentation will result in delays prior to licensure or renewal of licensure and possible grounds for ineligibility.

(h) The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the Nursing Practice Act or rules of the Board, the board may consider such evidence as a factor in its deliberations regarding any decision to grant a license, restrict a license, or impose licensure discipline.

(i) Behavior that would otherwise bar or impede licensure may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior using the factors set out in §213.27 of this title (relating to Good Professional Character), subsections (a) - (f) of this section and at least the following criteria:
(1) age of 22 years or less at the time of the behavior;
(2) absence of criminal plan or premeditation;
(3) presence of peer pressure or other contributing influences;
(4) absence of adult supervision or guidance;
(5) evidence of immature thought process/judgment at the time of the activity;
(6) evidence of remorse;
(7) evidence of restitution to both victim and community;
(8) evidence of current maturity and personal accountability;
(9) absence of subsequent undesirable conduct;
(10) evidence of having learned from past mistakes;
(11) evidence of current support structures that will prevent future criminal activity; and
(12) evidence of current ability to practice nursing in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing.

(j) With respect to a request to obtain a license from a person who has a criminal history, the executive director is authorized to close an eligibility file when the applicant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof.

(k) The board shall revoke a license or authorization to practice as an advanced practice nurse upon the imprisonment of the licensee following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(l) The board shall revoke or deny a license or authorization to practice as an advanced practice nurse for the crimes listed in Texas Occupations Code §301.4535.

(m) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:
(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html.

The provisions of this §213.28 adopted to be effective September 1, 1998, 23 TexReg 6444; amended to be effective July 20, 1999, 24 TexReg 5473; amended to be effective November 14, 2002, 27 TexReg 10594; amended to be effective May 17, 2004, 29 TexReg 4884; amended to be effective March 14, 2007, 32 TexReg 1304; amended to be effective October 10, 2007, 32 TexReg 7058; amended to be effective July 2, 2008, 33 TexReg 5007; amended to be effective July 10, 2013, 38 TexReg 4327.

§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

(a) A person desiring to obtain or retain a license to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule.

(b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he/she has not:
(1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or
(2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:
(1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines);
(2) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain a license to practice as a nurse unless such person can demonstrate sobriety and abstinence for the preceding twelve consecutive months through verifiable and reliable evidence, or can establish eligibility to participate in a peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;
(3) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain an unencumbered license to practice nursing until the individual has attained a five-year term of sobriety and abstinence or until such person has successfully completed participation in a board-approved peer assistance program created pursuant to Chapter 467 of the Health and Safety Code.
(4) Those persons who have been diagnosed with, treated, or hospitalized for the disorders mentioned in subsection (b) of this section shall execute an authorization for release of medical, psychiatric, and treatment records.

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this chapter.

(e) Prior intemperate use, mental illness, or diminished mental capacity is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:
(1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;
(2) close any eligibility file in which the movant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof;
(3) approve eligibility, enter eligibility orders and approve renewals, without Board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and
(4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:

(A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for the previous twelve consecutive months; and
(B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.

(g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:
(1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least the previous twelve consecutive months; and
(2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.

(h) In renewal matters involving chemical dependency use, mental illness, or diminished mental capacity, the executive director shall consider the following information from the preceding renewal period:
(1) evidence of the licensee's safe practice;
(2) compliance with the NPA and Board rules; and
(3) written verification of compliance with any treatment.

(i) Upon receipt of items (h)(1) - (3) of this section, the executive director may renew the license.

(j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:
(1) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's web site at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
(2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html.

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§213.30. Declaratory Order of Eligibility for Licensure.

(a) For purposes of this section only, "petitioner" means an individual who:
(1) is enrolled or planning to enroll in an educational nursing program that prepares individuals for initial licensure as a registered or vocational nurse;
(2) seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement); or
(3) seeks licensure by examination pursuant to §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions) or §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction) of this title.

(b) An individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement may petition the Board for a declaratory order as to his or her eligibility.

(c) A petitioner must submit a petition on forms provided by the Board, which includes:
(1) a statement by the petitioner indicating the reason(s) and basis of potential ineligibility;
(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to: indictments, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, if applicable;
(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) and evidence of treatment;
(4) if the potential ineligibility is due to chemical dependency, including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care, and support group attendance; and
(5) the required fee, which is not refundable.

(d) Once the Board has received all necessary information, including the information required by subsection (c) of this section, an investigation of the petition and the petitioner's eligibility shall be conducted.

(e) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(f) If an individual seeking licensure by endorsement pursuant to §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the following provisions shall govern the eligibility of the petitioner with regard to §213.27 of this title (relating to Good Professional Character).
   (1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the jurisdiction that the individual has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.
   (2) An individual who is disciplined for professional misconduct in the course of nursing in any jurisdiction or who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title, and is therefore ineligible to seek licensure by endorsement under §217.5 of this titleduring the period of discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the individual has filed a petition for reinstatement in the disciplining jurisdiction and obtained a final determination on that petition.

(g) If a petitioner's potential ineligibility is due to criminal conduct and/or conviction, including deferred adjudication, the following provisions shall govern the eligibility of the petitioner with regard to §213.28 of this title (relating to Licensure of Persons with Criminal Convictions).
   (1) The record of conviction, guilty plea, or order of deferred adjudication is conclusive evidence of guilt.
   (2) Upon proof that a felony conviction or felony order of probation, with or without adjudication of guilt, has been set aside or reversed, the petitioner shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner possesses present good professional character and fitness.

(h) If the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. The hearing shall be conducted in accordance with §213.22 of this chapter (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this chapter (relating to Decision of the Board).

(i) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. If the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

(j) The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this chapter and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters:
   (1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
   (2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.
   (3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html.

(k) If an individual seeking licensure by endorsement under §217.5 of this title or licensure by examination under §217.2 or §217.4 of this title should have had an eligibility issue settled pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order under this section, and the individual will be treated as a petitioner under this section and will be required to pay the non-refundable fee required by this section.

(l) This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.

The provisions of this §213.30 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884; amended to be effective February 19, 2006, 31 TexReg 847; amended to be effective October 10, 2007, 32 TexReg 7058; amended to be effective July 2, 2008, 33 TexReg 5007; amended to be effective November 15, 2009, 34 TexReg 7812; amended to be effective July 12, 2010, 35 TexReg 6074; amended to be effective July 10, 2013, 38 TexReg 4342.

§213.31. Cross-reference of Rights and Options Available to Licensees and Petitioners.

Licensees subject to disciplinary action and petitioners seeking a determination of licensure eligibility have certain rights and options available to them in connection with these mechanisms. For example, licensees or petitioners have the right to request information in the Board's possession, including information favorable to licensee or petitioner, and the option to be represented by an attorney at their own expense. The following is a list of references to provisions of the Nursing Practice Act (Texas Occupations Code Annotated Chapter 301) and the Board's rules addressing these rights and options and related matters. Persons with matters before the Board should familiarize themselves with these provisions:

(1) Section 301.257—Declaratory Order of License Eligibility;

(2) Section 301.203—Records of Complaints;

(3) Section 301.204—General Rules Regarding Complaint Investigation and Disposition;

(4) Section 301.464—Informal Proceedings;

(5) Section 301.552—Monitoring of License Holder;

(6) Section 301.452—Grounds for Disciplinary Action;

(7) Section 301.453—Disciplinary Authority of Board; Methods of Discipline;

(8) Section 301.457—Complaint and Investigation;

(9) Section 301.159—Board Duties Regarding Complaints;

(10) Section 301.463—Agreed Disposition;

(11) Section 301.462—Voluntary Surrender of License;

(12) Section 301.454—Notice and Hearing;

(13) Section 301.458—Initiation of Formal Charges; Discovery;

(14) Section 301.459—Formal Hearing;

(15) Section 301.460—Access to Information;

(16) Section 301.352—Protection for Refusal to Engage in Certain Conduct;

(17) Section 301.455—Temporary License Suspension;

(18) Section 217.11—Standards of Nursing Practice;

(19) Section 217.12—Unprofessional Conduct; and

(20) Sections 213.1 - 213.33—Practice and Procedure.

The provisions of this §213.31 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884.

§213.32. Corrective Action Proceedings and Schedule of Administrative Fines.

A corrective action may be imposed by the Board as specified in the following circumstances.

(1) For purposes of this section only, corrective action has the meaning assigned by the Occupations Code §301.651. A corrective action imposed under this section is not a disciplinary action under the Occupations Code Chapter 301, Subchapter J.

(2) Pursuant to the Occupations Code §301.652, the Board may impose a corrective action for the first occurrence of each of the following violations:
   (A) practice on a delinquent license for more than six months but less than one year;
   (B) failure to comply with continuing competency requirements;
   (C) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible;
   (D) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including, but not limited to: employment history, licensure history, and criminal history;
   (E) failure to comply with Board requirements for change of name/address;
   (F) failure to develop, maintain, and implement a peer review plan according to statutory peer review requirements;
   (G) failure of an advanced practice registered nurse to register for prescriptive authority in an additional role and population focus area, where the advanced practice registered nurse otherwise meets all requirements for prescriptive authority as specified in Chapter 222 of this title (relating to Advanced Practice Registered Nurses With Prescriptive Authority); and
   (H) other violations of the Nursing Practice Act and/or Board rules that are appropriate for resolution at the sanction level of Remedial Education, Remedial Education with a Fine, or a Fine, in accordance with the Board's Disciplinary Matrix.

(3) An individual will not be eligible for a corrective action if the individual has committed more than one of the violations listed in paragraph (2) of this section. If a fine is imposed by the Board as part of a corrective action under paragraph (2) of this section, the amount of the fine shall be $500.

(4) The opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director as a condition of settlement by agreement and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

(5) A fine, with or without remedial education stipulations, may be imposed in a disciplinary matter for the following violations in the following amounts:
   (A) practice on a delinquent license for more than six months but less than two years:
      (i) first occurrence: $250;
      (ii) subsequent occurrence: $500;
   (B) practice on a delinquent license for two to four years:
      (i) first occurrence: $500;
      (ii) subsequent occurrence: $1,000;
   (C) practice on a delinquent license more than four years: $1,000 plus $250 for each year over four years;
   (D) failure to comply with continuing competency requirements:
      (i) first occurrence: $250;
      (ii) subsequent occurrence: $500;
   (E) failure to comply with mandatory reporting requirements:
      (i) first occurrence: $250 - $500;
      (ii) subsequent occurrence: $500 - $1,000;
   (F) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible:
      (i) first occurrence: $250 - $500;
      (ii) subsequent occurrence: $500 - $1,000;
   (G) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history:
      (i) first occurrence: $250 - $800;
      (ii) second occurrence: $500 - $1000;
   (H) failure to report unauthorized practice:
      (i) first occurrence: $250 - $500;
      (ii) subsequent occurrence: $500 - $1,000;
   (I) failure to comply with Board requirements for change of name/address:
      (i) first occurrence: $250;
      (ii) subsequent occurrence: $300;

(J) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements:
  (i) first occurrence: $250 - $1,000;
  (ii) subsequent occurrence: $500 - $1,000;
(K) failure to file, or cause to be filed, complete, accurate and timely reports required by Board order: $250 for first occurrence;
(L) failure to make complete and timely compliance with the terms of any stipulation contained in a Board order: $250 for first occurrence;
(M) failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities:
  (i) first occurrence: $500;
  (ii) second occurrence: $1000 - $5000; and
(N) other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public:
  (i) first occurrence: $250 - $500;
  (ii) subsequent occurrence: $500 - $1,000.

(6) The following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions contained elsewhere in the Board's rules:
(A) violations other than those listed in paragraphs (2) and (5) of this section:
  (i) first occurrence: $250 - $1,000;
  (ii) subsequent occurrence: $500 - $1,000; and
(B) a cluster of violations listed in paragraphs (2) and (5) of this section: $250 - $5,000.

(7) The executive director is authorized to dispose of violations listed in paragraphs (2) and (5) of this section without ratification by the Board. The executive director shall report such cases to the Board at its regular meetings.

The provisions of this §213.32 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884; amended to be effective November 15, 2009, 34 TexReg 7820; amended to be effective July 30, 2014, 39 TexReg 5751.

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) The Board and the State Office of Administrative Hearings (SOAH) shall utilize the Disciplinary Matrix set forth in subsection (b) of this section in all disciplinary and eligibility matters.

(b) The Disciplinary Matrix is as follows:

Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33, published at 22 Tex. Admin. Code §213.33. The Matrix may list additional aggravating or mitigating factors which may be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

The Board may assess administrative penalties as outlined in 22 Tex. Admin. Code §213.32.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.

Although not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency, or abuse of drugs of alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code §213.29, §213.30, and §213.33.

This Matrix is also applicable to the determination of an individual's eligibility for licensure under the Occupations Code §301.257.

Disciplinary Matrix

§301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301;		
First Tier Offense: Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*. Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms.	Sanction Level I: Remedial Education, with or without a fine of $250.00 or more for each additional violation. If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of $250 or more for each additional violation.	Sanction Level II: Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, periodic board review; and/or a fine of $500 or more for each additional violation.
Second Tier Offense: Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.	Sanction Level I: Requirement to complete conditions of original Board order and a fine of $500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years).	Sanction Level II: Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.
Third Tier Offense: Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.	Sanction Level I: Revocation or Voluntary Surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(1)**: Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.		

Disciplinary Matrix

Mitigating Circumstances for **§301.452(b)(1)**: Unforeseen financial or health issues; not practicing nursing during stipulation period.
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.

§301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;		
First Tier Offense: Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license. *	Sanction Level I: Remedial Education and/or a fine of $250 or more for each additional violation.	Sanction Level II: Denial of Licensure or Revocation of nursing license.
Second Tier Offense: Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.	Sanction Level I: Denial of Licensure or Revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(2):** Multiple offenses; the relevance or seriousness of the hidden information, whether the hidden information, if known, would have prevented licensure.		
Mitigating Circumstances for **§301.452(b)(2):**Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;
Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
Eligibility and Discipline will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code §213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Disciplinary Matrix

§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
Sanction: Issuance of Cease and Desist Order with referral of all information to local law enforcement.

301.452(b)(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
Sanction: Revocation of license for this offense.

§301.452(b)(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;		
First Tier Offense: Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse* or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.	Sanction Level I: Remedial Education and/or a fine of $250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities; periodic board review; and/or a fine of $250 or more for each additional violation.	Sanction Level II: Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.
Second Tier Offense: Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.	Sanction Level I: Denial of Licensure, Revocation or Voluntary Surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances of **§301.452(b)(7)**: Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.		
Mitigating Circumstances of **§301.452(b)(7)**: The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

Disciplinary Matrix

§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;		
First Tier Offense: Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond. Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board's rules and alcohol or substance misuse policy. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Sanction Level I: Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities; and/or periodic board review. Order to participate in Board approved peer assistance program. Action should be at least consistent with action from other jurisdiction.	Sanction Level II: Revocation, Suspension, or Denial of Licensure when the individual doesn't respond or is not eligible for stipulated license. Action should be at least consistent with action from other jurisdiction.
Second Tier Offense: Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.	Sanction Level I: Revocation, denial of licensure, or voluntary surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(8)**: Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.		
Mitigating Circumstances for **§301.452(b)(8)**: Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.		

§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;		
First Tier Offense: Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.	Sanction Level I: Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Sanction Level II: For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.

Disciplinary Matrix

Second Tier Offense: Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.	Sanction Level I: Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. Includes individuals with non disciplinary history of peer assistance participation. http://www.bon.state.tx.us/disciplinaryaction/dsp.html. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Reprimand with Stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.	Sanction Level II: Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Third Tier Offense: Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.	Sanction Level I: Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances. Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through	Sanction Level II: Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities; and/or periodic board review. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public

	urinalysis; limit specific nursing activities, and/or periodic board review. Denial of Licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing through urinalysis.	service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Fourth Tier Offense: Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.	Sanction Level I: Denial of Licensure, Revocation or Voluntary Surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(9)**: Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.		
Mitigating Circumstances for **§301.452(b)(9)**: Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/ alcohol screens.		

§301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;		
First Tier Offense: Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects. Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*	Sanction Level I: Remedial Education and/or a fine of $250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.	Sanction Level II: Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities; and/or periodic Board review; and/or a fine of $500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.

Disciplinary Matrix

Second Tier Offense:	Sanction Level I:	Sanction Level II:
Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.	Warning or Reprimand with Stipulations which may include remedial education, supervised practice, and/or perform public service. Fine of $250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities, and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to drug or alcohol misuse in analyzing facts. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review. Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.
Third Tier Offense:	Sanction Level I:	Sanction Level II:
Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of $4,999.99.	Denial of licensure or revocation of nursing license. Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Aggravating Circumstances for **§301.452(b)(10)**: Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.

Mitigating Circumstances for **§301.452(b)(10)**: Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.

* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.

Disciplinary Matrix

§301.452(b)(11) adjudication of mental incompetency;		
	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.

§301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or		
First Tier Violation: A physical condition or diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.	Sanction Level I: Referral to the Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Sanction Level II: Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.
Second Tier Violation: Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. "Lack of fitness" includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.	Sanction Level I: With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Sanction Level II: With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9). Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review.
Third Tier Violation: Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Disciplinary Matrix

Aggravating Circumstances of **§301.452(b)(12)**: Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.
Mitigating Circumstances of **§301.452(b)(12)**: Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependancy evaluation from a board approved evaluator who has opportunity to review the Board's file.

§301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.		
First Tier Offense: Practice below standard with a low risk of patient harm.	Sanction Level I: Remedial Education and/or fine of $250 when there is isolated incident or a fine of more than $250 for each additional violation.	Sanction Level II: Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic board review and/or fine of $500 or more for each additional violation.
Second Tier Offense: Practice below standard with patient harm or risk of patient harm.	Sanction Level I: Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review and/or a fine of $500 or more for each additional violation.	Sanction Level II: Denial, suspension of license, revocation of license, or request for voluntary surrender.
Third Tier Offense: Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency. In addition, any intentional act or omission that risks or results in serious harm.	Sanction Level I: Denial, suspension of license; revocation of license or request for voluntary surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(13)**: Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.		
Mitigating Circumstances for **§301.452(b)(13)**: Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.		

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:
  (1) evidence of actual or potential harm to patients, clients, or the public;
  (2) evidence of a lack of truthfulness or trustworthiness;
  (3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
  (4) evidence of practice history;
  (5) evidence of present fitness to practice;
  (6) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;
  (7) the length of time the person has practiced;
  (8) the actual damages, physical, economic, or otherwise, resulting from the violation;
  (9) the deterrent effect of the penalty imposed;
  (10) attempts by the licensee to correct or stop the violation;
  (11) any mitigating or aggravating circumstances, including those specified in the Disciplinary Matrix;
  (12) the extent to which system dynamics in the practice setting contributed to the problem;
  (13) whether the person is being disciplined for multiple violations of the NPA or its derivative rules and orders;
  (14) the seriousness of the violation;
  (15) the threat to public safety;
  (16) evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character);
  (17) participation in a continuing education course described in §216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and
  (18) any other matter that justice may require. The presence of mitigating factors does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules.

(d) Each specific act or instance of conduct may be treated as a separate violation.

(e) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:
  (1) Denial of the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit;
  (2) Approval of the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit, with reasonable probationary stipulations as a condition of issuance, renewal, or reinstatement of the license or temporary permit. Additionally, the Board may determine, in accordance with §301.468 of the NPA, that an order denying a license application, license renewal, license reinstatement, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:
    (A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance, renewal, or reinstatement of the license or temporary permit;
    (B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;
    (C) participate in a program of education or counseling prescribed by the Board;
    (D) limit specific nursing activities and/or periodic Board review;
    (E) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;
    (F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or
    (G) perform public service which the Board considers appropriate;
  (3) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:
    (A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;
    (B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;
    (C) participate in a program of education or counseling prescribed by the Board;
    (D) limit specific nursing activities and/or periodic Board review;

(E) practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;
(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or
(G) perform public service which the Board considers appropriate;

(4) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:
(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;
(B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;
(C) participate in a program of education or counseling prescribed by the Board;
(D) limit specific nursing activities and/or periodic Board review;
(E) practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;
(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or
(G) perform public service which the Board considers appropriate;

(5) Limitation or restriction of the person's license, including limits on specific nursing activities or periodic Board review;

(6) Suspension of the person's license. The Board may determine that the order of suspension be enforced and active for a specific period and/or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:
(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;
(B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;
(C) participate in a program of education or counseling prescribed by the Board;
(D) limit specific nursing activities and/or periodic Board review;
(E) practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;
(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or
(G) perform public service which the Board considers appropriate;

(7) Remit payment of the administrative penalty, fine, or assessment of hearing costs;

(8) Acceptance of a Voluntary Surrender of a nurse's license(s);

(9) Revocation of the person's license;

(10) Require participation in remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;

(11) Assessment of a fine as set forth in §213.32 of this chapter (relating to Corrective Action Proceedings and Schedule of Administrative Fines);

(12) Assessment of costs as authorized by the Occupations Code §301.461 and the Government Code §2001.177; or

(13) Require successful completion of a Board approved peer assistance program.

(f) Every disciplinary order issued by the Board shall require the person subject to the order to participate in a program of education or counseling prescribed by the Board, which at a minimum, will include a review course in nursing jurisprudence and ethics.

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft, and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the May17, 2013, issue of the *Texas Register* and available on the Board's website at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html.

(h) To the extent that a conflict exists between the Disciplinary Matrix and a disciplinary and eligibility sanction policy described in subsection (g) of this section, the Disciplinary Matrix controls.

(i) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(j) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(k) If the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol, the Board may require an evaluation that meets the following standards:
(1) The evaluation must be conducted by a Board-approved addictionologist, addictionist, medical doctor, neurologist, doctor of osteopathy, psychologist, neuropsychologist, advanced practice registered nurse, or psychiatrist, with credentials appropriate for the specific evaluation, as determined by the Board. In all cases, the evaluator must possess credentials, expertise, and experience appropriate for conducting the evaluation, as determined by the Board. The evaluator must be familiar with the duties appropriate to the nursing profession.
(2) The evaluation must be designed to determine whether the suspected impairment prevents the person from practicing nursing with reasonable skill and safety to patients. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments with valid and reliable validity scales designed to test the person's fitness to practice. The evaluation may include testing of the person's psychological or neuropsychological stability only if the person is suspected of mental impairment, chemical dependency, or drug or alcohol abuse. If applicable, the evaluation must include information regarding the person's prognosis and medication regime.
(3) The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(l) When determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history:
(1) The Board may request an evaluation conducted by a Board-approved forensic psychologist, forensic psychiatrist, or advanced practice registered nurse who:
(A) evaluates the behavior in question or the prior criminal history of the person;
(B) seeks to predict:
(i) the likelihood that the person subject to evaluation will engage in the behavior in question or criminal activity again, which may result in the person committing a second or subsequent reportable violation or receiving a second or subsequent reportable adjudication or conviction; and
(ii) the continuing danger, if any, that the person poses to the community;
(C) is familiar with the duties appropriate to the nursing profession;
(D) conducts the evaluation pursuant to professionally recognized standards and methods; and
(E) utilizes objective tests and instruments, as determined and requested by the Board, that are designed to test the psychological or neuropsychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation.
(2) The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by Board staff and a release that permits the evaluator to release the evaluation to the Board.
(3) The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(m) Notwithstanding any other provision herein, a person's failure to appear in person or by attorney on the day and at the time set for hearing in a contested case shall entitle the Board to revoke the person's license.

The provisions of this §213.33 adopted to be effective August 15, 2002, 27 TexReg 710; amended to be effective March 14, 2007, 32 TexReg 1304; amended to be effective October 10, 2007, 32 TexReg 7058; amended to be effective July 2, 2008, 33 TexReg 5007; amended to be effective February 16, 2010, 35 TexReg 1208; amended to be effective April 18, 2011, 36 TexReg 2395; amended to be effective July 16, 2012, 37 TexReg 5272; amended to be effective July 11, 2013, 38 TexReg 4348.

§213.34. Deferred Discipline.

(a) Deferred discipline may be imposed by the Board as specified in this rule.

(b) The opportunity to enter into a deferred disciplinary order is at the sole discretion of the Executive Director as a condition of settlement by agreement and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

(c) Deferred discipline will be available for:
   (1) individuals with no prior disciplinary history with the Board or any other licensing board and/or disciplinary authority in another jurisdiction or under federal law;
   (2) violations of the Nursing Practice Act and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or a Fine; and
   (3) violations of the Nursing Practice Act and/or Board rules that were pending with the Board on September 1, 2009, or after.

(d) Violations of the Nursing Practice Act and/or Board rules involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, or substance use disorder will not be eligible for resolution through deferred discipline.

(e) Deferred discipline will not be available to:
   (1) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure);
   (2) an individual whose application under §217.2 of this title (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 of this title (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or
   (3) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(f) A deferred disciplinary order will be available to the public for a minimum of five years and until such time as an individual successfully completes all of the conditions required by the deferred disciplinary order and the originating complaint is dismissed by the Board. After such time, the deferred disciplinary order will become confidential to the same extent that a complaint is confidential under the Occupations Code §301.466.

(g) If an individual fails to comply with a condition required by a deferred disciplinary order or if a subsequent complaint is filed against an individual during the pendency of the deferred disciplinary order, the Board will stay the dismissal of the originating complaint pending the resolution of the subsequent complaint. If the subsequent complaint is proposed for resolution through a disciplinary action under the Occupations Code Chapter 301, Subchapter J, the Board will not dismiss the originating complaint, and the Board may treat the deferred disciplinary order as prior discipline when considering the imposition of a disciplinary sanction.

The provisions of this §213.34 adopted to be effective July 12, 2010, 35 TexReg 6077; amended to be effective July 30, 2014, 39 TexReg 5753.

§213.35. Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program.

(a) This section is authorized by Texas Occupations Code §301.1605(a) and §301.453 and implements the Knowledge, Skills, Training, Assessment and Research (KSTAR) pilot program approved by the Texas Board of Nursing on October 17, 2014. The pilot program will commence after the final adoption of this rule and will continue for a period not to exceed two years from the implementation date. The program may be extended upon an approval of a written application submitted to the Board.

(b) The purpose of this rule is to evaluate the effectiveness of the KSTAR program, or an equivalent, as an alternative method of discipline. The pilot will develop a comprehensive and individualized assessment of nurse practice competency based on identified violations of the Nursing Practice Act (NPA) and use targeted remedial education to correct identified deficiencies in order to ensure minimum competency. Additionally, the pilot will develop an alternative extensive orientation program consistent with §217.6(b) of this title (relating to Failure to Renew License) and §217.9(g) of this title (relating to Inactive and Retired Status) of this title that will evaluate and remediate nurses who wish to re-enter practice after prolonged absences. The design of an alternative extensive orientation will provide evidence-based assurance of minimum nurse competency before returning to practice.

(c) Approval of the pilot program provider is within discretion of the Executive Director and any provider must be able to meet the requirements of this rule.

(d) The KSTAR pilot program order will be considered a method of discipline pursuant to Texas Occupations Code §301.453 or §301.6555; and will be considered public information subject to all reporting requirements of disciplinary actions under federal and state laws.

(e) Participation in the KSTAR pilot program will only be through an agreed order and the opportunity to enter into a KSTAR pilot program order is at the sole discretion of the Executive Director.

(f) Each nurse will be responsible for the entire cost of participation in the KSTAR pilot program. Each nurse subject to a KSTAR order must:
  (1) enroll in the pilot program within 45 days of the date of the order unless otherwise agree;
  (2) submit to an individualized assessment designed to evaluate nurse practice competency and to support a targeted remediation plan;
  (3) follow all requirements within the remediation plan if any;
  (4) successfully complete the KSTAR order within one year from the effective date of the agreed order; and
  (5) provide written proof of successful completion of the KSTAR pilot program to the Board.

(g) The KSTAR pilot program provider should be capable of meeting the following requirements:
  (1) provide reasonable intake and assessment options within 45 days of enrollment;
  (2) perform an individualized comprehensive assessment designed to evaluate nurse practice competency;
  (3) develop a written individualized remediation plan to ensure minimum competency that may include a period of monitoring and follow-up;
  (4) if requested by the Board, provide the remediation plan to the Board for review and approval;
  (5) provide the education, resources, tools and support that the remediation plan requires; and
  (6) provide a written report to the nurse and the Board upon the successful completion of the remediation plan.

(h) Every KSTAR pilot program order shall require the person subject to the order to participate in a program of education and study that will include a course in nursing jurisprudence and ethics.

(i) If the individualized assessment identifies further violations of the Nursing Practice Act, including inability to practice nursing safely, further disciplinary action may be taken based on such results in the assessments.

(j) A KSTAR pilot program action under the pilot program will be available:
  (1) for individuals with no prior disciplinary history with the Board;
  (2) for violations of the NPA and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or any deferred order issued pursuant to §213.34 of this title (relating to Deferred Discipline);
  (3) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings;
  (4) only if the probationary stipulations outlined in the KSTAR pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and
  (5) for violations of the NPA and/or Board rules that were pending with the Board on January 1, 2014, or after.

(k) Violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a KSTAR pilot program action under the pilot program.

(l) KSTAR pilot program action under the pilot program will not be available to:
  (1) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure);
  (2) an individual whose application under §217.2 of this title (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 of this title (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or
  (3) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(m) If an individual fails to comply with a probationary stipulation required by the KSTAR pilot program order or if a subsequent complaint is filed against an individual during the pendency of the KSTAR pilot program order, the Board may treat the KSTAR pilot program action as prior disciplinary action when considering the imposition of a disciplinary sanction.

(n) The outcome and effectiveness of the pilot program will be monitored and evaluated by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

(o) The Board may contract with a third party to perform the monitoring and evaluation of the KSTAR pilot program.

The provisions of this §213.35 adopted to be effective July 30, 2014, 39 TexReg 5757.

CHAPTER 214. VOCATIONAL NURSING EDUCATION

§214.1. General Requirements.

(a) The director/coordinator and faculty are accountable for complying with the Board's rules and regulations and the Nursing Practice Act.

(b) Rules for vocational nursing education programs shall provide reasonable and uniform standards based upon sound educational principles that allow the opportunity for flexibility, creativity, and innovation.

The provisions of this §214.1 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form containing an approved vocational nursing education program's curriculum components and hours, and a statement verified by the nursing program director/coordinator attesting to an applicant's qualifications for vocational nurse licensure in Texas.

(2) Affiliating agency or clinical facility--a health care facility or agency providing clinical learning experiences for students.

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, although their primary function is not the delivery of health care.

(4) Approved vocational nursing education program--a vocational nursing education program approved by the Texas Board of Nursing.

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in learning.

(6) Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(7) CANEP (Compliance Audit for Nursing Education Programs)--a document required by the Board to be submitted by the vocational nursing education program's director/coordinator that serves as verification of the program's adherence to the requirements of this chapter.

(8) Career school or college--an educational entity as defined in Title 3, Texas Education Code, §132.001(1) as a "career school or college".

(9) Classroom instruction hours--hours allocated to didactic instruction and testing in nursing and non-nursing Board-required courses and content.

(10) Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet the stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur inactual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies.

(11) Clinical preceptor--a licensed nurse who meets the requirements in §214.10(i)(6) of this chapter (relating to Clinical Learning Experiences), who is not employed as a faculty member by the governing entity, and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(12) Conceptual framework--theories or concepts giving structure to the curriculum and guiding faculty in making decisions about curriculum development, implementation, and evaluation.

(13) Correlated theory and clinical practice--didactic and clinical experiences that have a reciprocal relationship or mutually complement each other.

(14) Course--organized subject content and related activities, that may include didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(15) Curriculum--course offerings which, in aggregate, make up the total learning activities in a program of study.

(16) Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a vocational or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(17) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(18) Director/coordinator--a registered nurse who is accountable for administering a pre-licensure vocational nursing education program, who meets the requirements as stated in §214.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(19) Examination year--the period beginning January 1 and ending December 31 used for the purpose of determining a vocational nursing education program's annual NCLEX-PN® examination pass rate.

(20) Extension site/campus--a location other than the program's main campus where a portion or all of the curriculum is provided.

(21) Faculty member--an individual employed to teach in the vocational nursing education program who meets the requirements as stated in §214.7 of this chapter (relating to Faculty).

(22) Faculty waiver--a waiver granted by a director or coordinator of a vocational nursing education program to an individual who meets the criteria specified in §214.7(d)(1) of this chapter.

(23) Governing entity--the body with administrative and operational authority over a Board-approved vocational nursing education program.

(24) Health care professional--an individual other than a licensed nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: a respiratory therapist, physical therapist, occupational therapist, dietitian, pharmacist, physician, social worker, and psychologist.

(25) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing education program designed for students to complete course work and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

(26) Mobility--the ability to advance without educational barriers.

(27) NEPIS (Nursing Education Program Information Survey)--a document required by the Board to be submitted by the vocational nursing education program director/coordinator to provide annual workforce data.

(28) Non-nursing faculty--instructors who teach non-nursing content, such as pharmacology, pathophysiology, anatomy and physiology, growth and development, and nutrition, and who have educational preparation appropriate to the assigned teaching responsibilities.

(29) Objectives/Outcomes--expected student behaviors that are attainable and measurable.
(A) Program Objectives/Outcomes--broad statements describing student learning outcomes achieved upon graduation.
(B) Clinical Objectives/Outcomes--expected student behaviors for clinical learning experiences that provide evidence of progression of students' cognitive, affective, and psychomotor achievement in clinical practice across the curriculum.
(C) Course Objectives/Outcomes--expected student outcomes upon successful completion of specific course content serving as a mechanism for the evaluation of student progression.

(30) Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in patient/client care.

(31) Pass rate--the percentage of first-time candidates within one (1) examination year who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN®).

(32) Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(33) Program of study--the courses and learning experiences that constitute the requirements for completion of a vocational nursing education program.

(34) Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

(35) Requirement--mandatory criterion based on program assessment directly related to the rules that must be addressed in the manner prescribed.

(36) Shall--denotes mandatory requirements.

(37) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

(38) Staff--employees of the Texas Board of Nursing.

(39) Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first hand the practice of students.

(40) Survey visit--an on-site visit to a vocational nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements.

(41) Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the licensed vocational nurse role engages in:
(A) collecting data and performing focused nursing assessments of the health status of an individual;
(B) participating in the planning of the nursing care needs of an individual;
(C) participating in the development and modification of the nursing care plan;
(D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual; and
(E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs.

(42) Texas Higher Education Coordinating Board (THECB)--the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(43) Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

(44) Vocational nursing education program--an educational unit within the structure of a school, including a college, university, or career school or college or a hospital or military setting that provides a program of nursing study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN® examination.

The provisions of this §214.2 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective July 10, 2005, 30 TexReg 3996; amended to be effective February 19, 2008, 33 TexReg 1326; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.3. Program Development, Expansion, and Closure.

(a) New Programs.
(1) New vocational nursing education programs must be approved by the Board in order to operate in the State of Texas. The Board has established guidelines for the initial approval of vocational nursing education programs.
(2) Proposal to establish a new vocational nursing education program.
(A) An educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital or military setting is eligible to submit a proposal to establish a vocational nursing education program.
(B) The new vocational nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new vocational nursing

education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC.

(C) The process to establish a new vocational nursing education program shall be initiated with the Board office one (1) year prior to the anticipated start date of the program.

(D) The individual writing the proposal for a new vocational nursing education program should hold a current license or privilege to practice as a registered nurse in Texas and should meet the qualifications for the program director as specified in §214.6(f) of this chapter (relating to Administration and Organization).

(i) The name and credentials of the author of the proposal must be included in the document.

(ii) A qualified director or coordinator must be employed by the program early in the development of the proposal, and in no event shall the director or coordinator be hired later than six (6) months prior to the submission of the proposal to the Board.

(iii) The prospective program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.

(E) At least one (1) potential faculty member shall be identified before the curriculum development to assist in planning the program of study.

(F) The proposal shall include information outlined in Board Education Guideline 3.1.1.a. Proposal to Establish a New Vocational Nursing Education Program.

(G) After the proposal is submitted and determined to be complete, a preliminary survey visit shall be conducted by Board Staff prior to presentation to the Board.

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that are high-risk.

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: inexperience of the governing entity in nursing education; inexperience of the potential director or coordinator in directing a nursing program; potential for director or faculty turnover; or potential for a high attrition rate among students.

(iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(I) The program shall not enroll students until the Board approves the proposal and grants initial approval.

(J) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory agencies shall be provided.

(K) When the proposal is submitted, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(L) A proposal without action for one (1) calendar year shall be inactivated and a new proposal application and fee will be required.

(M) If the Board denies a proposal, the educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital or military setting must wait a minimum of twelve (12) calendar months from the date of the denial before submitting a new proposal to establish a vocational nursing education program.

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Site/Campus.

(1) Only vocational nursing education programs that have full approval with a current NCLEX-PN® examination pass rate of 80% or better are eligible to initiate or modify an extension site/campus.

(2) Instruction provided for the extension site/campus may include a variety of instructional methods, shall be consistent with the main campus program's current curriculum, and shall enable students to meet the goals, objectives, and competencies of the vocational nursing education program and requirements of the Board as stated in §§214.1 - 214.13 of this chapter (relating to Vocational Nursing Education).

(3) An approved vocational nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:
  (A) Complete and submit an application form for approval of the extension site to Board Staff at least four (4) months prior to implementation of the extension site/campus; and
  (B) Provide information in the application form that evidences:
    (i) a strong rationale for the establishment of the extension site in the community;
    (ii) availability of a qualified coordinator, if applicable, and qualified faculty;
    (iii) adequate educational resources (classrooms, labs, and equipment);
    (iv) documentation of communication and collaboration with other programs within twenty-five (25) miles of the extension site;
    (v) signed commitments from clinical affiliating agencies to provide clinical practice settings for students;
    (vi) projected student enrollments for the first two (2) years;
    (vii) plans for quality instruction;
    (viii) a planned schedule for class and clinical learning activities for one (1) year;
    (ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This includes regional approval of out-of-service extension sites for community colleges; and
    (x) letters of support from clinical affiliating agencies.
(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guideline 3.1.1.a. applies.
(5) Extension programs of vocational nursing education programs that have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board Education Guideline 3.1.2.a. Initiating or Reactivating an Extension Nursing Education Program for initiating an extension program.
(6) A program intending to close an extension site/campus shall:
  (A) Notify the Board office at least four (4) months prior to closure of the extension site/campus; and
  (B) Submit required information according to Board Education Guideline 3.1.2.a., including:
    (i) reason for closing the program;
    (ii) date of intended closure;
    (iii) academic provisions for students; and
    (iv) provisions made for access to and storage of vital school records.
(7) Consolidation. When a governing entity oversees an extension site/campus or multiple extension sites/campuses with curricula consistent with the curriculum of the main campus, the governing entity and the program director/coordinator may request consolidation of the extension site(s)/campus(es) with the main program, utilizing one (1) NCLEX-PN® examination testing code thereafter.
  (A) The request to consolidate the extension site(s)/campus(es) with the main campus shall be submitted in a formal letter to the Board office at least four (4) months prior to the effective date of consolidation and must meet Board Education Guideline 3.1.2.b. Consolidation of Vocational Nursing Education Programs.
  (B) The notification of the consolidation will be presented, as information only, to the Board at a regularly scheduled Board meeting as Board approval is not required.
  (C) The program will receive an official letter of acknowledgment following the Board meeting.
  (D) After the effective date of consolidation, the NCLEX-PN® examination testing code(s) for the extension site(s) will be deactivated/closed.
  (E) The NCLEX-PN® examination testing code assigned to the main campus will remain active.

(c) Transfer of Administrative Control by the Governing Entity. The authorities of the governing entity shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.3.a. Notification of Transfer of Administrative Control of a Vocational Nursing Education Program or a Professional Nursing Education Program by the Governing Entity.

(d) Closing a Program.
(1) When the decision to close a program has been made, the director/coordinator must notify the Board by submitting a written plan for closure which includes the following:
  (A) reason for closing the program;
  (B) date of intended closure;
  (C) academic provisions for students to complete the vocational nursing education program and teach-out arrangements that have been approved by the appropriate Texas agency (i.e., the THECB, the TWC, or the Board);
  (D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students enrolled in the vocational nursing education program at the time of the decision to close have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two (2) years since the last graduating class or student enrollment has not occurred for a two (2) year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Vocational Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The vocational nursing education program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Board at least four (4) months prior to the anticipated start date of the clinical learning experiences in Texas.

(2) A written request, the required fee set forth in §223.1(a)(27) of this title, and all required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency (i.e., the THECB, the TWC), to conduct business in the State of Texas, must be obtained before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(4) The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.1.f. and this section.

The provisions of this §214.3 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective July 10, 2005, 30 TexReg 3996; amended to be effective January 10, 2008, 33 TexReg 179; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294; amended to be effective October 1, 2013, 38 TexReg 6593.

§214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to enroll students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) The number of students to be enrolled while the program is on initial approval is determined by the Board and the requirements are included in the Board's initial approval letter.

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the NCLEX-PN® examination pass rate is 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(2) Full Approval.

(A) Full Approval is granted by the Board to a vocational nursing education program that is in compliance with all Board requirements and has responded to all Board recommendations.

(B) Only programs with full approval status may initiate extension programs and grant faculty waivers.

(3) Full or initial approval with warning is issued by the Board to a vocational nursing education program that is not meeting the Board's requirements.

(A) A program issued a warning will receive written notification from the Board of the warning and a survey visit will be conducted.

(B) Following the survey visit, the program will be given a list of identified deficiencies and a specified time in which to correct the deficiencies. Further, in order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct deficiencies.

(A) The program shall not enroll students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's requirements are currently being or have been met, the Board may change the approval status from conditional approval to full approval or to full approval with warning, or may withdraw approval. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. The program shall be removed from the list of Board approved vocational nursing education programs.

(b) Factors Jeopardizing Program Approval Status.

(1) When a program demonstrates non-compliance with Board requirements, approval may be changed to full with warning or conditional status, may be withdrawn, or the Board, in its discretion, may impose restrictions or conditions it deems appropriate and necessary. In addition to imposing restrictions or conditions, the Board may also require monitoring of the program. Board monitoring may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(2) A change in approval status, requirements for restrictions or conditions, or a monitoring plan may be issued by the Board for any of the following reasons:

(A) deficiencies in compliance with the rule;

(B) utilization of students to meet staffing needs in health care facilities;

(C) noncompliance with school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(D) failure to submit records and reports to the Board office within designated time frames;

(E) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(F) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(G) student enrollments without resources to support the program, including sufficient qualified faculty, adequate educational facilities, and appropriate clinical affiliating agencies;

(H) failure to maintain an 80% passing rate on the licensing examination by first-time candidates;

(I) failure of program director/coordinator to verify the currency of faculty licenses; or

(J) other activities or situations that demonstrate to the Board that a program is not meeting Board requirements.

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-PN® examination pass rates, and other pertinent data.

(1) Compliance Audit. Each approved vocational nursing education program shall submit a biennial CANEP regarding its compliance with the Board's requirements.

(2) NCLEX-PN® Pass Rates. The annual NCLEX-PN® examination pass rate for each vocational nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) Eighty percent (80%) of first-time NCLEX-PN® candidates are required to achieve a passing score on the NCLEX-PN® examination during the examination year.

(B) When the passing score of first-time NCLEX-PN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:

(i) the pass rate of first-time NCLEX-PN®, candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two (2) consecutive examination years; and

(ii) the program has been in violation of Board requirements.

(B) A program may be placed on conditional approval status if:

(i) the pass rate of first-time NCLEX-PN® candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for three (3) consecutive examination years;

(ii) the faculty fails to implement appropriate corrective measures identified in the Self-Study Report or survey visit;

(iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards; or

(iv) the program persists despite the existence of multiple deficiencies set forth in subsection (b) of this section.

(C) Approval may be withdrawn if:

(i) the performance of first-time NCLEX-PN® candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval;

(ii) the program is consistently unable to meet requirements of the Board; or

(iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards.

(D) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting following the end of the examination year if:

(i) the program's pass rate for first-time NCLEX-PN® candidates during the examination year is at least 80%; and

(ii) the program has met all Board requirements.

(E) The Board may, in its discretion, change the approval status of a program on full approval with warning to full approval, to full approval with restrictions or conditions, or impose a monitoring plan. The Board may restrict enrollments.

(F) The Board may change the approval status of a program on conditional approval to full approval, full approval with restrictions or conditions, full approval with warning, or impose a monitoring plan. The Board may restrict enrollments.

(4) Survey Visit. Each vocational nursing education program shall be visited at least every six (6) years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) Board Staff may conduct a survey visit at any time based upon Board Education Guideline 3.2.3.a. Criteria for Conducting Survey Visits.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, information from the program's NEPIS and CANEP, and NCLEX-PN® examination pass rates shall be reviewed by the Board at a regularly scheduled meeting.

(5) The Board will select one (1) or more national nursing accrediting agencies, recognized by the United States Department of Education, and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) The Board will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(7) The Board will deny or withdraw approval from a vocational nursing education program that fails to:

(A) meet the prescribed program of study or other Board requirements;

(B) maintain voluntary accreditation with the national nursing accrediting agency selected by the Board; or

(C) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(8) A vocational nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Nursing Education Programs Accredited by the National League for Nursing Accrediting Commission and/or the Commission on Collegiate Nursing Education - Specific Exemptions from Education Rule Requirements if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(B) maintains an acceptable NCLEX-PN® pass rate, as determined by the Board, on the NCLEX-PN® examination.

(9) A vocational nursing education program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on NCLEX-PN® examinations is subject to review by the Board.

(10) A vocational nursing education program that qualifies for exemption pursuant to paragraph (8) of this subsection, but does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards, is subject to review by the Board.
(11) The Board may assist the program in its effort to achieve compliance with the Board's requirements and standards.
(12) A program from which approval has been withdrawn may reapply for approval. A new proposal may not be submitted to the Board until after at least twelve (12) calendar months from the date of withdrawal of approval have elapsed.
(13) A vocational nursing education program accredited by a national nursing accrediting agency recognized by the Board shall:
(A) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of any official reports;
(B) demonstrate accountability for compliance with national nursing accreditation standards and processes and provide copies of approvals for substantive changes from the national nursing accreditation organizations after the program has followed the approval process;
(C) notify the Board of any change in accreditation status within two (2) weeks following receipt of an official notification letter; and
(D) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity shall be notified by the Board when there is a change in approval status of the program.

The provisions of this §214.4 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective January 10, 2008, 33 TexReg 179; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.5. Philosophy/Mission and Objectives/Outcomes.

(a) The philosophy/mission and objectives/outcomes of the vocational nursing education program shall be consistent with the philosophy/mission of the governing entity. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(c) Clinical objectives/outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The conceptual framework shall provide the organization of major concepts from the philosophy/mission of the program that provides the underlying structure or theme of the curriculum and facilitates the achievement of program objectives/outcomes.

(e) The director/coordinator and the faculty shall periodically review the philosophy/mission and objectives/outcomes and shall make appropriate revisions to maintain currency.

The provisions of this §214.5 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.6 Administration and Organization.

(a) The governing entity of a vocational nursing education program shall be licensed/approved or deemed exempt by the TWC or the THECB.

(b) There shall be an organizational chart indicating lines of authority between the vocational nursing education program and the governing entity.

(c) The vocational nursing education program shall have comparable status with other education units within the governing entity in such areas as budgetary authority, rank, promotion, tenure, leave, benefits, and professional development.

(d) Salaries shall be adequate to recruit, employ, and retain sufficient qualified nursing faculty members with the expertise necessary for students to meet program goals.

(e) The governing entity shall provide financial support and resources needed to operate a vocational nursing education program which meets the requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment, and qualified administrative and instructional personnel.

(f) Each vocational nursing education program shall be administered by a qualified individual who is accountable for the planning, implementation, and evaluation of the vocational nursing education program. The director/coordinator shall:
  (1) hold a current license or privilege to practice as a registered nurse in the state of Texas;
  (2) have been actively employed in nursing for the past five (5) years, preferably in administration or teaching, with a minimum of one (1) year teaching experience in a pre-licensure nursing education program;
  (3) if the director or coordinator has not been actively employed in nursing for the past five (5) years, the director's or coordinator's advanced preparation in nursing, nursing education, and nursing administration and prior relevant nursing employment may be taken into consideration by Board Staff in evaluating qualifications for the position;
  (4) have a degree or equivalent experience that will demonstrate competency and advanced preparation in nursing, education, and administration;
  (5) have had five (5) years of varied nursing experience since graduation from a professional nursing education program;
  (6) the director or coordinator may have responsibilities other than the program, provided that another qualified nursing faculty member is designated to assist with the program management; and
  (7) a director or coordinator with responsibilities other than the program shall not have major teaching responsibilities.

(g) When the director/coordinator or of the program changes, the director/coordinator shall submit to the Board office written notification of the change indicating the final date of employment.
  (1) A new Dean/Director/Coordinator Qualification Form shall be submitted to the Board office by the governing entity for approval prior to the appointment of a new director/coordinator or an interim director/coordinator in an existing program or a new vocational nursing education program according to Board Education Guideline 3.4.1.a. Approval Process for a New Dean/Director/Coordinator or New Interim/Dean/Director/Coordinator.
  (2) A curriculum vitae and all applicable official transcripts for the proposed new director/coordinator shall be submitted with the new Dean/Director/Coordinator Qualification Form, according to Board Education Guideline 3.4.1.a.
  (3) If an interim director/coordinator is appointed to fill the position, this appointment shall not exceed one (1) year.
  (4) In a fully approved vocational nursing education program, other qualifications may be considered if there is supporting evidence that the candidate has competencies to fulfill the responsibilities.

(h) A newly appointed director/coordinator or interim director/coordinator of a vocational nursing education program shall attend the next scheduled education workshop provided by the Board related to the education rules and the role and responsibilities of newly appointed directors/coordinators.

(i) The director/coordinator shall have the authority to direct the vocational nursing education program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies. Additional responsibilities include, but are not limited to:
  (1) providing evidence of faculty expertise and knowledge to teach curriculum content;
  (2) verifying students' completion of program requirements;
  (3) completing and submitting the Texas Board of Nursing Affidavit of Graduation; and
  (4) completing and submitting the NEPIS and CANEP by the required dates.

(j) The director or coordinator of the nursing program shall notify Board Staff immediately when there is a change in the name of the vocational nursing education program or the governing entity, or when there are changes in contact information.

The provisions of this §214.6 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective January 10, 2008, 33 TexReg 179; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.7. Faculty.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the governing entity.

(1) Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcomes).
(2) Written policies concerning workload for the director or coordinator shall allow for sufficient time for administrative responsibilities consistent with §214.6 of this chapter (relating to Administration and Organization).
(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.
(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.
(5) Position descriptions for the director/coordinator and nursing faculty outlining their responsibilities directly related to the nursing program shall be included in the nursing faculty handbook.
(6) Written policies for nursing faculty shall include: plans for faculty orientation to the institution and the nursing program, faculty development, and evaluation of faculty.
(A) Orientation of new nursing faculty members shall be initiated at the onset of employment.
(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.
(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer, and administrative evaluation.

(b) A vocational nursing education program shall employ sufficient faculty members with educational preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:
(1) The number and level of students enrolled;
(2) The curriculum plan;
(3) Activities and responsibilities required of faculty;
(4) The number and geographic locations of affiliating agencies and clinical practice settings; and
(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.
(1) Documentation of faculty qualifications shall be included in the official files of the program.
(2) Each nurse faculty member shall:
(A) Hold a current license or privilege to practice nursing in the State of Texas;
(B) Have been actively employed in nursing for the past three (3) years or have advanced preparation in nursing, nursing education, and/or nursing administration;
(C) Have had three (3) years varied nursing experiences since graduation; and
(D) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject areas of teaching responsibility.

(d) Faculty Waivers.
(1) In fully approved programs, if an individual to be appointed as a faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the director or coordinator is permitted to waive the Board's requirements without Board approval, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one (1) year;
(2) Minimum program criteria:
(A) program's NCLEX-PN® examination pass rate for the preceding examination year was 80% or above; and
(B) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty.
(3) Minimum criteria for prospective faculty member:
(A) hold a current license or privilege to practice as a vocational or registered nurse in the State of Texas;
(B) has been actively employed in nursing for at least two (2) years of the last three (3) years;
(C) if not actively employed in nursing during the past three (3) years, the prospective faculty's advanced preparation in nursing, nursing education, and nursing administration shall be considered; and
(D) prior relevant nursing employment.
(4) A waiver is valid for up to one (1) year.
(5) The director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.
(6) If an extension of the waiver is needed, the director or coordinator shall petition Board Staff for an extension of the original waiver.

(e) Military faculty. Federal laws and regulations regarding licensure of military nursing personnel shall apply to Texas based military faculty members functioning within vocational nursing education programs.

(f) Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments are not nursing content or clinical nursing courses.

(g) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including, body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, and human growth and development, shall have sufficient educational preparation verified by the program director/coordinator as appropriate to these areas of teaching responsibility.

(h) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(i) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(j) Faculty shall be responsible for:
  (1) supervising students in clinical learning experiences;
  (2) supervising all initial nursing procedures performed by the student in the clinical area and ascertaining that the student is competent before allowing the student to perform an actual nursing procedure independently;
  (3) developing, implementing, and evaluating curriculum; and
  (4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(k) Teaching activities shall be coordinated among full-time faculty, part-time faculty, and clinical preceptors.

(l) There shall be a minimum of one (1) full-time nursing instructor for the program.

(m) A director/coordinator without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a vocational nursing education program.

(n) Substitute faculty may be employed to meet emergent program needs. Substitute faculty beyond ten (10) consecutive working days and/or on an interim basis shall meet qualifications as specified in subsection (c)(2) of this section.

(o) Faculty Organization:
  (1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.
  (2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.
    (A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.
    (B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.
    (C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluative criteria shall be included in policies for part-time faculty.

The provisions of this §214.7 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective January 9, 2007, 32 TexReg 91; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.8.Students.

(a) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students. Programs shall not accept admissions after the third day of class.

(b) Individuals enrolled in approved vocational nursing education programs preparing students for licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:
  (1) Texas Occupations Code §§301.252, 301.257, and 301.452-.469; and
  (2) Sections 213.27 - 213.30 of the Texas Administrative Code (relating to Good Professional Character, Licensure of Persons with Criminal Offenses, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters, and Declaratory Order of Eligibility for Licensure).

(c) The program shall have well-defined, written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented, and enforced.
  (1) Student policies shall be in accordance with the requirements of all applicable federal and state agencies.
  (2) Nursing student policies which differ from those of the governing entity shall be in writing and shall be made available to faculty and students.
  (3) Applicants shall present evidence of being able to meet objectives/outcomes of the program;
  (4) All students shall be pretested. Tests shall measure reading comprehension and mathematical ability.

(d) Reasons for dismissal from the program shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to:
  (1) evidence of actual or potential harm to patients, clients, or the public;
  (2) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency;
  (3) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and
  (4) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to: behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(e) Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(f) Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the vocational nursing education program.
  (1) The program shall maintain a signed receipt of student policies in all students' records.
  (2) The program shall maintain evidence of student receipt of the criteria regarding eligibility for licensure, as specifically outlined in subsection (b) of this section.
  (3) It is the responsibility of the program and the nursing faculty to define and enforce nursing student policies.

(g) Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the governing entity. Upon completing the program's requirements, the transferred student is considered to be a graduate of the program.

(h) Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(i) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

The provisions of this §214.8 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:
  (1) a minimum of 1,398 clock hours: 558 hours for classroom instruction and 840 hours for clinical practice;
  (2) planned, implemented, and evaluated by the faculty;
  (3) based on the philosophy/mission and objectives/outcomes.
  (4) organized by subject and content to meet the needs of the program;
  (5) scheduled with the placement of courses or course content throughout the entire length of the program;
  (6) based on sound educational principles;
  (7) designed to prepare graduates to practice according to the Standards of Nursing Practice as set forth in the Board's rules;
  (8) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs); and
  (9) designed to teach students to use a systematic approach to clinical decision making and safe patient care.

(b) The faculty shall be responsible for the development, implementation, and evaluation of the curriculum based upon the following guidelines:

(1) There shall be a reasonable balance between non-nursing courses and nursing courses that are clearly appropriate for the study of vocational nursing and are offered in a supportive sequence based upon the rationale for the curriculum.
(2) Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, human growth and development; vocational adjustments; and nursing skills. Courses may be integrated or separate.
(3) Delivery of the curriculum through distance education shall comply with the requirements of this section and §214.10 of this chapter (relating to Clinical Learning Experiences) to ensure that students receive comparable curriculum, supervised clinical learning experiences, and formative and summative evaluations. Faculty must have documented competencies specific to online education.

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.
(1) Classroom instruction hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses and content.
(2) Laboratory activities/instruction in the nursing skills or simulation laboratory may be considered as either classroom instruction hours or clinical learning experience hours.
(3) Hours in clinical learning experiences shall be sufficient to meet program of study requirements with a minimum of 840 hours.
(4) Clinical practice learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; and observation experiences for the purpose of calculating the hours for clinical learning experiences in the curriculum. Observation experiences provide supplemental learning experiences that meet specific learning objectives.
(5) The total weekly schedule throughout the length of the program shall not exceed forty (40) hours per week, including both classroom instruction and clinical practice hours.
(6) Students shall be assigned two (2) consecutive non-class/clinical days off each week.
(7) Students shall be allocated at least eighteen (18) days leave for vacation and/or holidays.
(8) All scheduled holidays are to be observed on the holidays designated by the governing entity.
(9) Vacation time shall be scheduled at the same time for all students.

(d) Educational mobility shall be a consideration in curriculum design.

(e) The program of study shall include, but not be limited to, the five (5) areas described as follows. Faculty-supervised, hands-on patient care clinical learning experiences in acute and non-acute settings may include long-term care, rehabilitation settings, clinics, respite or day care settings, or other settings where the clinical objectives can be met.
(1) Nursing Care of Children. Content includes:
(A) Common health problems of children and implications for nursing care.
(B) Care and needs of infants and children.
(C) Growth and development from infancy through adolescence.
(D) Influences of the family.
(E) Examples of clinical settings may include, but are not limited to: day care settings, clinics, settings providing care to infants, and facilities providing care to sick children.
(2) Maternity Nursing. Content includes:
(A) Psychological and physiological aspects of pregnancy, labor, and post-partum care.
(B) Nursing care to assist mothers in the care of their newborn infants.
(C) Examples of clinical experiences may include, but are not limited to: maternity clinics, units providing care for maternity patients, and newborn nurseries.
(3) Nursing Care of the Aged. Content includes:
(A) Physical, psychological, and cognitive changes associated with the aging process.
(B) Implications of aging in planning nursing care.
(C) Nursing care of individuals experiencing common health problems associated with aging.
(D) Palliative and end-of-life care.
(E) Examples of clinical experiences may include, but are not limited to: long-term care and rehabilitation settings, acute care units serving adult clients of all ages, clinics, elderly respite or day care settings, nursing homes, and assisted living settings.
(4) Nursing Care of Adults. Content includes:
(A) Common health problems of adults and implications for nursing care.
(B) Physical, psychological, and spiritual components of health and disease.
(C) External influences on adult health including the family and community resources.

(D) Role of the nurse in preventive, therapeutic, and rehabilitation settings.
(E) Clinical experiences may include, but are not limited to: acute care settings (long and short term), clinics, and rehabilitation settings.

(5) Nursing Care of Individuals with Mental Health Problems. Content includes:
(A) Personality development, human needs, common mental defense mechanisms, and factors influencing mental health and mental illness.
(B) Common mental disorders and related therapy.
(C) Role of the nurse in promoting mental health.
(D) Clinical experiences: experiences are optional in psychiatric nursing.

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.
(1) The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.
(2) Didactic learning experiences shall be provided either prior to or concurrent (at the same time) with the related clinical learning experiences.
(3) Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.
(4) Students shall have sufficient opportunities in simulated or clinical settings to develop manual technical skills, using contemporary technologies, essential for safe, effective nursing practice.
(5) Learning opportunities shall assist students to develop communication and interpersonal relationship skills.

(g) Course content shall be appropriate to the role expectations of the graduate.
(1) Professional values, including ethics, safety, diversity, and confidentiality shall be addressed.
(2) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, and other laws and regulations which pertain to various practice settings shall be addressed.
(3) The curriculum plan, including course outlines, shall be kept current and available to faculty and Board representatives.

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.7.3.a. Student Evaluation Methods and Tools.
(1) A system of grading shall be in place which does not allow grades of less than a "C" on any required subject areas in the program of study.
(2) A program may develop admission policies to allow students to challenge course content the student may have previously completed that meets the program's course objectives/outcomes.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.7.1.a. Proposals for Curriculum Changes. The two (2) types of curriculum changes are:
(1) Minor curriculum changes not requiring prior Board staff approval, which may include:
(A) Editorial updates of philosophy/mission and objectives/outcomes; or
(B) Redistribution of course content or course hours; and
(2) Major curriculum changes requiring Board staff approval prior to implementation, which may include:
(A) Changes in program philosophy/mission and objectives/outcomes which result in a reorganization or re-conceptualization of the entire curriculum, including but not limited to, changing from a block to an integrated curriculum or changing the approved delivery method of the curriculum to methods consistent with distance education/learning;
(B) Revisions in program hours; and
(C) Addition/reduction of course(s) in the program of study.

(j) Documentation of governing entity approval and appropriate approval from either the TWC or the THECB, if approved/licensed by the TWC or the THECB, must be provided to the Board prior to implementation of changes, as appropriate.

(k) Vocational nursing education programs that have full approval status and are undergoing major curriculum changes shall submit an abbreviated proposal, as outlined in Board Education Guideline 3.7.1.a., to the Board office for approval at least four (4) months prior to implementation. The abbreviated proposal shall contain at least the following:
(1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;
(2) new and old curriculum plans;
(3) rationale for the curriculum changes;
(4) clinical evaluation tools for each clinical course; and

(5) additional information, as requested, in order to provide clarity for Board Staff.

(l) Vocational nursing education programs not having full approval status, but proposing a major curriculum change, shall submit a full curriculum change proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office and meet the requirements as outlined in subsection (i) of this section. Vocational nursing education programs not having full approval status are not eligible to submit for Board approval a proposal for a new nursing education program until the program's status has been restored to full approval status by the Board.

(m) All vocational nursing education programs implementing any curriculum change shall submit to Board Staff an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

The provisions of this §214.9 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective July 10, 2005, 30 TexReg 3996; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective December 27, 2010, 35 TexReg 11662; amended to be effective October 21, 2012, 37 TexReg 8294; amended to be effective August 10, 2014, 39 TexReg 6046.

§214.10. Clinical Learning Experiences.

(a) Faculty shall be responsible and accountable for managing clinical learning experiences and observation experiences of students.

(b) Faculty shall develop criteria for the selection of affiliating agencies/clinical facilities or clinical practice settings which address safety and the need for students to achieve the program outcomes (goals) and course objectives through the practice of nursing care or observation experiences. Consideration of selection of a clinical site shall include:
   (1) client census in sufficient numbers to meet the clinical objectives/outcomes of the program/courses; and
   (2) evidence of collaborative arrangements for scheduling clinical rotations with those facilities that support multiple nursing programs.

(c) Faculty shall select and evaluate affiliating agencies/clinical facilities or clinical practice settings which provide students with opportunities to achieve the goals of the program.
   (1) Written agreements between the program and the affiliating agencies shall be in place before clinical learning experiences begin and shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program.
   (2) Agreements shall be reviewed periodically and include provisions for adequate notice of termination and a withdrawal of participation clause indicating a minimum period of time to be given for notice of such withdrawal.
   (3) Affiliation agreements are optional for those clinical experiences which are observation only.

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences and scheduling of student time and clinical rotations.
   (1) Selected clinical learning experiences will remain unchanged unless a client's condition demands reassignment.
   (2) Reassignment must be approved with prior consent of faculty.
   (3) The student's daily client assignment shall be made in accordance with clinical objectives/outcomes and learning needs of the students.
   (4) The total number of daily assignments shall not exceed five (5) clients.

(e) Clinical learning experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons throughout the life span with acute and chronic illnesses, and rehabilitative care.
   (1) Students shall participate in instructor supervised patient teaching.
   (2) Students shall also be provided opportunities for participation in clinical conferences.
   (3) Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives and may be counted as either classroom or clinical hours for the purpose of calculating the hours in the curriculum.

(f) Faculty shall be responsible for student clinical practice evaluations. Clinical evaluation tools shall be correlated with level and/or course objectives and shall include a minimum of a formative and a summative evaluation for each clinical in the curriculum.

(g) The following ratios only apply to clinical learning experiences involving direct patient care:
   (1) When a faculty member is the only person officially responsible for a clinical group, the group shall total no more than ten (10) students.
   (2) Patient safety shall be a priority and may mandate lower ratios, as appropriate.

(3) The faculty member shall supervise that group in only one (1) facility at a time, unless some portion or all of the clinical group are assigned to observation experiences in additional settings.
(4) Direct faculty supervision is not required for an observation experience.

(h) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing, or after a student has received clinical and didactic instruction in the basic areas of nursing for the related course or specific learning experience.
(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than twelve (12) students in a clinical group.
(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorship for no more than twenty-four (24) students.
(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliating agency or clinical practice setting.
(4) The preceptor shall be responsible for the clinical learning experiences of no more than two (2) students at a time per clinical group.

(i) When faculty use clinical preceptors to enhance clinical learning experiences and to assist faculty in the clinical supervision of students, the following applies:
(1) Faculty shall develop written criteria for the selection of clinical preceptors.
(2) When clinical preceptors are used, written agreements between the vocational nursing education program, clinical preceptor, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.
(3) Faculty shall be readily available to students and clinical preceptors during clinical learning experiences.
(4) The designated faculty member shall meet periodically with the clinical preceptors and student(s) for the purpose of monitoring and evaluating learning experiences.
(5) Written clinical objectives shall be shared with the clinical preceptors prior to or concurrent with the experience. Written clinical objectives shall be shared with the clinical preceptors prior to or concurrent with the experience.
(6) Clinical preceptors shall have the following qualifications:
(A) competence in designated areas of practice;
(B) philosophy of health care congruent with that of the nursing program; and
(C) current licensure or privilege to practice as a licensed nurse in the State of Texas.

(j) During clinical learning experiences, programs shall not permit utilization of students for health care facility staffing.

(k) The affiliating agency shall:
(1) provide clinical facilities for student experiences;
(2) provide space for conducting clinical conferences for use by the school if classrooms are located elsewhere;
(3) provide assistance with clinical supervision of students, including preceptorships, by mutual agreement between the affiliating agency and governing entity; and
(4) have no authority to dismiss faculty or students. Should the affiliating agency wish to recommend dismissal of faculty or students, such recommendation(s) shall be in writing.

The provisions of this §214.10 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective May 2, 2007, 32 TexReg 2361; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.11. Facilities, Resources, and Services.

(a) The governing entity shall be responsible for providing:
(1) educational facilities,
(2) resources, and
(3) services which support the effective development and implementation of the vocational nursing education program.

(b) An appropriately equipped skills laboratory shall be provided to accommodate the maximum number of students allowed for the program.
(1) The laboratory shall be equipped with hot and cold running water.
(2) The laboratory shall have adequate storage for equipment and supplies.

(c) The director/coordinator and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(d) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The director/coordinator shall have a private office.
(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.
(3) Space for clerical staff, records, files, and equipment shall be adequate.
(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.
(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.
(6) Teaching aids shall be provided to meet the objectives/outcomes of the program.
(7) Adequate restrooms and lounges shall be provided convenient to the classroom.

(e) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.
(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.
(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

The provisions of this §214.11 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.12. Records and Reports.

(a) Accurate and current records shall be maintained for a minimum of two (2) years in a confidential manner and be accessible to appropriate parties, including Board representatives. These records shall include, but are not limited to:
(1) records of current students, including the student's application and required admission documentation, evidence of student's ability to meet objectives/outcomes of the program, final clinical practice evaluations, signed receipt of written student policies furnished by manual and/or electronic means, evidence of student receipt of the Board license eligibility information as specifically outlined in §214.8(b) of this chapter (relating to Students), and the statement of withdrawal from the program, if applicable;
(2) faculty records;
(3) administrative records, which include minutes of faculty meetings for the past three (3) years, and school catalogs;
(4) the current program of study and curriculum including mission and goals (philosophy and outcomes), and course outlines;
(5) agreements with affiliating agencies; and
(6) the master plan of evaluation with most recent data collection.

(b) Record forms may be developed by an individual school.

(c) Hospital employment forms are not to be used for student records.

(d) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

(e) Copies of the program's NEPIS, CANEP, and important Board communications shall be maintained as appropriate.

The provisions of this §214.12 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective January 10, 2008, 33 TexReg 179; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective October 21, 2012, 37 TexReg 8294.

§214.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:
(1) organization and administration of the program;
(2) philosophy/mission and objectives/outcomes;
(3) program of study, curriculum, and instructional techniques, including online components of the vocational nursing education program, if applicable;
(4) educational facilities, resources, and services;
(5) affiliating agencies and clinical learning activities;
(6) students' achievement;
(7) graduates' performance on the licensing examination;
(8) graduates' nursing competence;

(9) faculty members' performance; and
(10) extension sites/campuses.

(b) All evaluation methods and instruments shall be periodically reviewed for appropriateness.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) Major changes in the vocational nursing education program shall be evidence-based and supported by rationale.

The provisions of this §214.13 adopted to be effective February 13, 2005, 30 TexReg 545; amended to be effective October 19, 2008, 33 TexReg 8501; amended to be effective October 21, 2012, 37 TexReg 8294.

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

§215.1. General Requirements.

(a) The dean/director and faculty are accountable for complying with the Board's rules and regulations and the Nursing Practice Act.

(b) Rules for professional nursing education programs shall provide reasonable and uniform standards based upon sound educational principles that allow the opportunity for flexibility, creativity, and innovation.

The provisions of this §215.1 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form containing an approved professional nursing education program's curriculum components and hours, and a statement verified by the nursing program dean/director attesting to an applicant's qualifications for registered nurse licensure in Texas.

(2) Affiliating agency or clinical facility--a health care facility or agency providing clinical learning experiences for students.

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, although their primary function is not the delivery of health care.

(4) Approved professional nursing education program--a professional nursing education program approved by the Texas Board of Nursing.

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in learning.

(6) Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(7) CANEP (Compliance Audit for Nursing Education Programs)--a document required by the Board to be submitted by the professional nursing education program's dean/director that serves as verification of the program's adherence to the requirements of this chapter.

(8) Career school or college--an educational entity as defined in Title 3, Texas Education Code, §132.001(1) as a "career school or college".

(9) Clinical learning experiences--faculty planned and guided learning activities designed to assist students to meet the stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised, hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies.

(10) Clinical preceptor--a registered nurse who meets the requirements in §215.10(j)(6) of this chapter (relating to Clinical Learning Experiences), who is not employed as a faculty member by the governing entity, and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(11) Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctorally prepared nursing faculty member and who meets the requirements of §215.10(j)(8) of this chapter.

(12) Conceptual framework--theories or concepts giving structure to the curriculum and guiding faculty in making decisions about curriculum development, implementation, and evaluation.

(13) Correlated theory and clinical practice--didactic and clinical experiences that have a reciprocal relationship or mutually complement each other.

(14) Course--organized subject content and related activities, that may include didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(15) Curriculum--course offerings, which in aggregate, make up the total learning activities in a program of study.

(16) Dean/director--a registered nurse who is accountable for administering a professional nursing education program, who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(17) Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a professional or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(18) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Professional (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(19) Examination year--the period beginning October 1 and ending September 30 used for the purposes of determining a professional nursing education program's annual NCLEX-RN® examination pass rate.

(20) Extension site/campus a location other than the program's main campus where a portion or all of the curriculum is provided.

(21) Faculty member--an individual employed to teach in the professional nursing education program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty).

(22) Faculty waiver--a waiver granted by a dean or director of a professional nursing education program to an individual who meets the criteria specified in §215.7(d)(1) of this chapter.

(23) Governing entity--the body with administrative and operational authority over a Board-approved professional nursing education program.

(24) Health care professional--an individual other than a registered nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: a respiratory therapist, physical therapist, occupational therapist, dietitian, pharmacist, physician, social worker, and psychologist.

(25) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing education program designed for students to complete course work and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

(26) NEPIS (Nursing Education Program Information Survey)--a document required by the Board to be submitted by the professional nursing education program dean/director to provide annual workforce data.

(27) Non-nursing faculty--instructors who teach non-nursing content, such as pharmacology, pathophysiology, research, management and statistics, and who have educational preparation appropriate to the assigned teaching responsibilities.

(28) Objectives/Outcomes--expected student behaviors that are attainable and measurable.
(A) Program Objectives/Outcomes--broad statements describing student learning outcomes achieved upon graduation.
(B) Clinical Objectives/Outcomes--expected student behaviors for clinical learning experiences that provide evidence of progression of students' cognitive, affective, and psychomotor achievement in clinical practice across the curriculum.
(C) Course Objectives/Outcomes--expected student outcomes upon successful completion of specific course content, serving as a mechanism for the evaluation of student progression.

(29) Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in patient/client care.

(30) Pass rate--the percentage of first-time candidates within one (1) examination year who pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN®).

(31) Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(32) Professional Nursing Education Program--an education unit that offers courses and learning experiences preparing graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN® examination, often referred to as a pre-licensure nursing program. Types of pre-licensure professional nursing education programs:
(A) Associate degree nursing education program--a program leading to an associate degree in nursing conducted by an education unit in nursing within the structure of a public or private college or university authorized to grant associate degrees.
(B) Baccalaureate degree nursing education program--a program leading to a bachelor's degree in nursing conducted by an education unit in nursing which is a part of a public or private college or university authorized to grant baccalaureate degrees.
(C) Master's degree nursing education program--a program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an education unit in nursing within the structure of a college or university authorized to grant graduate degrees.
(D) Diploma nursing education program--a program leading to a diploma in nursing conducted by a single purpose school, usually under the control of a hospital.

(33) Program of study--the courses and learning experiences that constitute the requirements for completion of a professional nursing education program.

(34) Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

(35) Requirement--mandatory criterion based upon program assessment directly related to the rules that must be addressed in the manner prescribed.

(36) Shall--denotes mandatory requirements.

(37) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

(38) Staff--employees of the Texas Board of Nursing.

(39) Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

(40) Survey visit--an on-site visit to a professional nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements.

(41) Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the registered nurse engages in:
(A) performing comprehensive nursing assessments regarding the health status of the client;
(B) making nursing diagnoses that serve as the basis for the strategy of care;
(C) developing a plan of care based on the assessment and nursing diagnosis;
(D) implementing nursing care; and
(E) evaluating the client's responses to nursing interventions.

(42) Texas Higher Education Coordinating Board (THECB) the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(43) Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

The provisions of this §215.2 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective February 19, 2008, 33 TexReg 1328; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective December 27, 2010, 35 TexReg 11668; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.3. Program Development, Expansion and Closure.

(a) New Programs.
(1) New professional nursing education programs must be approved by the Board in order to operate in the State of Texas. The Board has established guidelines for the initial approval of professional nursing education programs.
(2) Proposal to establish a new professional nursing education program.

(A) The proposal to establish a professional nursing education program may be submitted by:
  (i) a college or university accredited by an agency recognized by the THECB or holding a certificate of authority from the THECB under provisions leading to accreditation of the institution; or
  (ii) a single-purpose school, such as a hospital, proposing a new diploma program.
(B) The new professional nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB, or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new professional nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC.
(C) The process to establish a new professional nursing education program shall be initiated with the Board office one (1) year prior to the anticipated start date of the program.
(D) The individual writing the proposal for a new professional nursing education program should hold a current license or privilege to practice as a registered nurse in Texas and should meet the qualifications for the program director as specified in §215.6 of this chapter (relating to Administration and Organization).
  (i) The name and credentials of the author of the proposal must be included in the document.
  (ii) A qualified dean or director must be employed by the program early in the development of the proposal, and in no event shall the dean or director be hired later than six (6) months prior to the submission of the proposal to the Board.
  (iii) The prospective dean/program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.
(E) At least one (1) potential faculty member shall be identified before the curriculum development to assist in planning the program of study.
(F) The proposal shall include information outlined in Board Education Guidelines 3.1.1.b. Proposal to Establish a New Diploma Nursing Education Program and 3.1.1.c. Proposal to Establish a New Pre-Licensure Associate, Baccalaureate, or Entry-Level Master's Degree Nursing Education Program.
(G) A proposal for a new diploma nursing education program must include a written plan addressing the legislative mandate that all nursing diploma programs in Texas must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable, and, at a minimum, entitle a graduate of the diploma program to receive an associate degree in nursing.
(H) After the proposal is submitted and determined to be complete, a preliminary survey visit shall be conducted by Board Staff prior to presentation to the Board.
(I) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.
  (i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that are high-risk.
  (ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: inexperience of the governing entity in nursing education; inexperience of the potential dean or director in directing a nursing program; potential for director or faculty turnover; or potential for a high attrition rate among students.
  (iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program deans and directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.
(J) The program shall not enroll students until the Board approves the proposal and grants initial approval.
(K) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory agencies shall be provided.
(L) When the proposal is submitted, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(M) A proposal without action for one (1) calendar year shall be inactivated and a new proposal application and fee will be required.
(N) If the Board denies a proposal, the educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital must wait a minimum of twelve (12) calendar months from the date of the denial before submitting a new proposal to establish a professional nursing education program.

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Site/Campus.

(1) Only professional nursing education programs that have full approval with a current NCLEX-RN® examination pass rate of 80% or better are eligible to initiate or modify an extension site/campus.

(2) Instruction provided for the extension site/campus may include a variety of instructional methods, shall be consistent with the main campus program's current curriculum, and shall enable students to meet the goals, objectives, and competencies of the professional nursing education program and requirements of the Board as stated in §§215.1 - 215.13 of this chapter (relating to Professional Nursing Education).

(3) An approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:

(A) Complete and submit an application form for approval of the extension site to Board Staff at least four (4) months prior to implementation of the extension site/campus; and

(B) Provide information in the application form that evidences:

(i) a strong rationale for the establishment of the extension site in the community;
(ii) availability of a qualified director or coordinator, if applicable, and qualified faculty;
(iii) adequate educational resources (classrooms, labs, and equipment);
(iv) documentation of communication and collaboration with other programs within twenty-five (25) miles of the extension site;
(v) signed commitments from clinical affiliating agencies to provide clinical practice settings for students;
(vi) projected student enrollments for the first two (2) years;
(vii) plans for quality instruction;
(viii) a planned schedule for class and clinical learning activities for one (1) year;
(ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This includes regional approval for out-of-service extension sites for public colleges; and
(x) letters of support from clinical affiliating agencies.

(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guidelines 3.1.1.b and 3.1.1.c apply.

(5) Extension programs of professional nursing education programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board Education Guideline 3.1.2.a. for initiating an extension program.

(6) A program intending to close an extension site/campus shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension site/campus; and

(B) Submit required information according to Board Education Guideline 3.1.2.a., including:

(i) reason for closing the program;
(ii) date of intended closure;
(iii) academic provisions for students; and
(iv) provisions made for access to and storage of vital school records.

(c) Transfer of Administrative Control by Governing Entity. The authorities of the governing entity shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.3.a. Notification of Transfer of Administrative Control of a Professional Nursing Education Program or a Professional Nursing Education Program by the Governing Entity.

(d) Closing a Program.

(1) When the decision to close a program has been made, the dean or director must notify the Board by submitting a written plan for closure which includes the following:

(A) reason for closing the program;
(B) date of intended closure;
(C) academic provisions for students to complete the professional nursing education program and teach-out arrangements that have been approved by the appropriate Texas agency (i.e., the THECB, the TWC, or the Board);
(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students enrolled in the professional nursing education program at the time of the decision to close have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two (2) years since the last graduating class or student enrollment has not occurred for a two (2) year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Professional Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The professional nursing education program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Board at least four (4) months prior to the anticipated start date of the clinical learning experiences in Texas.

(2) A written request, the required fee set forth in §223.1(a)(27) of this title, and all required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., the THECB, the TWC) to conduct business in the State of Texas, must be obtained before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(4) The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.1.f. and this section.

The provisions of this §215.3 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective February 19, 2008, 33 TexReg 1328; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective December 27, 2010, 35 TexReg 11668; amended to be effective October 23, 2012, 37 TexReg 8304; amended to be effective October 1, 2013, 38 TexReg 6596.

§215.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to enroll students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) The number of students to be enrolled while the program is on initial approval is determined by the Board and the requirements are included in the Board's initial approval letter.

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the NCLEX-RN® examination pass rate is 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(2) Full Approval.

(A) Full approval is granted by the Board to a professional nursing education program that is in compliance with all Board requirements and has responded to all Board recommendations.

(B) Only programs with full approval status may initiate extension programs and grant faculty waivers.

(3) Full or initial approval with warning is issued by the Board to a professional nursing education program that is not meeting the Board's requirements.

(A) A program issued a warning will receive written notification from the Board of the warning and a survey visit will be conducted.

(B) Following the survey visit, the program will be given a list of identified deficiencies and a specified time in which to correct the deficiencies. Further, in order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program the opportunity to correct deficiencies.

(A) The program shall not enroll students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's requirements are currently being or have been met, the Board may change the approval status from conditional approval to full approval or to full approval with warning, or may withdraw approval. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. The program shall be removed from the list of Board-approved professional nursing education programs.

(6) A diploma program of study in Texas that leads to an initial license as a registered nurse under this chapter must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable. At a minimum, a graduate of a diploma program will be entitled to receive an associate degree in nursing.

(b) Factors Jeopardizing Program Approval Status.

(1) When a program demonstrates non-compliance with Board requirements, approval may be changed to full with warning or conditional status, may be withdrawn, or the Board, in its discretion, may impose restrictions or conditions it deems appropriate and necessary. In addition to imposing restrictions or conditions, the Board may also require additional monitoring of the program. Board monitoring may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(2) A change in approval status, requirements for restrictions or conditions, or a monitoring plan may be issued by the Board for any of the following reasons:

(A) deficiencies in compliance with the rule;

(B) utilization of students to meet staffing needs in health care facilities;

(C) noncompliance with school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(D) failure to submit records and reports to the Board office within designated time frames;

(E) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(F) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(G) student enrollments without resources to support the program, including sufficient qualified faculty, adequate educational facilities, and appropriate clinical affiliating agencies;

(H) failure to maintain an 80% passing rate on the licensing examination by first-time candidates;

(I) failure of program director/dean to verify the currency of faculty licenses; or

(J) other activities or situations that demonstrate to the Board that a program is not meeting Board requirements.

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-RN® examination pass rates, and other pertinent data.

(1) Compliance Audit. Each approved professional nursing education program shall submit a biennial CANEP regarding its compliance with the Board's requirements.

(2) NCLEX-RN® Pass Rates. The annual NCLEX examination pass rate for each professional nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) Eighty percent (80%) of first-time NCLEX-RN® candidates are required to achieve a passing score on the NCLEX-RN® examination during the examination year.

(B) When the passing score of first-time NCLEX-RN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance

and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:
  (i) the pass rate of first-time NCLEX-RN® candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two (2) consecutive examination years; and
  (ii) the program has been in violation of Board requirements.

(B) A program may be placed on conditional approval status if:
  (i) the pass rate of first-time candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for three (3) consecutive examination years;
  (ii) the faculty fails to implement appropriate corrective measures identified in the Self-Study Report or survey visit;
  (iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards; or
  (iv) the program persists despite the existence of multiple deficiencies mentioned in subsection (b) of this section.

(C) Approval may be withdrawn if:
  (i) the performance of first-time NCLEX-RN® candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval;
  (ii) the program is consistently unable to meet requirements of the Board; or
  (iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards.

(D) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting following the end of the examination year if:
  (i) the program's pass rate for first-time NCLEX-RN® candidates during the examination year is at least 80%; and
  (ii) the program has met all Board requirements.

(E) The Board may, in its discretion, change the approval status of a program on full approval with warning to full approval, to full approval with restrictions or conditions, or impose a monitoring plan. The Board may restrict enrollments.

(F) The Board may change the approval status of a program on conditional approval to full approval, full approval with restrictions or conditions, full approval with warning, or impose a monitoring plan. The Board may restrict enrollments.

(4) Survey Visit. Each professional nursing education program shall be visited at least every six (6) years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) Board Staff may conduct a survey visit at any time based upon Board Education Guideline 3.2.3.a. Criteria for Conducting Survey Visits.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, information from the program's NEPIS and CANEP, and NCLEX-RN® examination pass rates shall be reviewed by the Board at a regularly scheduled meeting.

(5) The Board will select one (1) or more national nursing accrediting agencies, recognized by the United States Department of Education, and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) The Board will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(7) The Board will deny or withdraw approval from a professional nursing education program that fails to:

(A) meet the prescribed program of study or other Board requirement;

(B) maintain voluntary accreditation with the national nursing accrediting agency selected by the Board; or

(C) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(8) A professional nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Nursing Education Programs Accredited by the National League for Nursing Accrediting Commission and/or the Commission on Collegiate Nursing Education - Specific Exemptions from Education Rule Requirements if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and
(B) maintains an acceptable NCLEX-RN® pass rate, as determined by the Board, on the NCLEX-RN® examination.

(9) A professional nursing education program that fails to meet or maintain an acceptable NCLEX-RN® pass rate, as determined by the Board, on NCLEX-RN® examinations is subject to review by the Board.

(10) A professional nursing education program that qualified for exemption pursuant to paragraph (8) of this subsection, but does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards, is subject to review by the Board.

(11) The Board may assist the program in its effort to achieve compliance with the Board's requirements and standards.

(12) A program from which approval has been withdrawn may reapply for approval. A new proposal may not be submitted to the Board until after at least twelve (12) calendar months from the date of withdrawal of approval have elapsed.

(13) A professional nursing education program accredited by a national nursing accrediting agency recognized by the Board shall:
(A) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of any official reports;
(B) demonstrate accountability of compliance with national nursing accreditation standards and processes and provide copies of approvals for substantive changes from the national nursing accreditation organizations after the program has followed the approval process;
(C) notify the Board of any change in accreditation status within two (2) weeks following receipt of an official notification letter; and
(D) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the dean or director and others as determined by the Board. The chief administrative officer of the governing entity shall be notified when there is a change of approval status of the program.

The provisions of this §215.4 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective February 19, 2008, 33 TexReg 1328; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective December 27, 2010, 35 TexReg 11668; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.5. Philosophy/Mission and Objectives/Outcomes.

(a) The philosophy/mission and objectives/outcomes of the professional nursing education program shall be consistent with the philosophy/mission of the governing entity. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(c) Clinical objective/outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The conceptual framework shall provide the organization of major concepts from the philosophy/mission of the program that provides the underlying structure or theme of the curriculum and facilitates the achievement of the program objectives/outcomes.

(e) The dean/director and the faculty shall periodically review the philosophy/mission and objectives/outcomes and shall make appropriate revisions to maintain currency.

The provisions of this §215.5 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective December 27, 2010, 35 TexReg 11668; amended to be effective October 23, 2012, 37 TexReg 8304; amended to be effective September 28, 2014, 39 TexReg 7735.

§215.6. Administration and Organization.

(a) The governing entity of a professional nursing education program, not including a diploma program, must be accredited by an agency recognized by the THECB or hold a certificate of authority from the THECB under provisions leading to accreditation of the institution in due course.

(b) There shall be an organizational chart which demonstrates the relationship of the professional nursing education program to the governing entity and indicates lines of responsibility and authority.

(c) In colleges and universities, the professional nursing education program shall have comparable status with other academic units within the governing entity in such areas as budgetary authority, rank, promotion, tenure, leave, benefits, and professional development.

(d) Salaries shall be adequate to recruit, employ, and retain sufficient qualified nursing faculty members with graduate preparation and expertise necessary for students to meet program goals.

(e) The governing entity shall provide financial support and resources needed to operate a professional nursing education program which meets the requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment, and qualified administrative and instructional personnel.

(f) Each professional nursing education program shall be administered by a qualified individual who is accountable for the planning, implementation, and evaluation of the professional nursing education program. The dean or director shall:
  (1) hold a current license or privilege to practice as a registered nurse in the state of Texas;
  (2) hold a master's degree or a doctoral degree in nursing;
  (3) hold a doctoral degree, if administering a baccalaureate or master's degree program;
  (4) have a minimum of three (3) years teaching experience in a professional nursing education program;
  (5) have demonstrated knowledge, skills, and abilities in administration within a professional nursing education program; and
  (6) not carry a teaching load of more than three (3) clock hours per week if required to teach.

(g) When the dean/director of the program changes, the dean/director shall submit to the Board office written notification of the change indicating the final date of employment.
  (1) A new Dean/Director/Coordinator Qualification Form shall be submitted to the Board office by the governing entity for approval prior to the appointment of a new dean/director or interim dean/director in an existing program or a new professional nursing education program according to Board Education Guideline 3.4.1.a. Approval Process for a New Dean/Director/Coordinator or New Interim/Dean/Director/Coordinator.
  (2) A curriculum vitae and all official transcripts for the proposed new dean/director shall be submitted with the new Dean/Director/Coordinator Qualification Form according to Board Education Guideline 3.4.1.a.
  (3) If an interim dean/director is appointed to fill the position, this appointment shall not exceed one (1) year.
  (4) In a fully approved professional nursing education program, other qualifications may be considered if there is supporting evidence that the candidate has the competencies to fulfill the responsibilities.

(h) A newly appointed dean/director or interim dean/director of a professional nursing education program shall attend the next scheduled education workshop provided by the Board related to the education rules and the role and responsibilities of newly appointed deans/directors.

(i) The dean/director shall have the authority to direct the professional nursing education program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies. Additional responsibilities include, but are not limited to:
  (1) providing evidence of faculty expertise and knowledge to teach curriculum content;
  (2) verifying students' completion of program requirements;
  (3) completing and submitting the Texas Board of Nursing Affidavit of Graduation; and
  (4) completing and submitting the NEPIS and CANEP by the required dates.

(j) The dean or director of the nursing program shall notify Board Staff immediately when there is a change in the name of the professional nursing education program or the governing entity, or when there are changes in the contact information.

The provisions of this §215.6 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective August 11, 2005, 30 TexReg 4480; amended to be effective January 10, 2008, 33 TexReg 183; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.7. Faculty.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the governing entity.
  (1) Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(2) Written policies concerning workload for the dean or director shall allow for sufficient time for administrative responsibilities consistent with §215.6 of this chapter (relating to Administration and Organization).
(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.
(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.
(5) Position descriptions for the dean/director and nursing faculty outlining their responsibilities directly related to the nursing program shall be included in the nursing faculty handbook.
(6) Written policies for nursing faculty shall include: plans for faculty orientation to the institution and the nursing program, faculty development, and evaluation of faculty.
(A) Orientation of new nursing faculty members shall be initiated at the onset of employment.
(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.
(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer, and administrative evaluation.

(b) A professional nursing education program shall employ sufficient faculty members with graduate preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:
(1) The number and level of students enrolled;
(2) The curriculum plan;
(3) Activities and responsibilities required of faculty;
(4) The number and geographic locations of affiliating agencies and clinical practice settings; and
(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.
(1) Documentation of faculty qualifications shall be included in the official files of the program.
(2) Each nurse faculty member shall:
(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;
(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject areas of teaching responsibility;
(C) Hold a master's degree or doctoral degree, preferably in nursing;
(D) A nurse faculty member holding a master's degree or doctoral degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and
(i) if teaching in a diploma or associate degree nursing program, shall have at least six (6) graduate semester hours in nursing appropriate to assigned teaching responsibilities, or
(ii) if teaching in a baccalaureate level program, shall have at least twelve (12) graduate semester hours in nursing appropriate to assigned teaching responsibilities.

(d) Faculty Waivers.
(1) In fully approved programs, if an individual to be appointed as a faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the dean or director is permitted to waive the Board's requirements, without Board approval, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one (1) year:
(2) Minimum program criteria:
(A) program's NCLEX-RN® pass rate for the preceding examination year was 80% or above; and
(B) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty.
(3) Minimum criteria for prospective faculty member:
(A) hold a current license or privilege to practice as a registered nurse in the State of Texas;
(B) has at least two (2) years in the last four (4) years of nursing practice experience in the anticipated subject areas of teaching responsibility;
(C) has earned a bachelor's degree in nursing or completed, as part of a nursing education program culminating in a master's or doctorate degree in nursing, the course work equivalent to the course work required for a bachelor's degree in nursing; and either
(i) is currently enrolled in a master's nursing education program and has earned a minimum of 50% of the required credits toward the master's degree in nursing, excluding thesis or professional paper; or
(ii) holds a master's degree in another field and has a documented plan to complete, within a designated time frame, the required number of graduate semester hours in nursing appropriate to

the anticipated subject areas of teaching responsibility, six (6) graduate semester hours in nursing to teach in a diploma or associate degree nursing education program or twelve (12) graduate semester hours in nursing to teach in a baccalaureate degree or entry-level master's degree in nursing education program.

(4) When the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member, a petition for an emergency waiver may be submitted to the Board Staff for approval when a vacancy occurs because a faculty member fails to report as planned, i.e., sudden illness or death of a faculty member, or there is an unexpected resignation, or qualified applicants/prospective faculty are not available.

(5) A waiver is valid for up to one (1) year.

(6) The dean or director shall submit a sworn (notarized) notification of waiver to the Board.

(7) If an extension of the waiver is needed, the dean or director shall petition Board Staff for an extension of the original waiver.

(e) Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments are not nursing content or clinical nursing courses.

(f) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including pathophysiology, pharmacology, research, nutrition, human growth and development, management, and statistics, shall have sufficient graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.

(g) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(h) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(i) Faculty shall be responsible for:

(1) supervising students in clinical learning experiences;

(2) supervising all initial nursing procedures performed by the student in the clinical area and ascertaining that the student is competent before allowing the student to perform an actual nursing procedure independently;

(3) developing, implementing, and evaluating curriculum; and

(4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(j) Teaching activities shall be coordinated among full-time faculty, part-time faculty, clinical preceptors, and clinical teaching assistants.

(k) There shall be a minimum of one (1) full-time nursing instructor for the program.

(l) A dean/director without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a professional nursing education program.

(m) Substitute faculty may be employed to meet emergent program needs. Substitute faculty shall meet qualifications as specified in subsection (c)(2) of this section.

(n) Faculty Organization:

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluative criteria shall be included in policies for part-time faculty.

The provisions of this §215.7 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective August 11, 2005, 30 TexReg 4480; amended to be effective January 9, 2007, 32 TexReg 92; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.8. Students.

(a) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.

(b) Individuals enrolled in approved professional nursing education programs preparing students for licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:
  (1) Texas Occupations Code §§301.252, 301.257 and 301.452 - 301.469; and
  (2) Sections 213.27 - 213.30 of this title (relating to Good Professional Character, Licensure of Persons with Criminal Offenses, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters, Declaratory Order of Eligibility for Licensure).

(c) The program shall have well-defined, written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented, and enforced.
  (1) Student policies shall be in accordance with the requirements of all applicable federal and state agencies.
  (2) Nursing student policies which differ from those of the governing entity shall be in writing and shall be made available to faculty and students.

(d) Reasons for dismissal from the program shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to:
  (1) evidence of actual or potential harm to patients, clients, or the public;
  (2) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency;
  (3) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and
  (4) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic, and/or occupational behaviors which indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to: behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(e) Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(f) Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the professional nursing education program.
  (1) The program shall maintain a signed receipt of student policies in all students' records.
  (2) The program shall maintain evidence of student receipt of the Board's license eligibility information as specifically outlined in subsection (b) of this section.
  (3) It is the responsibility of the program and the nursing faculty to define and enforce nursing student policies.

(g) Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the dean or director of the program and the governing entity. Upon completing the program's requirements, the transferred student is considered to be a graduate of the program.

(h) Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(i) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

The provisions of this §215.8 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective December 27, 2010, 35 TexReg 11668; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:
  (1) at least the equivalent of two (2) academic years and shall not exceed four (4) calendar years;
  (2) planned, implemented, and evaluated by the faculty;
  (3) based on the philosophy/mission and objectives/outcomes;
  (4) organized logically, sequenced appropriately;
  (5) based on sound educational principles;

(6) designed to prepare graduates to practice according to the Standards of Nursing Practice as set forth in the Board's Rules and Regulations;
(7) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Professional (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs); and
(8) designed to teach students to use a systematic approach to clinical decision making and safe patient care.

(b) The faculty shall be responsible for the development, implementation, and evaluation of the curriculum based upon the following guidelines:
(1) There shall be a reasonable balance between non-nursing courses and nursing courses that are clearly appropriate for collegiate study and are offered in a supportive sequence based upon the rationale for the curriculum.
(2) Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, human growth and development; and nursing skills.
(3) Delivery of the curriculum through distance education shall comply with the requirements of this section and §215.10 of this chapter (relating to Clinical Learning Experiences) to ensure that students receive comparable curriculum, supervised clinical learning experiences, and formative and summative evaluations. Faculty must have documented competencies specific to online education.

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.
(1) Classroom instruction hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses/content.
(2) Laboratory activities/instruction in the nursing skills or simulation laboratory may be considered as either classroom instruction hours or clinical learning experience hours.
(3) Clinical learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; and observation experiences. Observation experiences provide supplemental learning experiences to meet specific learning objectives.
(4) Hours in clinical learning experiences shall be sufficient to meet program of study requirements. There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The suggested ratio is one (1) contact hour of didactic to three (3) contact hours of related clinical learning experiences (1:3).

(d) Associate degree nursing education programs shall develop formal articulation agreements to enable graduates to earn a bachelor's degree in nursing in a timely manner.

(e) The program of study shall include, but not be limited to, the following areas:
(1) non-nursing courses, clearly appropriate for collegiate study, offered in a supportive sequence.
(2) nursing courses which include didactic and clinical learning experiences in the four (4) content areas, medical-surgical, maternal/child health, pediatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, restoration of health, and palliative and end-of-life care for individuals of all ages across the lifespan.
(A) Course content shall be appropriate to the role expectations of the graduate.
(B) Professional values including ethics, safety, diversity, and confidentiality shall be addressed.
(C) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, Delegation Rules, and other laws and regulations which pertain to various practice settings shall be addressed.
(3) Nursing courses shall prepare students to recognize and analyze health care needs, select and apply relevant knowledge and appropriate methods for meeting the heath care needs of individuals and families, and evaluate the effectiveness of the nursing care.
(4) Baccalaureate and entry-level master's degree programs in nursing shall include learning activities in basic research and management/leadership, and didactic and clinical learning experiences in community health nursing.

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.

(g) The curriculum plan and course content shall be appropriate to the role expectations of the graduate and shall be kept current and available to faculty and Board representatives.

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.7.3.a. Student Evaluation Methods and Tools.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.7.1.a. Proposals for Curriculum Changes. The two (2) types of curriculum changes are:
  (1) Minor curriculum changes not requiring prior Board Staff approval include:
    (A) Editorial updates of philosophy/mission and objectives/outcomes; or
    (B) Redistribution of course content or course hours; and
  (2) Major curriculum changes requiring Board staff approval prior to implementation include:
    (A) Changes in program philosophy/mission and objectives/outcomes which result in a reorganization or re-conceptualization of the entire curriculum including, but not limited to, changing from a block to an integrated curriculum or changing the approved delivery method of the curriculum to methods consistent with distance education/learning;
    (B) The addition of transition course(s), tracks/alternative programs of study, including MEEP, that provide educational mobility;
    (C) Revisions in program hours; and
    (D) Addition/reduction of course(s) in the program of study.

(j) Documentation of governing entity approval and appropriate approval from either the TWC or the THECB, if approved/licensed by the TWC or the THECB, must be provided to the Board prior to implementation of changes, as appropriate.

(k) Professional nursing education programs that have full approval status and are undergoing major curriculum changes shall submit an abbreviated proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office for approval at least four (4) months prior to implementation. The abbreviated proposal shall contain at least the following:
  (1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;
  (2) new and old curriculum plans;
  (3) rationale for the curriculum changes;
  (4) clinical evaluation tools for each clinical course; and
  (5) additional information, as requested, in order to provide clarity for Board Staff.

(l) Professional nursing education programs not having full approval status, but proposing a major curriculum change, shall submit a full curriculum change proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office and meet the requirements as outlined in subsection (i) of this section. Professional nursing education programs not having full approval status are not eligible to request Board Staff approval for the addition of transition course(s) or tracks/alternative programs of study, including MEEP, that provide educational mobility or to submit for Board approval a proposal for a new nursing education program until the program's status has been restored to full approval status by the Board.

(m) All professional nursing education programs implementing any curriculum change shall submit to Board Staff an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

The provisions of this §215.9 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective December 27, 2010, 35 TexReg 11668; amended to be effective October 23, 2012, 37 TexReg 8304; amended to be effective August 10, 2014, 39 TexReg 6047.

§215.10. Clinical Learning Experiences.

(a) Faculty shall be responsible and accountable for managing clinical learning experiences and observation experiences of students.

(b) Faculty shall develop criteria for the selection of affiliating agencies/clinical facilities or clinical practice settings which address safety and the need for students to achieve the program outcomes (goals) and course objectives through the practice of nursing care or observation experiences. Consideration of selection of a clinical site shall include:
  (1) client census in sufficient numbers to meet the clinical objectives/outcomes of the program/courses; and
  (2) evidence of collaborative arrangements for scheduling clinical rotations with those facilities that support multiple nursing programs.

(c) Faculty shall select and evaluate affiliating agencies/clinical facilities or clinical practice settings which provide students with opportunities to achieve the goals of the program.

(1) Written agreements between the program and the affiliating agencies shall be in place before clinical learning experiences begin and shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program.
(2) Agreements shall be reviewed periodically and include provisions for adequate notice of termination and a withdrawal of participation clause indicating a minimum period of time to be given for notice of such withdrawal.
(3) Affiliation agreements are optional for those clinical experiences which are observation only.

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences and for scheduling of student time and clinical rotations.

(e) Clinical learning experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons throughout the life span with acute and chronic illnesses, and rehabilitative care.
(1) Students shall participate in instructor supervised patient teaching.
(2) Students shall also be provided opportunities for participation in clinical conferences.
(3) Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives and may be counted as either classroom or clinical hours for the purpose of calculating the hours in the curriculum.

(f) Faculty shall be responsible for student clinical practice evaluations. Clinical evaluation tools shall be correlated with level and/or course objectives and shall include a minimum of a formative and a summative evaluation for each clinical in the curriculum.

(g) The following ratios only apply to clinical learning experiences involving direct patient care:
(1) When a faculty member is the only person officially responsible for a clinical group, the group shall total no more than ten (10) students.
(2) Patient safety shall be a priority and may mandate lower ratios, as appropriate.
(3) The faculty member shall supervise that group in only one (1) facility at a time, unless some portion or all of the clinical group are assigned to observation experiences in additional settings.
(4) Direct faculty supervision is not required for an observation experience.

(h) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing, or after a student has received clinical and didactic instruction in the basic areas of nursing for the related course or specific learning experience.
(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than twelve (12) students in a clinical group.
(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorship for no more than twenty-four (24) students.
(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliating agency or clinical practice setting.
(4) The preceptor shall be responsible for the clinical learning experiences of no more than two (2) students at a time per clinical group.

(i) Clinical teaching assistants may assist qualified, experienced faculty with clinical learning experiences.
(1) In clinical learning experiences where a faculty member is supported by a clinical teaching assistant, the ratio of faculty to students shall not exceed two (2) to fifteen (15).
(2) Clinical teaching assistants shall supervise student clinical learning experiences only when the qualified and experienced faculty member is physically present in the affiliating agency or alternative practice setting.

(j) When faculty use clinical preceptors or clinical teaching assistants to enhance clinical learning experiences and to assist faculty in the clinical supervision of students the following applies:
(1) Faculty shall develop written criteria for the selection of clinical preceptors and clinical teaching assistants.
(2) When clinical preceptors or clinical teaching assistants are used, written agreements between the professional nursing education program, clinical preceptor or clinical teaching assistant, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.
(3) Faculty shall be readily available to students and clinical preceptors or clinical teaching assistants during clinical learning experiences.
(4) The designated faculty member shall meet periodically with the clinical preceptors or clinical teaching assistants and student(s) for the purpose of monitoring and evaluating learning experiences.
(5) Written clinical objectives shall be shared with the clinical preceptors or clinical teaching assistants prior to or concurrent with the experience.
(6) Clinical preceptors shall have the following qualifications:
(A) competence in designated areas of practice;

(B) philosophy of health care congruent with that of the nursing program; and
(C) current licensure or privilege to practice as a registered nurse in the State of Texas.
(7) When acting as a clinical teaching assistant, the registered nurse shall not be responsible for other staff duties, such as supervising other personnel and/or patient care.
(8) Clinical teaching assistants shall meet the following criteria:
(A) hold a current license or privilege to practice as a registered nurse in the State of Texas; and
(B) have the clinical expertise to function effectively and safely in the designated area of teaching.

The provisions of this §215.10 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective May 2, 2007, 32 TexReg 2361; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.11. Facilities, Resources, and Services.

(a) The governing entity shall be responsible for providing:
(1) educational facilities,
(2) resources, and
(3) services which support the effective development and implementation of the professional nursing education program.

(b) An appropriately equipped skills laboratory shall be provided to accommodate the maximum number of students allowed for the program.
(1) The laboratory shall be equipped with hot and cold running water.
(2) The laboratory shall have adequate storage for equipment and supplies.

(c) The dean/director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(d) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.
(1) The dean/director shall have a private office.
(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.
(3) Space for clerical staff, records, files, and equipment shall be adequate.
(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.
(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.
(6) Teaching aids shall be provided to meet the objectives/outcomes of the program.
(7) Adequate restrooms and lounges shall be provided convenient to the classroom.

(e) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.
(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.
(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

The provisions of this §215.11 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.12. Records and Reports.

(a) Accurate and current records shall be maintained for a minimum of two (2) years in a confidential manner and be accessible to appropriate parties, including Board representatives. These records shall include, but are not limited to:
(1) records of current students, including the student's application and required admission documentation, evidence of student's ability to meet objectives/outcomes of the program, final clinical practice evaluations, signed receipt of written student policies furnished by manual and/or electronic means, evidence of student receipt of the Board license eligibility information as specifically outlined in §215.8(b) of this chapter (relating to Students), and the statement of withdrawal from the program, if applicable;
(2) faculty records;
(3) administrative records, which include minutes of faculty meetings for the past three (3) years, and school catalogs;
(4) the current program of study and curriculum including mission and goals (philosophy and outcomes), and course outlines;
(5) agreements with affiliating agencies; and

(6) the master plan of evaluation with most recent data collection.

(b) Record forms may be developed by an individual school.

(c) Hospital employment forms are not to be used for student records.

(d) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

(e) Copies of the program's CANEP, NEPIS, and important Board communications shall be maintained as appropriate.

The provisions of this §215.12 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective January 10, 2008, 33 TexReg 183; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

§215.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:
   (1) organization and administration of the program;
   (2) philosophy/mission and objectives/outcomes;
   (3) program of study, curriculum, and instructional techniques, including online components of the professional nursing education program, if applicable;
   (4) education facilities, resources, and services;
   (5) affiliating agencies and clinical learning activities;
   (6) students' achievement;
   (7) graduates' performance on the licensing examination;
   (8) graduates' nursing competence;
   (9) faculty members' performance; and
   (10) extension sites/campuses.

(b) All evaluation methods and instruments shall be periodically reviewed for appropriateness.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) Major changes in the professional nursing education program shall be evidence-based and supported by rationale.

The provisions of this §215.13 adopted to be effective January 9, 2005, 29 TexReg 12190; amended to be effective October 19, 2008, 33 TexReg 8509; amended to be effective October 23, 2012, 37 TexReg 8304.

CHAPTER 216. CONTINUING COMPETENCY.

§ 216.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic course—A specific set of learning experiences offered in an accredited school, college or university. Academic credit will convert on the following basis: One academic quarter hour = 10 contact hours; one academic semester hour = 15 contact hours.

(2) Advanced Practice Registered Nurse (APRN)—A registered nurse who:
(A) has completed a graduate-level advanced practice nursing education program that prepares him/her for one of the four APRN roles;
(B) has passed a national certification examination recognized by the Board that measures APRN role and population focused competencies;
(C) maintains continued competence as evidenced by re-certification/certification maintenance in the role and population focus through the national certification program;
(D) practices by building on the competencies of registered nurses by demonstrating a greater depth and breadth of knowledge, a greater synthesis of data, and greater role autonomy, as permitted by state law;
(E) is educationally prepared to assume responsibility and accountability for health promotion and/or maintenance, as well as the assessment, diagnosis, and management of patient problems, including the use and prescription of pharmacologic and non-pharmacologic interventions in compliance with state law;
(F) has clinical experience of sufficient depth and breadth to reflect the intended practice; and
(G) has been granted a license to practice as an APRN in one of the four APRN roles and at least one population focus area recognized by the Board.

(3) Approved—Recognized as having met established standards and predetermined criteria of the:
(A) credentialing agencies recognized by the Board (applies to providers and programs); and
(B) certifying bodies accredited by a national certification accreditation body recognized by the Board.

(4) Area of Practice—Any activity, assignment, or task in which the nurse utilized nursing knowledge, judgment, or skills during the licensure renewal cycle. If a nurse does not have a current area of practice, the nurse may refer to his or her last area of practice or most recent area of practice.

(5) Audit—A random sample of licensees taken to verify satisfactory completion of the Board's requirements for continuing competency during a biennial license renewal period.

(6) Authorship—Development and publication of a manuscript related to nursing and health care that is published in a nursing or health-related textbook or journal.

(7) Certification—Nursing certification from an approved certifying body accredited by a national accreditation body recognized by the Board.

(8) Classroom instruction—Workshops, seminars, institutes, conferences or short term courses which the individual attends which may be acceptable for continuing education credit.

(9) Clinical learning experiences—Faculty-planned and guided learning experiences designed to assist students to meet the course objectives and to apply nursing knowledge and skills in the direct care of patients/clients. This includes laboratories, acute care facilities, extended care facilities, and other community resources.

(10) Competency—The application of knowledge and the interpersonal decision making, and psychomotor skills expected for the nurse's practice role, within the context of public health, safety, and welfare.

(11) Contact hour—Sixty consecutive minutes of participation in a learning activity.

(12) Continuing Nursing Education (CNE)—Programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of nursing practice, thus improving health care to the public.

(13) Continuing education program—An organized educational activity, e.g, self-paced (online), classroom, approved through an external review process based on a predetermined set of criteria. The review is conducted by an organization(s) recognized by the Board to approve programs and providers.

(14) Credentialing agency—An organization recognized by the Board as having met nationally predetermined criteria to approve programs and providers of CNE.

(15) Prescriptive authority—Authorization granted to an APRN who meets the requirements to prescribe or order a drug or device, as set forth in Chapter 222 of this title (relating to Advanced Practice Registered Nurses with Prescriptive Authority).

(16) Program development and presentation—Formulation of the purpose statement, objectives and associated content and/or presentation of an approved CNE activity.

(17) Program number—A unique number assigned to a program upon approval which shall identify it regardless of the number of times it is presented.

(18) Provider—An individual, partnership, organization, agency or institution approved by an organization recognized by the Board which offers continuing education programs.

(19) Provider number—A unique number assigned to the provider upon approval by the credentialing agency or organization.

The provisions of this §216.1 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective October 4, 2010, 35 TexReg 8917; amended to be effective February 23, 2014, 39 TexReg 982; amended to be effective November 10, 2014, 39 TexReg 8693.

§ 216.2. Purpose.

The purpose of continuing competency is to ensure that nurses stay abreast of current industry practices, enhance their professional competence, learn about new technology and treatment regimens, and update their clinical skills. Continuing education in nursing includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public. Nursing certification is another method of demonstrating continuing competence. Pursuant to authority set forth in the Occupations Code §§301.152, 301.303, 301.304, 301.305, 301.306, 301.307, the Board requires participation in continuing competency activities for license renewal. The procedures set forth in these rules provide guidance to fulfilling the continuing competency requirement. The Board encourages nurses to choose continuing education courses that relate to their work setting and area of practice or to attain, maintain, or renew an approved national nursing certification in their practice area, which benefits the public welfare.

The provisions of this §216.2 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982.

§ 216.3. Requirements.

(a) A nurse must meet either the requirements of this subsection or subsection (b) of this section. A nurse may choose to complete 20 contact hours of continuing nursing education (CNE) within the two years immediately preceding renewal of registration in his or her area of practice. These hours shall be obtained by participation in programs approved by a credentialing agency recognized by the Board. A list of these agencies/organizations may be obtained from the Board's office or web site.

(b) A nurse must meet either the requirements of this subsection or subsection (a) of this section. A nurse may choose to demonstrate the achievement, maintenance, or renewal of an approved national nursing certification in the nurse's area of practice. A list of approved national nursing certification criteria may be obtained from the Board's office or web site.

(c) Requirements for the APRN. The licensee authorized by the Board as an 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 APRN'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) The required hours are not in addition to the requirements of subsection (a) or (b) of this section.
  (2) The 20 contact hours of continuing education must be appropriate to the advanced specialty area and role recognized by the Board.
  (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) Category I Continuing Medical Education (CME) contact hours will meet requirements as described in this chapter.

(d) Forensic Evidence Collection.
  (1) Pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of this subsection. This is a one-time requirement. An APRN may use continuing medical

education in forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.

(2) A nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two hours of CNE relating to forensic evidence collection that meets the requirements of this subsection within two years of the initial date of the nurse's employment in an ER setting. This is a one-time requirement.

(A) This requirement applies to nurses who work in an ER setting that is:

(i) the nurse's home unit;

(ii) an ER unit to which the nurse "floats" or schedules shifts; or

(iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(B) A nurse shall be considered to have met the requirements of paragraphs (1) and (2) of this subsection if the nurse:

(i) completed CNE during the time period of February 19, 2006, through September 1, 2013; and

(ii) the CNE met the requirements of the Board's rules related to forensic evidence collection that were in effect from February 19, 2006, through September 1, 2013.

(C) Completion of at least two hours of CNE that meets the requirements of this subsection may simultaneously satisfy the requirements of paragraphs (1) and (2) of this subsection.

(3) A nurse who would otherwise be exempt from CNE requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CNE attendance. Validation of course completion in forensic evidence collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) Continuing education completed under this subsection shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(5) The hours of continuing education completed under this subsection will count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification related to forensic evidence collection that is approved by the Board may be used to fulfill the requirements of this subsection.

(e) A nurse who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization in compliance with the Occupations Code §112.051 and §301.261(e) and §217.9(d) of this title (relating to Inactive Status):

(1) Must have completed at least 10 hours of CNE as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as an APRN or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas.

(2) Must have completed at least 20 hours of CE as defined in this chapter if authorized by the Board in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APRN CE defined under subsection (c) of this section. An APRN authorized as a VR-RN with APRN authorization may not hold prescriptive authority. This does not preclude a registered nurse from placing his/her APRN authorization on inactive status and applying for authorization only as a VR-RN.

(3) Is exempt from fulfilling targeted CE requirements except as required for volunteer retired APRNs.

(f) Tick-Borne Diseases. An APRN, whose practice includes the treatment of tick-borne diseases, is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the role and population focus area applicable to the APRN and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Completion of continuing medical education in the treatment of tick-borne disease that meets the requirements of this subsection shall be credited as continuing education under this chapter.

(g) Nursing Jurisprudence and Nursing Ethics. Each nurse, including an APRN, is required to complete at least two hours of CNE, as defined in this chapter, relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. The CNE course(s) shall contain information related to the Texas Nursing Practice Act, the Board's rules, including §217.11 of this title (relating to Standards of Nursing Practice), the Board's position statements, principles of nursing ethics, and professional boundaries. The hours of continuing education required under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification may not be used to fulfill the CNE requirements of this subsection.

(h) Older Adult or Geriatric Care. A nurse, including an APRN, whose practice includes older adult or geriatric populations shall complete at least two contact hours of CE, as defined in this chapter, in every licensure cycle after January 1, 2014.
  (1) The minimum two contact hours of CE required by this subsection shall include information relating to elder abuse, age related memory changes and disease processes, including chronic conditions, and end of life issues. The minimum two contact hours of CE may include information related to health maintenance and health promotion of the older adult or geriatric populations.
  (2) Certification related to the older adult or geriatric populations that is approved by the Board may also be used to fulfill the CE requirements of this subsection. Further, the hours of continuing education completed under this subsection shall count towards completion of the 20 contact hours of CE required in subsection (a) of this section.

The provisions of this §216.3 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective October 4, 2010, 35 TexReg 8917; amended to be effective July 16, 2012, 37 TexReg 5274; amended to be effective November 20, 2013, 38 TexReg 8208; amended to be effective February 23, 2014, 39 TexReg 982.

§ 216.4. Criteria for Acceptable Continuing Education Activity.

Continuing Education programs must be approved by a credentialing agency or an affiliated entity of one of these agencies. Proof of successful completion shall contain the name of the provider; the program title, date, and location; number of contact hours; provider number; and credentialing agency.

The provisions of this §216.4 adopted to be effective August 16, 2009, 34 TexReg 5524.

§ 216.5. Additional Criteria for Specific Continuing Education Programs.

(a) In addition to those programs reviewed by a Board approved entity, a licensee may attend an academic course that meets the following criteria:
  (1) The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course directly relevant to the licensee's area of nursing practice.
  (2) Participants, upon audit by the Board, shall be able to present an official transcript indicating completion of the course with a grade of "C" or better, or a "Pass" on a Pass/Fail grading system.

(b) Program Development and Presentation. Development and presentation of a program that is approved by one of the credentialing agencies or providers approved by the Board.
  (1) Upon audit by the Board, the licensee must submit to the Board on one page: the title of the program, program objectives, brief outline of content, credentialing agency, provider number assigned to the program, dates and locations of the presentation, and number of contact hours.
  (2) Contact hours for a presentation shall equal the number of contact hours awarded by a credentialing agency or provider approved by the Board. Contact hours may be obtained by this means by the nurse(s) who developed and/or presented the qualifying program per renewal period. Only distinct activities may be used to obtain contact hours by this means for a renewal period.

(c) Authorship. A licensee may receive CE credit for development and publication of a manuscript related to nursing and health care.
  (1) Upon audit by the Board, the licensee must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work.
  (2) One contact hour per distinct publication may be obtained by this means per renewal period.

The provisions of this §216.5 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982; amended to be effective November 10, 2014, 39 TexReg 8693.

§ 216.6. Activities that are not Acceptable as Continuing Education.

The following activities do not meet continuing education requirements for licensure renewal.

(1) Basic Life Support (BLS) or cardiopulmonary resuscitation (CPR) courses.

(2) In service programs. Programs sponsored by the employing agency to provide specific information about the work setting and orientation or other programs which address the institution's philosophy; policies and procedures; on-the-job training; and basic CPR; and equipment demonstration are not acceptable for CNE credit.

(3) Nursing refresher courses. Programs designed to up-date knowledge or current nursing theory and clinical practice, which consist of a didactic and clinical component to ensure entry level competencies into nursing practice are not accepted for CNE credit.

(4) Orientation programs. A program designed to introduce employees to the philosophy, goals, policies,

procedures, role expectations and physical facilities of a specific work place are not acceptable for CNE credit.

(5) Courses which focus upon self-improvement, changes in attitude, self-therapy, self-awareness, weight loss, and yoga.

(6) Economic courses for financial gain, e.g., investments, retirement, preparing resumes, and techniques for job interview.

(7) Courses which focus on personal appearance in nursing.

(8) Liberal art courses in music, art, philosophy, and others when unrelated to patient/client care.

(9) Courses designed for lay people.

(10) Self-directed study—An educational activity wherein the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity including, but not limited to, academic courses that are audited, or that are not directly relevant to a licensee's area of nursing practice, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses are not acceptable.

(11) Continuing Medical Education (CME), unless completed by an APRN in the APRN's role and population focus area of licensure.

The provisions of this §216.6 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982; amended to be effective November 10, 2014, 39 TexReg 8693.

§ 216.7. Responsibilities of Individual Licensee.

(a) It shall be the licensee's responsibility to select and participate in continuing competency activities that will meet the criteria listed in this chapter.

(b) The licensee shall be responsible for maintaining a record of CNE activities. These records shall document attendance as evidenced by original certificates of attendance, contact hour certificates, or academic transcripts, and copies of these shall be submitted to the Board upon audit.

(c) These records shall be maintained by the licensee for a minimum of three consecutive renewal periods or six years.

The provisions of this §216.7 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982.

§ 216.8. Relicensure Process.

(a) Renewal of license.
  (1) Upon renewal of the license, the licensee shall sign a statement attesting that the CNE or approved national nursing certification requirements have been met.
  (2) The contact hours must have been completed in the biennium immediately preceding the license renewal. CNE contact hours from a previous renewal period will not be accepted. Additional contact hours earned may not be used for subsequent renewal periods.

(b) Persons licensed by examination. A candidate licensed by examination shall be exempt from the CNE or approved national nursing certification requirement for issuance of the initial license and for the immediate renewal period following licensure.

(c) Persons licensed by endorsement. An applicant licensed by endorsement shall be exempt from the CNE or approved national nursing certification requirement for the issuance of the initial Texas license and for the immediate renewal period following initial Texas licensure.

(d) Delinquent license.
  (1) A license that has been delinquent for less than four years may be renewed by the licensee showing evidence of having completed 20 contact hours of acceptable CNE or an approved national nursing certification within two years immediately preceding the application for relicensure and by meeting all other Board requirements. A licensee shall be exempt from the continuing education requirement for the immediate renewal period following renewal of the delinquent license.
  (2) A license that has been delinquent for four or more years may be renewed upon completion of requirements listed in §217.6 of this title (relating to Failure to Renew License).

(e) Reactivation of a license.

(1) A license that has been inactive for less than four years may be reactivated by the licensee submitting verification of having completed at least 20 contact hours of continuing education or a current approved national nursing certification in their current or prior area of practice within the past two years immediately prior to application for reactivation.
(2) A license that has been inactive for four or more years may be reactivated upon completion of requirements in §217.9 of this title (relating to Inactive Status).

(f) Reinstatement of a license. A licensee whose license has been revoked and subsequently applies for reinstatement must show evidence that the continuing competency requirements and other Board requirements have been met prior to reinstatement of the license by the Board.

The provisions of this §216.8 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982.

§ 216.9. Audit Process.

The Board shall select a random sample of licensees 90 days prior to each renewal month. Audit forms shall be sent to selected licensees to substantiate compliance with the continuing competency requirements.

(1) Within 30 days following notification of audit, these selected licensees shall submit an audit form and:
(A) documentation as specified in §216.4 and §216.5 of this chapter (relating to Criteria for Acceptable Continuing Education Activity and Additional Criteria for Specific Continuing Education Programs) and any additional documentation the Board deems necessary to verify compliance with continuing education requirements for the period of licensure being audited; or
(B) a copy of the current approved national nursing certification and any additional documentation the Board deems necessary to verify compliance with continuing competency requirements for the period of licensure being audited.

(2) Failure to notify the Board of a current mailing address will not absolve the licensee from audit requirements.

(3) Pursuant to this section, an audit shall be automatic for a licensee who has been found noncompliant in an immediately preceding audit.

(4) Failure to complete the audit satisfactorily or falsification of records shall constitute unprofessional conduct and provide grounds for disciplinary action.

The provisions of this §216.9 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982.

§ 216.10. Appeals.

(a) Any individual who wishes to appeal a determination of non-compliance with continuing competency requirements must submit a letter of appeal within 20 days of notification of the audit results.

(b) The Board or its designee shall conduct a review in which the appellant may appear in person to present reasons why the audit decision should be set aside or modified.

(c) The decision of the Board after the appeal shall be considered final and binding.

The provisions of this §216.10 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982.

§ 216.11. Consequences of Non-Compliance.

Failure to comply with the Board's continuing competency requirements will result in the denial of renewal.

The provisions of this §216.11 adopted to be effective August 16, 2009, 34 TexReg 5524; amended to be effective February 23, 2014, 39 TexReg 982.

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

§217.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic course—A specific set of learning experiences offered in an accredited school, college or university. Academic credit will convert on the following basis: One academic quarter hour = 10 contact hours; one academic semester hour = 15 contact hours.

(2) Advanced practice nurse (APN)—A registered nurse, currently licensed in the State of Texas, who has been approved by the board to practice as an advanced practice nurse based on completing an advanced educational program of study acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist.

(3) Applicant—An individual who has met the eligibility requirements and applied to take the National Council Licensure Examination for Practical Nurses (NCLEX-PN) or completed an accredited nursing program and has applied to take the National Council Licensure Examination for Registered Nurses (NCLEX-RN), or an individual who has applied for Temporary Licensure/Endorsement into Texas.

(4) Approved—Recognized as having met established standards and predetermined criteria of the credentialing agencies recognized by the board. Applies to providers and programs.

(5) Approved/Accredited nursing program—A school, department, or division of nursing approved/accredited by a nursing board or other licensing authority which has jurisdiction over approval/accreditation of nursing programs.

(6) Board—The Texas Board of Nursing.

(7) Credential Evaluation Services (CES)—Documentation that verifies the educational credentials and licensure of graduates of foreign nursing schools.

(8) Declaratory order—An order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a licensed vocational or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(9) Delinquent license—A license lapsed due to failure to renew the certificate of re-registration.

(10) Direct supervision—Requires a nurse to be immediately available to coordinate, direct, and observe at firsthand another individual for whom the nurse is responsible.

(11) Eligibility order—An order, issued by the Board pursuant to Texas Occupations Code §§301.256, 301.257 and 301.259 determining the eligibility of an individual for licensure.

(12) Endorsement—The process of issuing a permanent license without further examination to a nurse from another jurisdiction or licensing authority after determination is made that the applicant meets the same standards as those required of Texas nurses.

(13) First level, general nurse—Refers to the International Council of Nurses (ICN) classification of nurses. A first-level nurse is called a registered or professional nurse in most countries. A general nurse has studied theory and had clinical practice in a variety of nursing areas.

(14) Graduate of a foreign nursing school—An individual who graduated from a post-secondary nursing education program that prepares nurse generalists or enrolled nurses for licensure and is approved/accredited by a governmental authority.

(15) Graduate nurse (GN)—Graduates of approved professional nursing programs who are issued a permit to practice for a specific time period until they successfully meet all licensure requirements.

(16) Graduate vocational nurse (GVN)—Graduates of approved vocational nursing programs who are issued a permit to practice for a specific time period until they successfully meet all licensure requirements.

(17) Impaired practice—Practice in which the nurse's ability to perform the essential functions of a nurse is impaired by chemical dependency on drugs and/or alcohol or by mental illness.

(18) Indirect supervision—Requires a nurse to be readily available if needed for consultation to coordinate, direct, and observe another individual for whom the nurse is responsible.

(19) Jurisdiction—A state or territory of the United States using the National Council Licensure Examination for Registered Nurses (NCLEX-RN) and the National Council Licensure Examination for Practical Nurses (NCLEX-PN) as the licensing examination.

(20) Licensed Vocational Nurse—See Vocational Nurse.

(21) Licensing authority—A legislated or governmentally appointed agency which approves, accredits or otherwise regulates legally defined behaviors of institutions or individuals.

(22) National Council Licensure Examination for Practical Nurses (NCLEX-PN)—The test used by the board to measure minimal competence for licensure as a vocational nurse.

(23) National Council Licensure Examination for Registered Nurses (NCLEX-RN)—The test used by the board to measure minimal competence for licensure as a registered professional nurse.

(24) Nurse—a person required to be licensed under Texas Occupations Code chapter 301 to engage in professional or vocational nursing.

(25) Nursing curriculum—The equivalent of all nursing courses in the program of study within an approved/accredited nursing program.

(26) Nursing program—The equivalent of all non-nursing and nursing courses in the program of study within an approved/accredited program.

(27) Peer assistance program—An approved program designed for nurses whose nursing practice is or may be impaired by chemical dependency on drugs and/or alcohol or certain mental illnesses and which meets the minimum criteria established by the Texas Commission on Alcohol and Drug Abuse and the additional criteria established by the Board.

(28) Practitioner—As related to radiology practice, a doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of Texas and who prescribes radiologic procedures for other persons (See 25 TAC §143.2).

(29) Professional boundaries—The appropriate limits which should be established by the nurse in the nurse/client relationship due to the nurse's power and the patient's vulnerability. Refers to the provision of nursing services within the limits of the nurse/client relationship which promote the client's dignity, independence and best interests and refrain from inappropriate involvement in the client's personal relationships and/or the obtainment of the nurse's personal gain at the client's expense.

(30) Professional nursing education program (general)—Post-secondary general nursing program of at least two academic years in length that provides both theory and clinical instruction in:
(A) medical-surgical nursing;
(B) maternal/child nursing;
(C) pediatric nursing; and
(D) mental health nursing.

(31) Professional nursing practice—As defined in the Occupations Code §301.002(2).

(32) Program of study—The courses and learning experiences that constitute the requirements for completion of a basic nursing education program (vocational nursing education program, associate degree nursing education program, baccalaureate degree nursing education program, master's degree nursing education program, or diploma nursing education program) or a post-licensure nursing education program.

(33) Radiologic procedure—Any procedure or article used with clients, including diagnostic x-rays or nuclear medicine procedures, through the emission of ionizing radiation as stated in 25 TAC §143.2.

(34) Reactivation—The process of making a license current when a nurse has allowed his or her license to become delinquent and/or is in inactive/retired status.

(35) Refresher course—A program designed to update knowledge of current nursing theory and clinical practice consisting of didactic and clinical components to ensure entry level competencies into vocational, professional, or advanced nursing practice. Refresher courses are not accepted for continuing education credit and must meet current board requirements.

(36) Registered nurse—A person currently licensed by the board to practice professional nursing.

(37) Registered nurse, retired—An individual on inactive status who has met the requirements for using the title as stated in §217.9 of this title (relating to Inactive and Retired Status).

(38) Renewal period—Two-year period determined by the licensee's birth month and year. Specific time frame for renewal may vary from six months to 29 months as determined by board policies.

(39) Second level nurses—Refers to the International Council of Nurses (ICN) classification of nurses. Second level nurses are called enrolled, vocational, or practical nurses or nurse assistants in most countries. Those nurses who have specialized in one area without being educated and registered/licensed as a general nurse

(for instance, midwife, pediatric nurse, or psychiatric nurse) are not eligible to take the CGFNS qualifying exam.

(40) Shall, will and must—Mandatory requirements.

(41) Should—Denotes recommendations.

(42) State Board Test Pool Examination (SBTPE)—The test formerly used by the board prior to the NCLEX-RN to measure minimal competence for licensure as a registered nurse.

(43) Temporary authorization—An authorization to practice vocational or professional nursing for a specified period of time.

(44) Temporary license—A license that authorizes an individual licensed as a nurse in other jurisdictions to practice nursing in Texas for a specified period of time.

(45) Temporary permit—A permit issued to a nurse for a specific period of time which allows the nurse to complete specific requirements in order for the license to be reissued.

(46) Vocational nurse—A person currently licensed by the board to practice vocational nursing.

(47) Vocational nurse, retired—An individual on inactive status who has met the requirements for using the title as stated in §217.9 of this title; includes individuals formerly classified as Vocational nurse, emeritus.

(48) Vocational Nursing—Nursing other than professional nursing that generally requires experience and education in biological, physical, and social sciences sufficient to qualify as a licensed vocational nurse.

(49) Vocational Nursing Education Program—A comprehensive system of education which provides instruction in biological, physical, social, behavioral and nursing sciences, with correlated theory, to include clinical practice in nursing care of children, maternity nursing, nursing care of the aged, nursing care of adults and nursing care of individuals with mental health problems.

(50) Vocational Nursing Practice—As defined in the Occupations Code §301.002(5).

The provisions of this §217.1 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296; amended to be effective April 11, 2005, 30 TexReg 2065; amended to be effective September 28, 2014, 39 TexReg 7736.

§217.2. Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.

(a) All applicants for initial licensure by examination shall:
  (1) file a complete application containing data required by the board attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, and the required application processing fee which is not refundable;
  (2) submit verification of completion of all requirements for graduation from an approved nursing education program, or certification from the nursing program director of completion of certificate/degree requirements. Prerequisites of an accredited master's degree program leading to a first degree in professional nursing must be approved by the board;
  (3) pass the NCLEX-PN (LVN applicant) or NCLEX-RN (RN applicant);
  (4) Licensed vocational nurse applicants:
    (A) must hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);
    (B) who have graduated from another U.S. jurisdiction's nursing education program must satisfactorily have completed curriculum comparable to the curriculum requirements for graduates of board-approved vocational nurse education programs.
  (5) submit FBI fingerprint cards provided by the Board for a complete criminal background check; and
  (6) pass the jurisprudence exam approved by the board, effective September 1, 2008.

(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

(c) An applicant for initial licensure by examination shall pass the NCLEX-PN or NCLEX-RN within four years of completion of requirements for graduation.

(d) An applicant who has not passed the NCLEX-PN or NCLEX-RN within four years from the date of completion of requirements for graduation must complete a board approved nursing education program in order to take or retake the examination.

(e) Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their license in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

(f) The U.S. Army Practical Nurse Course (formerly the 91C Clinical Specialist Course) is the only military program acceptable for vocational nurse licensure by examination.

The provisions of this §217.2 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 14, 2003, 28 TexReg 5532; amended to be effective September 28, 2004, 29 TexReg 9189; amended to be effective April 16, 2006, 31 TexReg 3031; amended to be effective September 26, 2007, 32 TexReg 6519; amended to be effective May 14, 2009, 34 TexReg 2767; amended to be effective July 12, 2010, 35 TexReg 6083.

§217.3. Temporary Authorization to Practice/Temporary Permit.

(a) A new graduate who completes an accredited basic nursing education program within the United States, its Territories or Possessions and who applies for initial licensure by examination in Texas may be temporarily authorized to practice nursing as a graduate nurse (GN) or graduate vocational nurse (GVN) pending the results of the licensing examination.
  (1) In order to receive temporary authorization to practice as a GN or GVN and obtain a Permit, the new graduate must:
    (A) file a completed application, including verification of completion of graduation requirements and the non-refundable application processing fee (see §217.2(a)(1)-(2) of this title relating to Licensure by Examination for Graduates of Basic Nursing Education Programs Within the United States, its Territories or Possessions);
    (B) have no outstanding eligibility issues (see §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and Texas Occupations Code §301.257);
    (C) have never taken the NCLEX-PN or NCLEX-RN. Temporary authorization to practice as a GN will not be issued to any applicant who has previously failed the licensing examination; and
    (D) have registered to take the NCLEX-PN or NCLEX-RN with the examination administration service.
  (2) The temporary authorization to practice as a GN or GVN, which is not renewable, is valid for 75 days from the date of eligibility, receipt of permanent license, or upon receipt of a notice of failing the examination from the Board, whichever date is the earliest. The GN or GVN must immediately inform employers of receipt of notification of failing the examination and cease nursing practice.
  (3) The new graduate who has been authorized to practice nursing as a GN or GVN pending the results of the licensing examination must work under the direct supervision of either a licensed vocational or a registered professional nurse if a GVN or a registered professional nurse only if a GN, who is physically present in the facility or practice setting and who is readily available to the GN or GVN for consultation and assistance. If the facility is organized into multiple units that are geographically distanced from each other, then the supervising nurse must be working on the same unit to which the GN or GVN is assigned. The GN or GVN shall not be placed in supervisory or charge positions and shall not work in independent practice settings.
  (4) The nurse administrator of facilities that employ Graduate Nurses or Graduate Vocational Nurses must ensure that the GN or GVN has a valid temporary authorization to practice as a GN or GVN pending the results of the licensing examination, has scheduled a date to take the NCLEX-PN or NCLEX-RN, and does not continue to practice after expiration of the 75 days of eligibility or receipt of a notice of failing the examination from the Board, whichever date is earlier.

(b) A nurse who has not practiced nursing for four or more years may be issued a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of professional or vocational nursing, whichever is applicable, or academic course. The permit is valid for six months and is nonrenewable.

(c) A nurse whose license has been suspended, revoked, or surrendered through action by the board, may be issued a temporary permit for the limited purpose of meeting any requirement(s) imposed by the board in order for the nurse's license to be reissued. The permit is valid for six months and is nonrenewable.

The provisions of this §217.3 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296.

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.

(a) Nurse applicants for initial licensure applying under this section.
  (1) A licensed vocational nurse applicant must:
    (A) hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);
    (B) have successfully completed an approved program for educating vocational/practical (second level general nurses) nurses by providing a Credential Evaluation Service Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS),

Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF); and

(C) have achieved an approved score on an English proficiency test acceptable to the Board, unless a substantial portion of the applicant's nursing program of study, as determined by the Board, was conducted in English.

(2) A registered nurse applicant must provide a Credential Evaluation Service Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF) and an English proficiency test acceptable to the Board, or the equivalent which verifies that the applicant:

(A) has the educational credentials equivalent to graduation from a governmentally accredited/approved, post-secondary general nursing program of at least two academic years in length;

(B) received both theory and clinical education in each of the following: nursing care of the adult which includes both medical and surgical nursing, maternal/infant nursing, nursing care of children, and psychiatric/mental health nursing;

(C) received initial registration/license as a first-level, general nurse in the country where the applicant completed general nursing education;

(D) is currently registered/licensed as a first-level general nurse; and

(E) has achieved an approved score on an English proficiency test acceptable to the Board, unless a substantial portion of the applicant's nursing program of study, as determined by the Board, was conducted in English.

(3) all applicants must file a complete application for registration containing data required by the board attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, and the required application processing fee which is not refundable;

(4) all applicants must pass the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants) as a Texas applicant;

(A) within four years of completion of the requirements for graduation from the nursing education program if the applicant has not practiced as a second-level or first-level general nurse since completing the requirements for graduation; or

(B) within four years of the date of eligibility for the NCLEX-PN or NCLEX-RN if the applicant has practiced as a second-level or first-level general nurse at least two years since completing the requirements for graduation;

(5) all nurse applicants must submit FBI fingerprint cards provided by the Board for a complete criminal background check; and

(6) all nurse applicants must pass the jurisprudence exam approved by the board, effective September 1, 2008.

(b) An applicant who has completed the requirements for graduation and has practiced as a second-level or first-level general nurse for at least two years but has not practiced as a second-level or first-level general nurse within the four years immediately preceding the filing of an application for initial licensure will be issued a six month limited permit (temporary authorization) upon passing the NCLEX-PN or NCLEX-RN examination and must complete a nurse refresher course that meets the criteria defined by the Board in order to be eligible for licensure under this section.

(c) An applicant who has not passed the NCLEX-PN or NCLEX-RN within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete an appropriate nursing education program in order to be eligible to take or retake the examination.

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

(e) Accustomation Permit.

(1) An applicant who has graduated from an accredited nursing program outside the United States may apply to the Board for a six month accustomation permit by completing an application and paying a fee. An applicant holding an accustomation permit under this subsection may participate in nursing education courses and clinical experiences.

(2) An applicant is eligible to apply for an accustomation permit under this subsection only if the applicant has:

(A) graduated from an accredited nursing program outside the United States;

(B) never taken the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants); and

(C) successfully completed a credential evaluation service from a board approved credentialing agency.

(3) An applicant holding an accustomation permit under this subsection may only participate in nursing

education courses and clinical experiences under the direct supervision of a registered nurse who holds a current and unencumbered Texas license. For purposes of this subsection only, direct supervision requires a registered nurse to be working with the applicant at all times. At no time shall an applicant be left alone with a patient.

(f) Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

The provisions of this §217.4 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 14, 2003, 28 TexReg 5532; amended to be effective September 28, 2004, 29 TexReg 9189; amended to be effective April 11, 2005, 30 TexReg 2065; amended to be effective April 16, 2006, 31 TexReg 3031; amended to be effective September 26, 2007, 32 TexReg 6519; amended to be effective May 14, 2009, 34 TexReg 2767; amended to be effective July 12, 2010, 35 TexReg 6083; amended to be effective April 4, 2011, 36 TexReg 2123.

§217.5. Temporary License and Endorsement.

(a) A nurse who has practiced nursing in another state within the four years immediately preceding a request for temporary licensure and/or permanent licensure by endorsement may obtain a non-renewable temporary license, which is valid for 120 days, and/or a permanent license for endorsement by meeting the following requirements:
  (1) Graduation from an approved nursing education program;
  (2) Satisfactory completion of the licensure examination according to Board established minimum passing scores:
    (A) Vocational Nurse Licensure Examination:
      (i) Prior to April 1982—a score of 350 on the SBTPE;
      (ii) Beginning October 1982 to September 1988—a score of 350 on the NCLEX-PN; and
      (iii) October 1988 and after, must have achieved a passing report on the NCLEX-PN; and
    (B) Registered Nurse Licensure Examination:
      (i) Prior to July 1982—a score of 350 on each of the five parts of the SBTPE;
      (ii) Prior to February 1989—a minimum score of 1600 on the NCLEX-RN; and
      (iii) February 1989 and after, must have achieved a passing report on the NCLEX-RN;
  (3) Licensure by another U.S. jurisdiction;
  (4) For an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions—verification of LVN licensure as required in §217.4(a)(1) of this chapter or verification of RN licensure must be submitted from the country of education or as evidenced in a Credential Evaluation Service (CES) Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF), as well as meeting all other requirements in paragraphs (2) and (3) of this subsection;
  (5) Filing a completed "Application for Temporary License/Endorsement" containing:
    (A) personal identification and verification of required information in paragraphs (1) - (3) of this subsection; and
    (B) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure and attestation that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading;
  (6) the required application processing licensure fee, which is not refundable;
  (7) submitting fingerprints for a complete criminal background check; and
  (8) a passing score on the jurisprudence exam approved by the Board, effective September 1, 2008.

(b) A nurse who has not practiced nursing in another state within the four years immediately preceding a request for temporary licensure and/or permanent licensure by endorsement will be required to:
  (1) complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The nurse must submit an Application for Six Month Temporary Permit (RN) or an Application for Six Month Temporary Permit (LVN), as applicable, to the Board for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study;
  (2) submit to the Board evidence of the successful completion of the requirements of paragraph (1) of this subsection;
  (3) submit to the Board a course completion form from one of the following:
    (A) the online Texas Board of Nursing Jurisprudence Prep Course;
    (B) the Texas Board of Nursing Jurisprudence and Ethics Workshop; or
    (C) a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course; and

(4) after completing the requirements of paragraphs (1) - (3) of this subsection, submit to the Board verification of the completion of the requirements of subsection (a)(1) - (8) of this section.

(c) The Board adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by this section, and which are available at http://www.bon.state.tx.us/olv/forms.html:
(1) Application for Six Month Temporary Permit (RN); and
(2) Application for Six Month Temporary Permit (LVN).

(d) A nurse who has had disciplinary action at any time by any licensing authority is not eligible for temporary licensure until completion of the eligibility determination.

(e) Upon initial licensure by endorsement, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

(f) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

The provisions of this §217.5 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective September 28, 2004, 29 TexReg 9189; amended to be effective April 16, 2006, 31 TexReg 3031; amended to be effective September 26, 2007, 32 TexReg 6519; amended to be effective July 12, 2010, 35 TexReg 6083; amended to be effective July 26, 2011, 36 TexReg 4660.

§217.6. Failure to Renew License.

(a) A nurse who is not practicing nursing in Texas and who fails to maintain a current Texas license for a period of time less than four years may bring his or her license up-to-date by filing such forms as the Board may require, showing evidence of having completed 20 contact hours of acceptable continuing education that meets the requirements of Chapter 216 of this title (relating to Continuing Competency) within the two years immediately preceding the application for reactivation, and paying the current licensure fee plus a late fee and any applicable fines, which are not refundable.

(b) A nurse who is not practicing nursing and who fails to maintain a current license from any licensing authority for four or more years will be required to:
(1) complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The applicant must submit an application to the Board for a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study;
(2) submit to the Board evidence of the successful completion of the requirements of paragraph (1) of this subsection;
(3) submit to the Board a course completion form from one of the following:
(A) the online Texas Board of Nursing Jurisprudence Prep Course;
(B) the Texas Board of Nursing Jurisprudence and Ethics Workshop; or
(C) a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course;
(4) submit to the Board a certificate of completion from the Texas Nursing Jurisprudence Exam;
(5) submit to the Board a completed reactivation application;
(6) submit to the Board the current, non-refundable licensure fee, plus a late fee and any applicable fines which are not refundable; and
(7) submit to the Board evidence of completion of 20 contact hours of acceptable continuing education for the two years immediately preceding the application for reactivation that meets the requirements of Chapter 216 of this title.

(c) The Board adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by this section, and which are available at http://www.bon.state.tx.us/olv/forms.html:
(1) Application for Six Month Temporary Permit (RN); and
(2) Application for Six Month Temporary Permit (LVN).

(d) A nurse who fails to maintain a current Texas license for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of subsection (b)(3) - (7) of this section.

(e) The issuance of a license reactivation may be refused to an individual who:
(1) fails to submit an application for reactivation; or

(2) submits an application which:
(A) is incomplete;
(B) does not show evidence that the person meets the requirements for reactivation; or
(C) is not accompanied by the correct fee(s).

(f) The Board's refusal to reactivate a license for the reasons specified in subsection (e) of this section does not entitle an individual to a hearing at the State Office of Administrative Hearings.

(g) An individual who is refused a license reactivation and who wishes to reactivate his or her license will be required to:
(1) correctly complete the reactivation application;
(2) show evidence of meeting all the requirements for reactivation, including completion of 20 contact hours of continuing education that meets the requirements of Chapter 216 of this title; and
(3) submit payment of the correct, non-refundable reactivation fee as follows:
(A) if the license has been delinquent less than 90 days, the required fee will equal the renewal fee plus one-half the examination fee (see §223.1 of this title (relating to Fees)), plus any applicable fines; or
(B) if the license has been delinquent for more than 90 days, the required fee will equal the renewal fee plus the full examination fee (see §223.1 of this title), plus any applicable fines.

(h) Special Reactivation Provisions for Actively Deployed Nurses.
(1) If a nurse's license lapses and becomes delinquent while serving in the military whenever the United States is engaged in active military operations against any foreign power, the license may be reactivated without penalty or payment of the late renewal fee(s) under the following conditions:
(A) The license was active at the time of deployment;
(B) The application for reactivation is made while still in the armed services or no later than three months after discharge from active service or return to inactive military status;
(C) A copy of the military activation orders or other proof of active military service accompanies the application;
(D) The renewal fee is paid; and
(E) If the required continuing education contact hours were not earned for reactivation during the earning period, the nurse shall be required to complete the required continuing education hours needed for reactivation no later than three months after discharge from active service, return to inactive military status, or return to the United States from an active war zone.
(2) The continuing education contact hours used for reactivation may not be used for the next license renewal.
(3) The continuing education contact hours for the next license renewal following reactivation may not be prorated.

(i) A nurse whose license has been expired for more than one year and who has been initially or finally convicted of, or has entered a plea of guilty or nolo contendere for, an offense specified in the Occupations Code §301.4535(a); surrendered a license or a privilege in another state or had a license or privilege revoked, suspended, or denied in another state; or been imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision may not renew the license until the Board has completed an investigation and reached a final resolution of the matter.

(j) Military Spouse.
(1) A nurse who is the spouse of an individual serving on active duty as a member of the armed forces of the United States may be exempt from paying the late fees and fines required by this section if the applicant submits to the Board:
(A) a completed reactivation application, in paper form, that meets the applicable requirements of this section; and
(B) documentation showing that the applicant is the spouse of an individual serving on active duty as a member of the armed forces of the United States.
(2) A nurse submitting an application for reactivation under this section who is the spouse of an individual serving on active duty as a member of the armed forces of the United States and has practiced nursing in any jurisdiction within the four years immediately preceding the application is not required to complete the continuing education contact hours required by this section.
(3) All other requirements of this section apply to military spouse applicants.

The provisions of this §217.6 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296; amended to be effective July 10, 2005, 30 TexReg 3997; amended to be effective October 11, 2010, 35 TexReg 9093; amended to be effective January 17, 2012, 37 TexReg 120.

§217.7. Change of Name and/or Address.

(a) A nurse/applicant for licensure shall notify the board in writing within ten days of a change of name by submitting a legal document reflecting this name change.

(b) A nurse/applicant for licensure shall notify the board in writing within 10 days of a change of address, providing the new address and his or her license number.

The provisions of this §217.7 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296.

§217.8. Duplicate or Substitute Credentials.

(a) A nurse whose original certificate of registration or wallet-sized license is lost or destroyed may obtain a duplicate by filing a form containing identifying information, notarized affidavit, and paying a non-refundable fee.

(b) A nurse who wants to change his/her name on the original certificate of registration or current wallet-sized license must submit:
  (1) a duly executed affidavit;
  (2) the required non-refundable fee; and
  (3) a copy of the legal document reflecting this name change.

The provisions of this §217.8 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296.

§217.9. Inactive and Retired Status.

(a) A nurse may change his/her licensure status from "active" to "inactive" status by:
  (1) submitting a written request to the Board prior to the expiration of his/her license; or
  (2) designating "inactive" on the renewal form, if at the time of renewal.

(b) A nurse may change his/her licensure status from "active" or "inactive" to "retired" or "volunteer retired" status. A nurse who elects to change his/her licensure status from "active" or "inactive" to "retired" or "volunteer retired" status may do so only if he/she is in good standing with the Board. For purposes of this section, good standing means that the nurse's license is not in delinquent status and that there is no current disciplinary action, disciplinary probation, or pending investigation/s on his/her nursing license/s or authorization/s. A nurse will not be eligible for "retired" or "volunteer retired" status until all outstanding disciplinary issues have been resolved. Further, a nurse who wishes to change his/her licensure status from "inactive" to "retired" or "volunteer retired" status may do so only if his/her license was in good standing with the Board on the date his/her license became inactive.

(c) Retired Status. A nurse who wishes to change his/her licensure status to "retired" status and is eligible to do so under subsection (b) of this section must submit the following information to the Board:
  (1) a written request to use one of the following titles:
    (A) "Licensed Vocational Nurse, Retired"; "LVN, Retired"; "Vocational Nurse, Retired"; or "VN, Retired";
    (B) "Registered Nurse, Retired" or "RN, Retired"; or
    (C) "RN, Nurse Anesthetist, Retired"; "RN, Nurse-Midwife, Retired"; "RN, Nurse Practitioner, Retired"; or "RN, Clinical Nurse Specialist, Retired"; and
  (2) the required, non-refundable fee.

(d) A nurse whose license is in "retired" status may not practice as a nurse for compensation (monetary or non-monetary benefits).

(e) Volunteer Retired Authorization. In compliance with the Occupations Code §112.051, the Board shall adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care. The Board shall also define voluntary charity care.
  (1) A nurse who wishes to change his/her licensure status to "volunteer retired" status and is eligible to do so under subsection (b) of this section must request authorization from the Board. The nurse must meet the following criteria:
    (A) Must claim Texas as the nurse's Primary State of Residence in accordance with the Occupations Code Chapter 304, Nurse Licensure Compact, and Chapter 220 of this title; and
    (B) If applying as a vocational or registered nurse, must have completed at least 10 contact hours of continuing education as required by Chapter 216 of this title during the previous biennium. If applying as a registered nurse with advanced practice recognition, must meet the continuing education requirements of §216.3(c).

(2) Application. An applicant for "volunteer retired" authorization must complete and submit to the Board an application requesting "volunteer retired" authorization as a vocational nurse, registered nurse, or registered nurse with advanced practice authorization in a given role and population focus area.
(3) Scope of Authorization for LVN or RN. A nurse holding "volunteer retired" authorization may only practice nursing at the level for which he/she formerly held an active/unencumbered license to practice nursing. To qualify as volunteer practice, such practice must be without compensation or expectation of compensation as a direct service volunteer of a charitable organization. When engaging in practice as a volunteer retired nurse, the nurse must comply with the Nursing Practice Act (NPA) and Board rules in their entirety.
(4) Scope of Authorization for APRN. A nurse who has authorization in an advanced practice role and population focus area at the time of application for "volunteer retired" authorization must continue to practice in collaboration/supervision with a physician qualified in the APRN's role and population focus area, as well as in compliance with all other laws applicable to the APRN's practice setting, both within the NPA and Board rules, as well as other applicable laws.
(5) Charitable Organization. A charitable organization is defined in §84.003 of the Texas Civil Practice and Remedies Code and includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization promoting the common good and general welfare for the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.
(6) Renewal. A nurse's "volunteer retired" authorization expires on the same date as the nurse's regular license previously expired. Each volunteer retired nurse seeking to renew his/her "volunteer retired" authorization must meet all of the requirements of this section, including the continuing education requirements set forth in this section for the applicable renewal period.
(7) Penalty. A nurse whose license is in "volunteer retired" status shall not receive compensation (monetary or non-monetary benefits) for the practice of nursing. To do so would constitute the practice of vocational, professional, or advanced practice nursing (as applicable) without a license and will subject the volunteer retired nurse to the penalties imposed for this violation.
(8) Titles. A nurse holding "volunteer retired" authorization may hold him/herself out as and may use one of the titles specified in subsection (c) of this section to reflect the individual nurse's "volunteer retired" authorization. Titles representing to the public that a nurse holds "volunteer retired" authorization are protected in the same manner as titles listed in the Occupations Code §301.351 and §217.10 of this chapter.
(9) Authorization Verification. Authorization verification may be accomplished by accessing the Board's web page at http://www.bon.texas.gov/.

(f) A nurse who has not practiced nursing in Texas and whose license has been in an inactive status for less than four years may reactivate the license by completing the reactivation application form, paying the required reactivation fee and the current licensure fee which are non-refundable, and submitting verification of completion of 20 contact hours of continuing education that meets the requirements of Chapter 216 of this title (relating to Continuing Competency) within the two years immediately preceding the application for reactivation.

(g) A nurse who has not practiced nursing and whose license has been in an inactive status for four or more years must submit to the Board:
(1) a completed reactivation application;
(2) verification of successful completion of a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The nurse must submit an application to the Board for a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study;
(3) evidence of completion of 20 contact hours of acceptable continuing education for the two years immediately preceding the application for reactivation that meets the requirements of Chapter 216 of this title;
(4) a successful course completion form from one of the following:
(A) the online Texas Board of Nursing Jurisprudence Prep Course;
(B) the Texas Board of Nursing Jurisprudence and Ethics Workshop; or
(C) a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course;
(5) a certificate of successful completion from the Texas Nursing Jurisprudence Exam; and
(6) the required reactivation fee, plus the current licensure fee, which are non-refundable.

(h) The Board adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by this section, and which are available at http://www.bon.state.tx.us/olv/forms.html:

(1) Application for Six Month Temporary Permit (RN); and
(2) Application for Six Month Temporary Permit (LVN).

(i) A nurse whose license has been in an inactive status for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of subsection (g)(1) and (3) - (6) of this section.

The provisions of this §217.9 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296; amended to be effective January 2, 2006, 30 TexReg 8880; amended to be effective October 11, 2010, 35 TexReg 9093; amended to be effective January 17, 2012, 37 TexReg 122.

§217.10. Restrictions to Use of Designations for Licensed Vocational or Registered Nurse.

(a) Use of title
(1) A person who holds a valid current license as a registered nurse under this chapter:
(A) is referred to as a registered nurse; and
(B) may use the abbreviation "R.N."
(2) A person who holds a valid current license as a vocational nurse under this chapter:
(A) is referred to as a licensed vocational nurse or vocational nurse; and
(B) may use the abbreviation "L.V.N." or "V.N."
(3) An applicant for initial licensure by examination in Texas who has valid temporary authorizations to practice professional nursing as a graduate nurse pending the results of the licensing examination may use the initials "GN" or the title "graduate nurse."
(4) An applicant for initial licensure by examination in Texas who has valid temporary authorization to practice vocational nursing as a graduate vocational nurse pending the results of the licensing examination may use the initials "GVN" or the title "graduate vocational nurse."
(5) A person who is eligible for licensure by endorsement in Texas, holding a valid Texas temporary license to engage in professional nursing practice, may use the title "registered nurse" or "RN."
(6) A person who is eligible for licensure by endorsement in Texas, holding a valid Texas temporary license to engage in vocational nursing practice, may use the title "licensed vocational nurse," "vocational nurse," "LVN," and "VN."
(7) No other person, other than designated in paragraphs (1) - (6) of this section, may use, where applicable, titles or abbreviations with the word "nurse" such as office nurse, staff nurse, head nurse, charge nurse, school nurse, supervisor of nursing or nurses, or any other title tending to imply to the public that the person holds a license to practice nursing in Texas.
(8) Any person other than as permitted by law or rule who uses any of the above titles or abbreviations deemed by the board misleading or implying that the individual is a licensed nurse may be subject to potential violation or prosecution under the applicable law.
(9) If a nurse holds herself or himself out to the public as being engaged in the practice of nursing, or uses the designations "licensed vocational nurse," "vocational nurse," "LVN," "VN," "registered nurse," or "RN" or any combination or variation of those terms and abbreviations, alone or in combination with any other terms, then they must practice in accordance with the Nursing Practice Act and the Rules and Regulations Relating to Nurse Education, Licensure and Practice.
(10) Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:
(A) the title "nurse aide," "nurse assistant," or "nurse technician" or any other similar title; and
(B) may not abbreviate the title to "nurse."

(b) Display of Designations.
(1) While interacting with the public in a nursing role, each licensed nurse shall wear a clearly legible insignia that:
(A) displays the nurse's name, but the manner in which the name appears, in reference to use of first name and/or last name, is the nurse's preference in accordance with facility policy, if applicable; and
(B) identifies the nurse as a registered nurse or vocational nurse according to licensure.
(2) Although the board does not require the inclusion of any other designations, with the exception of the specific authorization of advanced practice nurses, the insignia may not contain information other than:
(A) the registered nurse or licensed vocational nurse designation;
(B) the nurse's name, certifications, academic degrees, or practice position;
(C) the name of the employing facility or agency, or other employer; or
(D) a picture of the nurse.

(c) Duty to Document Designations. While functioning in a nursing role, each licensed nurse shall document in his/her written communications:
(1) the nurse's name, but the manner in which the name appears, in reference to use of first name and/or last name, is the nurse's preference in accordance with facility policy, if applicable; and

(2) the nurse's designation as a registered nurse or vocational nurse according to licensure.

The provisions of this §217.10 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296.

§217.11. Standards of Nursing Practice.

The Texas Board of Nursing is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted.

(1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:
  (A) Know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice;
  (B) Implement measures to promote a safe environment for clients and others;
  (C) Know the rationale for and the effects of medications and treatments and shall correctly administer the same;
  (D) Accurately and completely report and document:
    (i) the client's status including signs and symptoms;
    (ii) nursing care rendered;
    (iii) physician, dentist or podiatrist orders;
    (iv) administration of medications and treatments;
    (v) client response(s); and
    (vi) contacts with other health care team members concerning significant events regarding client's status;
  (E) Respect the client's right to privacy by protecting confidential information unless required or allowed by law to disclose the information;
  (F) Promote and participate in education and counseling to a client(s) and, where applicable, the family/significant other(s) based on health needs;
  (G) Obtain instruction and supervision as necessary when implementing nursing procedures or practices;
  (H) Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations;
  (I) Notify the appropriate supervisor when leaving a nursing assignment;
  (J) Know, recognize, and maintain professional boundaries of the nurse-client relationship;
  (K) Comply with mandatory reporting requirements of Texas Occupations Code Chapter 301 (Nursing Practice Act), Subchapter I, which include reporting a nurse:
    (i) who violates the Nursing Practice Act or a board rule and contributed to the death or serious injury of a patient;
    (ii) whose conduct causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;
    (iii) whose actions constitute abuse, exploitation, fraud, or a violation of professional boundaries; or
    (iv) whose actions indicate that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.
    (v) except for minor incidents (Texas Occupations Code §§301.401(2), 301.419, 22 TAC §217.16), peer review (Texas Occupations Code §§301.403, 303.007, 22 TAC §217.19), or peer assistance if no practice violation (Texas Occupations Code §301.410) as stated in the Nursing Practice Act and Board rules (22 TAC Chapter 217).
  (L) Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served;
  (M) Institute appropriate nursing interventions that might be required to stabilize a client's condition and/or prevent complications;
  (N) Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the nurse makes the decision not to administer the medication or treatment;
  (O) Implement measures to prevent exposure to infectious pathogens and communicable conditions;
  (P) Collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;
  (Q) Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(R) Be responsible for one's own continuing competence in nursing practice and individual professional growth;
(S) Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made;
(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;
(U) Supervise nursing care provided by others for whom the nurse is professionally responsible; and
(V) Ensure the verification of current Texas licensure or other Compact State licensure privilege and credentials of personnel for whom the nurse is administratively responsible, when acting in the role of nurse administrator.

(2) Standards Specific to Vocational Nurses. The licensed vocational nurse practice is a directed scope of nursing practice under the supervision of a registered nurse, advanced practice registered nurse, physician's assistant, physician, podiatrist, or dentist. Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. The licensed vocational nurse shall assist in the determination of predictable healthcare needs of clients within healthcare settings and:
(A) Shall utilize a systematic approach to provide individualized, goal-directed nursing care by:
(i) collecting data and performing focused nursing assessments;
(ii) participating in the planning of nursing care needs for clients;
(iii) participating in the development and modification of the comprehensive nursing care plan for assigned clients;
(iv) implementing appropriate aspects of care within the LVN's scope of practice; and
(v) assisting in the evaluation of the client's responses to nursing interventions and the identification of client needs;
(B) Shall assign specific tasks, activities and functions to unlicensed personnel commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made and shall maintain appropriate supervision of unlicensed personnel.
(C) May perform other acts that require education and training as prescribed by board rules and policies, commensurate with the licensed vocational nurse's experience, continuing education, and demonstrated licensed vocational nurse competencies.

(3) Standards Specific to Registered Nurses. The registered nurse shall assist in the determination of healthcare needs of clients and shall:
(A) Utilize a systematic approach to provide individualized, goal-directed, nursing care by:
(i) performing comprehensive nursing assessments regarding the health status of the client;
(ii) making nursing diagnoses that serve as the basis for the strategy of care;
(iii) developing a plan of care based on the assessment and nursing diagnosis;
(iv) implementing nursing care; and
(v) evaluating the client's responses to nursing interventions;
(B) Delegate tasks to unlicensed personnel in compliance with Chapter 224 of this title, relating to clients with acute conditions or in acute are environments, and Chapter 225 of this title, relating to independent living environments for clients with stable and predictable conditions.

(4) Standards Specific to Registered Nurses with Advanced Practice Authorization. Standards for a specific role and specialty of advanced practice nurse supersede standards for registered nurses where conflict between the standards, if any, exist. In addition to paragraphs (1) and (3) of this subsection, a registered nurse who holds authorization to practice as an advanced practice nurse (APN) shall:
(A) Practice in an advanced nursing practice role and specialty in accordance with authorization granted under Board Rule Chapter 221 of this title (relating to practicing in an APN role; 22 TAC Chapter 221) and standards set out in that chapter.
(B) Prescribe medications in accordance with prescriptive authority granted under Board Rule Chapter 222 of this title (relating to APNs prescribing; 22 TAC Chapter 222) and standards set out in that chapter and in compliance with state and federal laws and regulations relating to prescription of dangerous drugs and controlled substances.

The provisions of this §217.11 adopted to be effective September 28, 2004, 29 TexReg 9192; amended to be effective November 15, 2007, 32 TexReg 8165.

The Board has adopted position statements and interpretive guidelines that are intended to clarify § 217.11 or address specific practice-related issues. These items are located at the Board's web site, www.bon.texas.gov, in the "Nursing Practice" section of the "Table of Contents."

§ 217.12. Unprofessional Conduct.

The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

(1) Unsafe Practice — actions or conduct including, but not limited to:
  (A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11;
  (B) Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings;
  (C) Improper management of client records;
  (D) Delegating or assigning nursing functions or a prescribed health function when the delegation or assignment could reasonably be expected to result in unsafe or ineffective client care;
  (E) Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care;
  (F) Failing to supervise the performance of tasks by any individual working pursuant to the nurse's delegation or assignment; or
  (G) Failure of a clinical nursing instructor to adequately supervise or to assure adequate supervision of student experiences.

(2) Failure of a chief administrative nurse to follow appropriate and recognized standards and guidelines in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible.

(3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a coded license or any stipulated agreement with the board.

(4) Careless or repetitive conduct that may endanger a client's life, health, or safety. Actual injury to a client need not be established.

(5) Inability to Practice Safely — demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness, use of alcohol, drugs, chemicals, or any other mood-altering substances, or as a result of any mental or physical condition.

(6) Misconduct — actions or conduct that include, but are not limited to:
  (A) Falsifying reports, client documentation, agency records or other documents;
  (B) Failing to cooperate with a lawful investigation conducted by the board;
  (C) Causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;
  (D) Violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional or financial exploitation of the client or the client's significant other(s);
  (E) Engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same;
  (F) Threatening or violent behavior in the workplace;
  (G) Misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation;
  (H) Providing information which was false, deceptive, or misleading in connection with the practice of nursing;
  (I) Failing to answer specific questions or providing false or misleading answers that would have affected the decision to license, employ, certify or otherwise utilize a nurse; or
  (J) Offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.

(7) Failure to repay a guaranteed student loan, as provided in the Texas Education Code § 57.491, or pay child support payments as required by the Texas Family Code § 232.001, *et seq*.

(8) Drug Diversion — diversion or attempts to divert drugs or controlled substances.

(9) Dismissal from a board-approved peer assistance program for noncompliance and referral by that program to the BNE.

(10) Other Drug Related — actions or conduct that include, but are not limited to:

(A) Use of any controlled substance or any drug, prescribed or unprescribed, or device or alcoholic beverages while on duty or on call and to the extent that such use may impair the nurse's ability to safely conduct to the public the practice authorized by the nurse's license;
(B) Falsification of or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances;
(C) Failing to follow the policy and procedure in place for the wastage of medications at the facility where the nurse was employed or working at the time of the incident(s);
(D) A positive drug screen for which there is no lawful prescription; or
(E) Obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception and/or subterfuge.

(11) Unlawful Practice — actions or conduct that include, but are not limited to:
(A) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of vocational, registered or advanced practice nursing;
(B) Violating an order of the board, or carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered or advanced practice nursing, or violating a state or federal narcotics or controlled substance law;
(C) Knowingly aiding, assisting, advising, or allowing a nurse under Board Order to violate the conditions set forth in the Order; or
(D) Failing to report violations of the Nursing Practice Act and/or the Board's rules and regulations.

(12) Leaving a nursing assignment, including a supervisory assignment, without notifying the appropriate personnel.

(13) Criminal Conduct — including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing.

The provisions of this §217.12 adopted to be effective September 28, 2004, 29 TexReg 9192.

§217.13. Peer Assistance Program.

(a) A peer assistance program for nurses approved by the Board under chapter 467, Health and Safety Code, will identify, monitor, and assist with locating appropriate treatment for those nurses whose practice is impaired or suspected of being impaired by chemical dependency, mental illness or diminished mental capacity so that they may return to practice safe nursing.

(b) Role of the Board of Nursing and Peer Assistance Program.
(1) The Board of Nursing will retain the sole and exclusive authority to discipline a nurse who has committed a practice violation under §301.452(b) of the Nursing Practice Act regardless of whether such violation was influenced by chemical dependency, mental illness, or diminished mental capacity. The Board will balance the need to protect the public and the need to ensure the nurse seeks treatment in determining whether the nurse is appropriate for participation in an approved peer assistance program.
(2) The program shall report to the board, in accordance with policies adopted by the board, a nurse reported to the program who is impaired or suspected of being impaired for chemical dependency, mental illness, or diminished mental capacity if the nurse was reported to the program by third party. A third party report is a report concerning a nurse suspected of chemical dependency, mental illness, or diminished mental capacity that comes to the attention of the program through any source other than a self report.

(c) General Criteria for Approved Peer Assistance Program.
(1) The program will provide statewide peer advocacy services to all nurses licensed to practice in Texas whose practice may be impaired by chemical dependency, certain mental illnesses, or diminished mental capacity.
(2) The program shall have a statewide monitoring system that will be able to track the nurse while preserving confidentiality.
(3) The program shall have a network of trained peer volunteer advocates located throughout the state.
(4) The program shall have a written plan for the education and training of volunteer advocates and other program personnel.
(5) The program shall have a written plan for the education of nurses, other practitioners, and employers.
(6) The program shall demonstrate financial stability and funding sufficient to operate the program.
(7) The program shall have a mechanism for documenting program compliance and for timely reporting of noncompliance to the board.
(8) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(d) Evaluation of Peer Assistance Program.

(1) The program shall collect and make available to the board and other appropriate persons data relating to program operations and participant outcomes. At a minimum, the program shall submit the following statistical information quarterly to the Board for the purpose of evaluating the success of the program:
(A) Number and source of referral;
(B) Number of individuals who sign participation agreements;
(C) Type of participation agreement signed, i.e., Extended Evaluation Program; substance abuse or dependency, dual diagnosis, mental illness;
(D) Number of cases referred to program by Board of Nursing (this number should include all third party referrals that are reported to the board, but remain in participation pending board review);
(E) Number of participants referred to program by Board order;
(F) Number of self referred cases closed and reason(s) for closure;
(G) Number of active cases;
(H) Number of participants employed in nursing;
(I) Number of participants completing program;
(J) Number of participants who are reported back for failing to comply with the participation agreement;
(K) Monitoring activities, including number of drug screens requested, conducted and results of these tests;
(L) All applicable performance measures required by the Legislative Budget Board.
(2) The program shall have a written plan for a systematic total program evaluation. Such plan shall include at a minimum monthly reports of the programs activities showing compliance with this rule, quarterly reports of applicable LBB performance measure data and an annual report of program activities.
(3) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(e) Participants entering the approved peer assistance program for chemical dependency or chemical abuse must agree to the following minimum conditions:
(1) The nurse shall undergo, as appropriate, a physical and/or psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.
(2) The nurse shall enter into a contract with the approved peer assistance program to comply with the requirements of the program which shall include, but not be limited to:
(A) The nurse will undergo recommended substance abuse treatment by an appropriate treatment facility or provider.
(B) The nurse will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber for legitimate medical purposes and approved by the program.
(C) The nurse must complete the prescribed aftercare, if any, which may include individual and/or group psychotherapy.
(D) The nurse will submit to random and "for cause" drug screening as specified by the approved monitoring program.
(E) The nurse will attend support groups as specified by the contract.
(F) The nurse will comply with specified employment conditions and restrictions as defined by the contract.
(G) The nurse shall sign a waiver allowing the approved peer assistance program to release, to the extend permitted by federal or state law, information to the Board if the nurse does not comply with the requirements of this contract.
(3) The nurse may be subject to disciplinary action by the Board if the nurse does not participate in the approved peer assistance program, does not comply with specified employment restrictions, or does not successfully complete the program.

(f) Referral to Board of Noncompliance with Peer Assistance Program.
(1) A participant may be terminated from the program for the following causes:
(A) Noncompliance with any aspect of the program agreement;
(B) Receipt of information by the board which, after investigation, results in disciplinary action by the board; or
(C) Being unable to practice according to acceptable and prevailing standards of safe nursing care.
(2) The program shall contact the board in accordance with board policies if a nurse under contract fails to comply with the terms of the program agreement or evidences conduct that indicates an inability or unwillingness to comply with the program.

(g) Eligibility for Program Participation.
(1) The program shall contact the board if it receives a third-party referral for a nurse who may have been impaired or suspected of being impaired and who may have failed to comply with the minimum standards of nursing (22 TAC §217.11) and/or committed an act constituting unprofessional conduct (22 TAC

§217.12). The program shall send that report to the Board. The Board will balance the need to protect the public and the need to ensure the impaired nurse seeks treatment in determining the whether the nurse is appropriate for participation in an approved peer assistance program.

(2) An individual may not participate in the program if the information reviewed in conjunction with the report indicates to the board that the individual's compliance with the program may not be effectively monitored while participating in the program. This information includes, but is not limited to, the following:
   (A) The individual is not currently licensed as a registered nurse or licensed vocational nurse;
   (B) The individual is currently using or being prescribed a drug normally associated with chemical dependency or abuse;
   (C) The individual has a medical and/or psychiatric condition, diagnosis, or disorder, other than chemical dependency, in which the manifest symptoms are not adequately controlled;
   (D) The individual has attempted or completed two or more chemical dependency monitoring programs as of the date of the application, notwithstanding the individual's current chemical dependency treatment plan and related treatment currently submitted for purposes of program eligibility;
   (E) The board has taken action against the individual's license to practice nursing as either a registered nurse or a licensed practical nurse in Texas within the last 5 years;
   (F) The individual has been convicted of a felony, placed on probation or received deferred adjudication relating to a felony, or felony charges are currently pending, or is currently being investigated for a felony; or
   (G) The individual has been convicted or registered as a sex offender.

(h) Successful Completion of the Program. A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement. When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement. The program shall notify the board when a nurse who the board has ordered to attend or referred to the program successfully completes the peer assistance contract.

The provisions of this §217.13 adopted to be effective February 18, 2008, 33 TexReg 1333.

§217.14. Registered Nurses Performing Radiologic Procedures.

(a) A registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by The Joint Commission shall submit an application for registration to the board and shall submit evidence including, but not limited to, the following:
   (1) current licensure as a registered nurse in the State of Texas; and
   (2) the name and business address of the practitioner or director of radiological services under whose instruction or direction the radiologic procedures are performed.

(b) After review by the board, notification of registration shall be mailed to the registered nurse informing him/her that the registration with the board has been completed.

(c) The registered nurse who is registered to perform radiologic procedures pursuant to subsection (a) of this section shall notify the board within 30 days of any changes that would render the information on the nurse's application incorrect, including but not limited to any changes in the identity of the practitioner or director of radiological procedures under whose instruction or direction the radiologic procedures are performed.

(d) The registered nurse whose functions include radiologic procedures must act within the scope of the Texas Nursing Practice Act and the Board's rules and shall comply with the training requirements and limitations of the Medical Radiologic Technologist Certification Act and the Texas Department of State Health Rules, 25 TAC §§140.517 - 140.522. In addition, the registered nurse must be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any applicable laws of the State of Texas.

(e) Any nurse who violates these rules shall be subject to disciplinary action by the board under the Occupations Code Chapter 301 and the Board's rules.

The provisions of this §217.14 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 10, 2013, 38 TexReg 4356.

§217.15. Copying the License/Permit/Permanent Certificate of a Licensed Vocational Nurse/Registered Nurse/Graduate Nurse/Advanced Practice Nurse.

(a) The licensee or permit holder has the responsibility to protect his or her license/permit/permanent certificate from loss and potential fraudulent or unlawful use.

(b) A licensee or permit holder shall only allow his or her license/permit certificate to be copied for the purpose of licensure verification by employers, licensing boards, professional organizations, nursing programs, and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the board's office in writing or by phone to verify licensure.

The provisions of this §217.15 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective July 5, 2004, 29 TexReg 6296.

§217.16. Reporting of Minor Incidents.

(a) Purpose. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act or a board rule. This is particularly true when there are mechanisms in place in the nurse's practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse's judgment, knowledge, training, or skill. This rule is intended to provide guidance to nurses, nursing peer review committees and others in determining whether a nurse has engaged in conduct that indicates the nurse's continued practice would pose a risk of harm to patients or others and should be reported to the board.

(b) Definition. A "minor incident" as defined under Nursing Practice Act §301.401(2) means conduct by a nurse that may be a violation of the Nursing Practice Act or a Board rule but does not indicate the Nurse's continued practice poses a risk of harm to a patient or another person.

(c) Factors to be Considered in Evaluating if Conduct Must Be Reported to the Board.
  (1) A nurse involved in a minor incident need not be reported to the Board unless the conduct indicates the nurse:
    (A) ignored a substantial risk that exposed a patient or other person to significant physical, emotional or financial harm or the potential for such harm;
    (B) lacked a conscientious approach to or accountability for his/her practice;
    (C) lacked the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or
    (D) indicates the nurse has engaged in a pattern of multiple minor incidents that demonstrate the nurse's continued practice would pose a risk of harm to patients or others.
  (2) Evaluation of Multiple Incidents.
    (A) Evaluation of Conduct. In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported.
    (B) Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse must be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period must be reported to the Board.
    (C) Nurse Manager and Nurse Supervisor Responsibilities. Regardless of the time frame or number of minor incidents, if a nurse manager or supervisor believes the minor incidents indicate a pattern of practice that poses a risk of harm that cannot be remediated, the nurse should be reported to the Board or Peer Review Committee.
  (3) Other factors that may be considered in determining whether a minor incident should be reported to the Board are:
    (A) the significance of the nurse's conduct in the particular practice setting; and
    (B) the presence of contributing or mitigating circumstances, including systems issues or factors beyond the nurse's control, in relation to the nurse's conduct.

(d) Conduct Required to be Reported.
  (1) A nurse must be reported to the board or to a nursing peer review committee for the following conduct:
    (A) An error that contributed to a patient's death or serious harm.
    (B) Criminal Conduct defined in Texas Occupations Code §301.4535.
    (C) A serious violation of the board's Unprofessional Conduct rule §217.12 of this title (relating to Unprofessional Conduct) involving intentional or unethical conduct including but not limited to fraud, theft, patient abuse or patient exploitation.
    (D) A practice-related violation involving impairment or suspected impairment by reason of chemical dependency, intemperate use, misuse or abuse of drugs or alcohol, mental illness, or diminished mental capacity required to be reported in accordance with §301.410(b) of the Nursing Practice Act and §217.19(g) of this title (relating to Incident Based Nursing Peer Review and Whistle Blower Protections).
  (2) If a nursing peer review committee determines that a nurse engaged in the conduct listed in subsection (c)(1)(A) - (D) of this section the committee must report the nurse to the board. For errors involving the

death or serious injury of a patient, if a nursing peer review committee makes a determination that a nurse has not engaged in conduct subject to reporting to the board, the committee must maintain documentation of the rationale for their belief that the nurse's conduct failed to meet each of the factors in paragraph (1)(A) - (D) of this subsection.

(e) Conduct Normally Not Required to Be Reported to the Board.
  (1) An incident should be evaluated to determine if:
    (A) the incident is primarily the result of factors beyond the nurse's control and addressing those factors is more likely to prevent the incident from reoccurring; or
    (B) the incident was a medication error caused primarily by factors beyond the nurse's control rather than failure of the nurse to exercise proper clinical judgment. Board Position Statement 15.17 Texas Board of Nursing/Board of Pharmacy Joint Position Statement/Medication Error provides guidelines for evaluating medication errors found at http://www.bon.state.tx.us/practice/position.html#15.17.
  (2) If either of the conditions listed in paragraph (1) of this subsection are present, a presumption should exist that the nurse's conduct does not indicate the nurse's continued practice poses a risk of harm to a patient or another person and does not need to be reported to the board.

(f) Documentation of Minor Incidents. A minor incident should be documented as follows:
  (1) A report must be prepared and maintained for a minimum of 12 months that contains a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remedy the problem.
  (2) If a medication error is attributable or assigned to the nurse as a minor incident, the record of that incident should indicate why the error is being attributed or assigned to the nurse.

(g) Nursing Peer Review Committee.
  (1) If a report is made to the peer review committee, the committee must investigate and conduct incident-based nursing peer review in compliance with Nursing Peer Review Law in Texas Occupations Code §303 and §217.19 of this title.
  (2) Review of a nurse's conduct or practice may be accomplished by either an informal work group of the nursing peer review committee as provided under §217.19(e) of this title or the full nursing peer review committee prior to a report being made to the board.
  (3) A nursing peer review committee receiving a report involving a minor incident or incidents must review the incident(s) and other conduct of the nurse during the previous 12 months to determine if the nurse's continuing to practice poses a risk of harm to patients or other persons and whether remediation would be reasonably expected to adequately mitigate such risk if it exists. The committee must consider the special considerations set out in subsection (c) of this section.
  (4) The nursing peer review committee need not report the nurse to the Board if the peer review committee determines that either:
    (A) the nurse's continuing to practice does not pose a risk of harm to patients or other persons; or
    (B) remediation could reasonably be expected to adequately mitigate any such risk and the nurse successfully completes the remediation.
  (5) If a nurse terminates employment while undergoing remediation activities as directed by a peer review committee under paragraph (3) of this subsection, the peer review committee may either:
    (A) report the nurse to the BON;
    (B) report to the peer review committee of the new employer, if known, with the nurses written consent;
    (C) re-evaluate the nurse's current conduct to determine if the nurse did complete sufficient remediation and is deemed safe to practice.

(h) A Right to Report. Nurses and other persons are encouraged not to report minor incidents to the Board unless required to do so by this rule, but nothing in this rule is intended to prevent reporting of a potential violation directly to the Board or to a nursing peer review committee.

(i) Mis-classifying to Avoid Reporting. Intentionally mis-classifying an incident to avoid reporting may result in violation of the mandatory reporting statute.

(j) Chief Nursing Officer or Nurse Administrator Responsibility. The Chief Nursing Officer, Nurse Administrator or registered nurse by any title who is responsible for nursing services shall be responsible for taking reasonable steps to assure that minor incidents are handled in compliance with this rule and any other applicable law.

(k) Nurses Reported to the Board. If a nurse is reported to the board, the board shall review the nurse's conduct to determine if it indicates the nurse's continued practice poses a risk of harm to a patient or another person. If it does not the board may elect not to proceed with filing formal charges.

The provisions of this §217.16 adopted to be effective September 1, 1999, 24 TexReg 4001; amended to be effective February 19, 2003, 28 TexReg 1378; amended to be effective July 5, 2004, 29 TexReg 6296; amended to be effective May 17, 2006, 31 TexReg 3873; amended to be effective January 4, 2009, 33 TexReg 10432.

§217.17. Texas Nursing Jurisprudence Exam (NJE).

(a) Exam Development.
  (1) The Board will develop a Nursing Jurisprudence Exam (NJE) as authorized by Nursing Practice Act (NPA) §301.252.
  (2) The NJE will be required for each person who submits an application seeking initial licensure on or after September 1, 2008.
  (3) The NJE will be a minimum of 50 questions and shall be psychometrically validated.
  (4) The NJE shall be designed to test an applicant's knowledge relating to board statutes, rules, position statements, guidelines, disciplinary sanction policies, frequently asked questions, and other resource documents accessible on the board's web page relating to the regulation, licensure, and practice of nursing under the following categories:
    (A) Nursing Licensure and Regulation in Texas;
    (B) Nursing Ethics;
    (C) Nursing Practice;
    (D) Nursing Peer Review;
    (E) Disciplinary Action.

(b) Grading Procedures.
  (1) In this chapter, applicants required to take the NJE exam, must achieve a passing score as determined by the Board of Nursing in consultation with a psychometrician. Should an applicant fail to achieve a passing score on the NJE, such applicant, shall retake the NJE until such time as a passing score is achieved.
  (2) In accordance with NPA §301.252(a)(3), an applicant for initial nursing licensure in Texas shall not be granted a nursing license until the applicant achieves a passing score on the NJE.
  (3) A person who has passed the NJE shall not be required to retake the NJE for another or similar license, except as a specific requirement of the board.
  (4) A passing grade on the NJE is valid for purposes of licensure for one year from the date the passing grade is achieved.

(c) Taking the NJE.
  (1) An applicant may take the NJE at any time during the application process.
  (2) Should an applicant fail to achieve a minimum passing score on the NJE, such applicant may retake the NJE until such time as a passing score is achieved.

(d) Notice of Results.
  (1) Attaining a passing score on the NJE is a requirement of initial licensure in Texas effective September 1, 2008.
  (2) Each applicant will be notified upon successful completion of all requirements for initial licensure.

The provisions of this §217.17 adopted to be effective November 15, 2007, 32 TexReg 8167; amended to be effective October 19, 2008, 33 TexReg 8512.

§217.18. Assisting at Surgery.

(a) Nurse First Assistants.
  (1) A registered nurse who wishes to function as a first assistant (RNFA) in surgery shall meet the following requirements:
    (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;
    (B) Completion of a nurse first assistant educational program approved or recognized by an organization recognized by the Board; and
    (C) Is either:
      (i) currently certified in perioperative nursing by an organization recognized by the board (CNOR certification in perioperative nursing); or
      (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.
  (2) 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 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.
  (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.

(b) Assisting at Surgery by Other Nurses.

(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:
  (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;
  (B) Assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;
  (C) Is in the same sterile field as the physician, podiatrist, or dentist;
  (D) Is employed by:
    (i) the physician, podiatrist, or dentist;
    (ii) a group to which the physician, podiatrist, or dentist belongs; or
    (iii) a hospital licensed or owned by the state; and
  (E) Is qualified by education, training, or experience to perform the tasks assigned to the nurse.
(2) A nurse assisting in the performance of surgery under this subsection shall not use:
  (A) The title "nurse first assistant" or "registered nurse first assistant,"
  (B) The abbreviation "R.N.F.A.," or
  (C) Any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under subsection (a) of this section.

The provisions of this §217.18 adopted to be effective March 13, 2002, 27 TexReg 1735; amended to be effective February 20, 2003, 28 TexReg 1381; amended to be effective February 19, 2006, 31 TexReg 850.

§217.19. Incident-Based Nursing Peer Review and Whistleblower Protections.

(a) Definitions.
  (1) Assignment—Designated responsibility for the provision or supervision of nursing care for a defined period of time in a defined work setting. This includes but is not limited to the specified functions, duties, practitioner orders, supervisory directives, and amount of work designated as the individual nurse's responsibility. Changes in the nurse's assignment may occur at any time during the work period.
  (2) Bad Faith—Knowingly or recklessly taking action not supported by a reasonable factual or legal basis. The term includes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process.
  (3) Chief Nursing Officer (CNO)—The registered nurse, by any title, who is administratively responsible for the nursing services at a facility, association, school, agency, or any other setting that utilizes the services of nurses.
  (4) Conduct Subject to Reporting defined by Texas Occupations Code (TOC) §301.401 of the Nursing Practice Act as conduct by a nurse that:
    (A) violates the Nursing Practice Act (NPA) or a Board rule and contributed to the death or serious injury of a patient;
    (B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;
    (C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or
    (D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.
  (5) Duty to a patient—A nurse's duty is to always advocate for patient safety, including any nursing action necessary to comply with the standards of nursing practice (§217.11 of this title) and to avoid engaging in unprofessional conduct (§217.12 of this title). This includes administrative decisions directly affecting a nurse's ability to comply with that duty.
  (6) Good Faith—Taking action supported by a reasonable factual or legal basis. Good faith precludes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process.
  (7) Incident-Based Peer Review—Incident-based peer review focuses on determining if a nurse's actions, be it a single event or multiple events (such as in reviewing up to five (5) minor incidents by the same nurse within a year's period of time) should be reported to the Board, or if the nurse's conduct does not require reporting because the conduct constitutes a minor incident that can be remediated. The review includes whether external factors beyond the nurse's control may have contributed to any deficiency in care by the nurse, and to report such findings to a patient safety committee as applicable.
  (8) Malice—Acting with a specific intent to do substantial injury or harm to another.
  (9) Minor incident—Conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person as described in §217.16 of this title.
  (10) Nurse Administrator—Chief Nursing Officer (CNO) or the CNO's designee.

(11) Nursing Peer Review Law (NPR Law)—Chapter 303 of the TOC. Nurses involved in nursing peer review must comply with the NPR Law.
(12) Nursing Practice Act (NPA)—Chapter 301 of the TOC. Nurses must comply with the NPA.
(13) Patient Safety Committee—Any committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety including:
  (A) the entity's medical staff composed of individuals licensed under Subtitle B (Medical Practice Act, TOC §§151.001, et seq.);
  (B) a medical committee under Chapter 161, Subchapter D of the Health and Safety Code (§§161.031 - 161.033); or
  (C) a multi-disciplinary committee, including nursing representation, or any committee established by the same entity to promote best practices and patient safety.
(14) Peer Review—Defined by TOC §303.001(5) (NPR Law) as the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term also includes the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns, report under Chapter 301, request peer review, and the resolution of workplace and practice questions relating to nursing and patient care. The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Peer review conducted by any entity must comply with NPR Law and with applicable Board rules related to incident-based or safe harbor peer review.
(15) Safe Harbor—A process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination, and licensure sanction when a nurse makes a good faith request for peer review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NPA or Board rules. Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at anytime during the work period when the initial assignment changes.
(16) Texas Occupations Code (TOC)—One of the topical subdivisions or "codes" into which the Texas Statutes or laws are organized. The TOC contains the statutes governing occupations and professions including the health professions. Both the NPA and NPR Law are located within these statutes. The TOC can be changed only by the Texas Legislature.
(17) Whistleblower Protections—Protections available to a nurse that prohibit retaliatory action by an employer or other entity because the nurse:
  (A) made a good faith request for Safe Harbor Nursing Peer Review under TOC §303.005(c) (NPR Law) and §217.20 of this title;
  (B) refused to engage in an act or omission relating to patient care that would constitute a violation of the NPA or Board rules as permitted by TOC §301.352 (NPA) (Protection for Refusal to Engage in Certain Conduct). A nurse invoking Safe Harbor under §217.20 of this title must comply with §217.20(g) of this title if the nurse refuses to engage in the conduct or assignment; or
  (C) made a lawful report of unsafe practitioners, or unsafe patient care practices or conditions, in accordance with TOC §301.4025 (NPA) (report of unsafe practices of non-nurse entities) and subsection (j)(2) of this section.

(b) Purpose. The purpose of this rule is to:
  (1) define minimum due process to which a nurse is entitled under incident-based peer review;
  (2) provide guidance to facilities, agencies, schools, or anyone who utilizes the services of nurses in the development and application of incident-based peer review plans;
  (3) assure that nurses have knowledge of the plan; and
  (4) provide guidance to the incident-based peer review committee in its fact finding process.

(c) Applicability of Incident-Based Peer Review. TOC §303.0015 (NPR Law) requires a person who regularly employs, hires or contracts for the services of ten (10) or more nurses (for peer review of an RN, at least 5 of the 10 must be RNs) to conduct nursing peer review for purposes of TOC §301.401(1) and §301.402(e) (NPA) (relating to alternate reporting by nurses to nursing peer review when a nurse engages in conduct subject to reporting), §301.403 (relating to nursing peer review committee reporting), §301.405(c) (relating to nursing peer review of external factors as part of employer reporting), and §301.407(b) (relating to alternate reporting by state agencies to peer review).

(d) Minimum Due Process.
  (1) A licensed nurse subject to incident-based peer review is entitled to minimum due process under TOC §303.002(e) (NPR Law). Any person or entity that conducts incident-based peer review must comply with the due process requirements of this section even if the person or entity does not utilize the number of nurses described by subsection (c) of this section.

(2) A facility conducting incident-based peer review shall have written policies and procedures that, at a minimum, address:
  (A) the level of participation of nurse or nurse's representative at an incident-based peer review hearing beyond that required by this subsection;
  (B) confidentiality and safeguards to prevent impermissible disclosures including written agreement by all parties to abide by TOC §§303.006, 303.007, 303.0075 (NPR Law) and subsection (h) of this section;
  (C) handling of cases involving nurses who are impaired or suspected of being impaired by chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity in accordance with the TOC §301.410, and subsection (g) of this section;
  (D) reporting of nurses to the Board by incident-based peer review committee in accordance with the TOC §301.403, and subsection (i) of this section; and
  (E) effective date of changes to the policies which in no event shall apply to incident-based peer review proceedings initiated before the change was adopted unless agreed to in writing by the nurse being reviewed.
(3) In order to meet the minimum due process required by TOC Chapter 303 (NPR Law), the nursing peer review committee must:
  (A) comply with the membership and voting requirements as set forth in TOC §303.003 (NPR Law);
  (B) exclude from the committee, including attendance at the peer review hearing, any person or persons with administrative authority for personnel decisions directly relating to the nurse. This requirement does not exclude a person who is administratively responsible over the nurse being reviewed from appearing before the committee to speak as a fact witness;
  (C) provide written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility that:
    (i) the nurse's practice is being evaluated;
    (ii) the incident-based peer review committee will meet on a specified date not sooner than 21 calendar days and not more than 45 calendar days from date of notice, unless:
      (I) the incident-based peer review committee determines an extended time period (extending the 45 days by no more than an additional 45 days) is necessary in order to consult with a patient safety committee; or
      (II) otherwise agreed upon by the nurse and incident-based peer review committee; and
    (iii) includes the information required by subparagraph (D) of this paragraph.
  (D) Include in the notice required by subparagraph (C) of this paragraph:
    (i) a description of the event(s) to be evaluated in sufficient detail to inform the nurse of the incident, circumstances and conduct (error or omission), including date(s), time(s), location(s), and individual(s) involved. The patient/client shall be identified by initials or number to the extent possible to protect confidentiality but the nurse shall be provided the name of the patient/client;
    (ii) the name, address, telephone number of contact person to receive the nurse's response; and
    (iii) a copy of this rule (§217.19 of this title) and a copy of the facility's incident-based peer review plan, policies and procedures.
  (E) provide the nurse the opportunity to review, in person or by attorney, the documents concerning the event under review, at least 15 calendar days prior to appearing before the committee;
  (F) provide the nurse the opportunity to:
    (i) submit a written statement regarding the event under review;
    (ii) call witnesses, question witnesses, and be present when testimony or evidence is being presented;
    (iii) be provided copies of the witness list and written testimony or evidence at least 48 hours in advance of proceeding;
    (iv) make an opening statement to the committee;
    (v) ask questions of the committee and respond to questions of the committee; and
    (vi) make a closing statement to the committee after all evidence is presented;
  (G) complete its review no more than fourteen (14) calendar days after the incident-based peer review hearing, or in compliance with subparagraph (C)(ii) of this paragraph relating to consultation with a patient safety committee;
  (H) provide written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility of the findings of the committee within ten (10) calendar days of when the committee's review has been completed; and
  (I) permit the nurse to file a written rebuttal statement within ten (10) calendar days of the notice of the committee's findings and make the statement a permanent part of the incident-based peer review record to be included whenever the committee's findings are disclosed;
(4) An incident-based peer review committee's determination to report a nurse to the Board cannot be overruled, changed, or dismissed.
(5) Nurse's Right to Representation.

(A) A nurse shall have a right of representation as set out in this paragraph. These rights are minimum requirements and a facility may allow the nurse more representation. The incident-based peer review process is not a legal proceeding; therefore, rules governing legal proceedings and admissibility of evidence do not apply and the presence of attorneys is not required.
(B) The nurse has the right to be accompanied to the hearing by a nurse peer or an attorney. Representatives attending the incident-based peer review hearing must comply with the facility's incident-based peer review policies and procedures regarding participation beyond conferring with the nurse.
(C) If either the facility or nurse will have an attorney or representative present at the incident-based peer review hearing in any capacity, the facility or nurse must notify the other at least seven (7) calendar days before the hearing that they will have an attorney or representative attending the hearing and in what capacity.
(D) Notwithstanding any other provisions of these rules, if an attorney representing the facility or incident-based peer review committee is present at the incident-based peer review hearing in any capacity, including serving as a member of the incident-based peer review committee, the nurse is entitled to "parity of participation of counsel." "Parity of participation of counsel" means that the nurse's attorney is able to participate to the same extent and level as the facility's attorney, e.g., if the facility's attorney can question witnesses, the nurse's attorney must have the same right.

(6) A nurse whose practice is being evaluated may properly choose not to participate in the proceeding after the nurse has been notified under paragraph (3)(C) of this subsection. If a nurse elects not to participate in incident-based peer review, the nurse waives any right to procedural due process under TOC §303.002 (NPR Law) and this subsection.

(e) Use of Informal Work Group In Incident Based Peer Review. A facility may choose to initiate an informal review process utilizing a workgroup of the nursing incident-based peer review committee provided there are written policies for the informal workgroup that require:
(1) the nurse be informed of how the informal work group will function, and consent, in writing, to the use of an informal work group. A nurse does not waive any right to incident-based peer review by accepting or rejecting the use of an informal work group;
(2) if the informal work group suspects that the nurse's practice is impaired by chemical dependency or diminished mental capacity, the chair person must be notified to determine if peer review should be terminated and the nurse reported to the Board or to a Board-approved peer assistance program as required by subsection (g) of this section;
(3) the informal work group comply with the membership and voting requirements of subsection (d)(3)(A) and (B) of this section;
(4) the nurse be provided the opportunity to meet with the informal work group;
(5) the nurse have the right to reject any decision of the informal work group and to then have his/her conduct reviewed by the peer review committee, in which event members of the informal work group shall not participate in that determination; and
(6) ratification by the committee chair person of any decision made by the informal work group. If the chair person disagrees with a determination of the informal work group, the chair person shall convene the full peer review committee to make a determination regarding the conduct in question; and
(7) the chair person communicate any decision of the informal work group to the CNO or nurse administrator.

(f) Exclusions to Minimum Due Process Requirements. The minimum due process requirements set out in subsection (d) of this section do not apply to:
(1) peer review conducted solely in compliance with TOC §301.405(c) (NPA) relating to review of external factors, after a report of a nurse to the Board has already occurred under TOC §301.405(b) (relating to mandatory report by employer, facility or agency);
(2) reviews governed by subsection (g) of this section involving nurses whose practice is suspected of being impaired due to chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity; or
(3) when a person required to report a nurse believes that a nurse's practice is impaired or suspected of being impaired and has also resulted in a violation under TOC §301.410(b), that requires a direct report to the Board.

(g) Incident-Based Peer Review of a Nurse's Impaired Practice/Lack of Fitness.
(1) When a nurse's practice is impaired or suspected of being impaired due to chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity, peer review of the nurse shall be suspended. The nurse shall be reported to the Board or to a Board-approved peer assistance program in accordance with TOC §301.410 (related to reporting of impairment):
(A) if there is no reasonable factual basis for determining that a practice violation is involved, the nurse shall be reported to:
(i) the Board; or

(ii) a Board-approved peer assistance program, that shall handle reporting the nurse in accordance with §217.13 of this title; or

(B) if there is a reasonable factual basis for a determination that a practice violation is involved, the nurse shall be reported to the Board.

(2) Following suspension of peer review of the nurse, the committee shall proceed to evaluate external factors to determine if:

(A) any factors beyond the nurse's control contributed to a practice violation; and

(B) any deficiency in external factors enabled the nurse to engage in unprofessional or illegal conduct.

(3) If the committee determines under paragraph (2) of this subsection that external factors do exist for either paragraph (2)(A) or (B) of this subsection, the committee shall report its findings to a patient safety committee or to the CNO or nurse administrator if there is no patient safety committee.

(4) A facility, organization, contractor, or other entity does not violate a nurse's right to due process under subsection (d) of this section by suspending the committee's review of the nurse and reporting the nurse to the Board or a Board-approved peer assistance program in accordance with paragraph (1) of this subsection.

(5) Paragraph (1) of this subsection does not preclude a nurse from self-reporting to a peer assistance program or appropriate treatment facility.

(h) Confidentiality of Proceedings.

(1) Confidentiality of information presented to and/or considered by the incident-based peer review committee shall be maintained and the information not disclosed except as provided by TOC §§303.006, 303.007, and 303.0075 (NPR Law). Disclosure/discussion by a nurse with the nurse's attorney is proper because the attorney is bound to the same confidentiality requirements as the nurse.

(2) In accordance with TOC §303.0075, a nursing incident-based peer review committee, including an entity contracted to conduct peer review under TOC §303.0015(b), and any patient safety committee established by the same entity, may share information.

(A) A record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee.

(B) The privileges under this subsection may be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee.

(C) This section does not affect the application of TOC §303.007 (NPR Law) (relating to disclosures by peer review committee) to a nursing peer review committee.

(D) A committee that receives information from another committee shall forward any request to disclose the information to the committee that provided the information.

(3) A CNO or Nurse Administrator shall assure that policies are in place relating to sharing of information and documents between an Incident-Based Nursing Peer Review committee and a patient safety committee(s) that at a minimum, address:

(A) separation of confidential Incident-Based Nursing Peer Review information from the nurse's human resource file;

(B) methods in which shared communications and documents are labeled and maintained as to which committee originated the documents or communications;

(C) the confidential and separate nature of incident-based peer review and patient safety committee proceedings including shared information and documents; and

(D) the treatment of nurses who violate the policies including when a violation may result in a nurse being reported to the Board or a nursing peer review committee.

(i) Committee Responsibility to Evaluate and Report.

(1) In evaluating a nurse's conduct, the incident-based peer review committee shall review the evidence to determine the extent to which any deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

(2) An incident-based peer review committee shall consider whether a nurse's conduct constitutes one or more minor incidents under §217.16 of this title. In accordance with that section, the committee may determine that the nurse:

(A) can be remediated to correct the deficiencies identified in the nurse's judgment, knowledge, training, or skill; or

(B) should be reported to the Board for either a pattern of practice that fails to meet minimum standards, or for one or more events that the incident-based peer review committee determines cannot be categorized as a minor incident(s).

(3) An incident-based nursing peer review committee is not required to submit a report to the Board if:

(A) the committee determines that the reported conduct was a minor incident that is not required to be reported in accordance with provisions of §217.16 of this title; or
(B) the nurse has already been reported to the Board under TOC §301.405(b) (NPA) (employer reporting requirements).

(4) If the committee determines it is required to report a nurse to the Board, the committee shall submit to the Board a written, signed report that includes:
(A) the identity of the nurse;
(B) a description of the conduct subject to reporting;
(C) a description of any corrective action taken against the nurse;
(D) a recommendation as to whether the Board should take formal disciplinary action against the nurse, and the basis for the recommendation;
(E) the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control; and
(F) any additional information the Board requires.

(5) If an incident-based peer review committee determines that a deficiency in care by the nurse was the result of a factor(s) beyond the nurse's control, in compliance with TOC §303.011(b) (NPR Law) (related to required peer review committee report when external factors contributed to a nurse's deficiency in care), the committee must submit a report to the applicable patient safety committee, or to the CNO or nurse administrator if there is no patient safety committee. A patient safety committee must report its findings back to the incident-based peer review committee.

(6) An incident-based peer review committee is not required to withhold its determination of the nurse being incident-based peer reviewed, pending feedback from a patient safety committee, unless the committee believes that a determination from a patient safety committee is necessary in order for the incident-based peer review committee to determine if the nurse's conduct is reportable.
(A) If an incident-based peer review committee finds that factors outside the nurse's control contributed to a deficiency in care, in addition to reporting to a patient safety committee, the incident-based peer review committee may also make recommendations for the nurse, up to and including reporting to the Board.
(B) An incident-based peer review committee may extend the time line for completing the incident-based peer review process (extending the 45 days by no more than an additional 45 days) if the committee members believe they need input from a patient safety committee. The incident-based peer review committee must complete its review of the nurse within this 90-day time frame.

(7) An incident-based peer review committee's determination to report a nurse to the Board cannot be overruled, changed, or dismissed.

(j) Nurse's Duty to Report.
(1) A report made by a nurse to a nursing incident-based peer review committee will satisfy the nurse's duty to report to the Board under TOC §301.402 (mandatory report by a nurse) provided that the following conditions are met:
(A) The reporting nurse shall be notified of the incident-based peer review committee's actions or findings and shall be subject to TOC §303.006 (confidentiality of peer review proceedings); and
(B) The nurse has no reason to believe the incident-based peer review committee made its determination in bad faith.

(2) A nurse may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for filing a report in good faith under this section and TOC §301.402(f) (retaliation for a report made in good faith prohibited) or advising a nurse of the nurse's rights and obligations under this section and §301.402(f). A violation of this subsection or TOC §301.402(f) is subject to TOC §301.413 that provides a nurse the right to file a civil suit to recover damages. The nurse may also file a complaint with the regulatory agency that licenses or regulates the nurse's practice setting. The BON does not have regulatory authority over practice settings or civil liability.

(k) State Agency Duty to Report. A state agency that has reason to believe that a nurse has engaged in conduct subject to reporting shall report the nurse in writing to:
(1) the Board; or
(2) the applicable nursing peer review committee in lieu of reporting to Board.

(l) Integrity of Incident-Based Peer Review Process.
(1) Incident-Based Peer Review must be conducted in good faith. A nurse who knowingly participates in incident-based peer review in bad faith is subject to disciplinary action by the Board.
(2) The CNO or nurse administrator of a facility, association, school, agency, or of any other setting that utilizes the services of nurses is responsible for knowing the requirements of this rule and for taking reasonable steps to assure that incident-based peer review is implemented and conducted in compliance with the NPA, NPR Law, and this section.

(3) A determination by an incident-based peer review committee, a CNO, nurse administrator, or an individual nurse to report a nurse to the Board cannot be overruled, dismissed, changed, or reversed. An incident-based peer review committee, CNO, and individual nurse each have a separate responsibility to protect the public by reporting a nurse to the Board as set forth in TOC §§301.402, 301.405, 217.11(1)(K) of this title, and this section.

(m) Reporting Conduct of other Practitioners or Entities: Whistleblower Protections.
(1) This section does not expand the authority of any incident-based peer review committee or the Board to make determinations outside the practice of nursing.
(2) In a written, signed report to the appropriate licensing Board or accrediting body, and in accordance with TOC §301.4025 (report of unsafe practices of non-nurse entities), a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:
(A) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or
(B) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.
(3) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.
(4) A person may not suspend or terminate the employment of, or otherwise discipline, retaliate, or discriminate against, a person who reports, in good faith, under this subsection or who advises a nurse of the nurse's rights and obligations under this subsection. A violation of this subsection is subject to TOC §301.413 (NPA) that provides a nurse the right to file a civil suit to recover damages. The nurse may also file a complaint with the regulatory agency that licenses or regulates the nurse's practice setting. The BON does not have regulatory authority over practice settings or civil liability.

The provisions of this §217.19 adopted to be effective May 11, 2008, 33 TexReg 3633; amended to be effective January 9, 2012, 37 TexReg 62.

§217.20. Safe Harbor Peer Review for Nurses and Whistleblower Protections.

(a) Definitions.
(1) Assignment--Designated responsibility for the provision or supervision of nursing care for a defined period of time in a defined work setting. This includes but is not limited to the specified functions, duties, practitioner orders, supervisory directives, and amount of work designated as the individual nurse's responsibility. Changes in the nurse's assignment may occur at any time during the work period.
(2) Bad Faith--Knowingly or recklessly taking action not supported by a reasonable factual or legal basis. The term includes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process.
(3) Chief Nursing Officer (CNO)--The registered nurse, by any title, who is administratively responsible for the nursing services at a facility, association, school, agency, or any other setting that utilizes the services of nurses.
(4) Conduct Subject to Reporting defined by Texas Occupations Code (TOC) §301.401 of the Nursing Practice Act as conduct by a nurse that:
(A) violates the Nursing Practice Act (NPA) or a Board rule and contributed to the death or serious injury of a patient;
(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;
(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or
(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.
(5) Duty to a patient--A nurse's duty is to always advocate for patient safety, including any nursing action necessary to comply with the standards of nursing practice (§217.11 of this title) and to avoid engaging in unprofessional conduct (§217.12 of this title). This includes administrative decisions directly affecting a nurse's ability to comply with that duty.
(6) Good Faith--Taking action supported by a reasonable factual or legal basis. Good faith precludes misrepresenting the facts surrounding the events under review, acting out of malice or personal animosity, acting from a conflict of interest, or knowingly or recklessly denying a nurse due process.

(7) Incident-Based Peer Review--Incident-based peer review focuses on determining if a nurse's actions, be it a single event or multiple events (such as in reviewing up to five (5) minor incidents by the same nurse within a year's period of time) should be reported to the Board, or if the nurse's conduct does not require reporting because the conduct constitutes a minor incident that can be remediated. The review includes whether external factors beyond the nurse's control may have contributed to any deficiency in care by the nurse, and to report such findings to a patient safety committee as applicable.
(8) Malice--Acting with a specific intent to do substantial injury or harm to another.
(9) Minor incident--Conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person as described in §217.16 of this title.
(10) Nurse Administrator--Chief Nursing Officer (CNO) or the CNO's designee.
(11) Nursing Peer Review Law (NPR law)--Chapter 303 of the TOC. Nurses involved in nursing peer review must comply with the NPR Law.
(12) Nursing Practice Act (NPA)--Chapter 301 of the TOC. Nurses must comply with the NPA.
(13) Patient Safety Committee--Any committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety including:
(A) the entity's medical staff composed of individuals licensed under Subtitle B (Medical Practice Act, TOC §151.001, et seq);
(B) a medical committee under Subchapter D, Chapter 161 of the Health and Safety Code (§§161.031 - 161.033); or
(C) a multi-disciplinary committee, including nursing representation, or any committee established by the same entity to promote best practices and patient safety.
(14) Peer Review--Defined by TOC §303.001(5) (NPR Law) as the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term also includes the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns, report under Chapter 301, request peer review, and the resolution of workplace and practice questions relating to nursing and patient care. The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Peer review conducted by any entity must comply with NPR Law and with applicable Board rules related to incident-based or safe harbor peer review.
(15) Safe Harbor--A process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination, and licensure sanction when a nurse makes a good faith request for peer review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NPA or Board rules. Safe Harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at anytime during the work period when the initial assignment changes.
(16) Texas Occupations Code (TOC)--One of the topical subdivisions or "codes" into which the Texas Statutes or laws are organized. The TOC contains the statutes governing occupations and professions including the health professions. Both the NPA and NPR Law are located within these statutes. The TOC can be changed only by the Texas Legislature.
(17) Whistleblower Protections--Protections available to a nurse that prohibit retaliatory action by an employer or other entity because the nurse:
(A) made a good faith request for Safe Harbor Nursing Peer Review under TOC §303.005(c) and this section; or
(B) refused to engage in an act or omission relating to patient care that would constitute a violation of the NPA or Board rules as permitted by TOC §301.352 (NPA) (Protection for Refusal to Engage in Certain Conduct). A nurse invoking Safe Harbor under this section must comply with subsection (g) of this section if the nurse refuses to engage in the conduct or assignment; or
(C) made a lawful report of unsafe practitioners, or unsafe patient care practices or conditions, in accordance with TOC §301.4025 (report of unsafe practices of non-nurse entities) and §217.19(j)(2) of this title.

(b) Purpose. The purpose of this rule is to:
(1) define the process for invoking Safe Harbor;
(2) define minimum due process to which a nurse is entitled under safe harbor peer review;
(3) provide guidance to facilities, agencies, employers of nurses, or anyone who utilizes the services of nurses in the development and application of peer review plans;
(4) assure that nurses have knowledge of the plan as well as their right to invoke Safe Harbor; and
(5) provide guidance to the peer review committee in making its determination of the nurse's duty to the patient.

(c) Applicability of Safe Harbor Nursing Peer Review.

(1) TOC §303.0015 (NPR Law) requires a person who regularly employs, hires or contracts for the services of ten (10) or more nurses (for peer review of an RN, at least 5 of the 10 must be RNs) to permit a nurse to request Safe Harbor Peer Review when the nurse is requested or assigned to engage in conduct that the nurse believes is in violation of his/her duty to a patient.
(2) Any person or entity that conducts Safe Harbor Nursing Peer Review is required to comply with the requirements of this rule.

(d) Invoking Safe Harbor.
(1) Safe Harbor must be invoked prior to engaging in the conduct or assignment and at any of the following times:
(A) when the conduct is requested or assignment made;
(B) when changes occur in the request or assignment that so modify the level of nursing care or supervision required compared to what was originally requested or assigned that a nurse believes in good faith that patient harm may result; or
(C) when the nurse refuses to engage in the requested conduct or assignment.
(2) The nurse must notify the supervisor requesting the conduct or assignment in writing that the nurse is invoking Safe Harbor. The content of this notification must meet the requirements for a Quick Request Form described in paragraph (3) of this subsection. A detailed written account of the Safe Harbor request that meets the minimum requirements for the Comprehensive Written Request described in paragraph (4) of this subsection must be completed before leaving the work setting at the end of the work period.
(3) Quick Request Form.
(A) A nurse wishing to invoke Safe Harbor must make an initial request in writing that at a minimum includes the following:
(i) the nurse(s) name making the safe harbor request and his/her signature(s);
(ii) the date and time of the request;
(iii) the location of where the conduct or assignment is to be completed;
(iv) the name of the person requesting the conduct or making the assignment; and
(v) a brief explanation of why safe harbor is being requested.
(B) The BON Safe Harbor Quick Request Form may be used to invoke the initial request for Safe Harbor, but use of the form is not required. The initial written request may be in any written format provided the above minimum information is provided.
(4) Comprehensive Written Request for Safe Harbor Peer Review.
(A) A nurse who invokes Safe Harbor must supplement the initial written request under paragraph (3)(A) of this subsection by submitting a comprehensive request in writing before leaving the work setting at the end of the work period. This comprehensive written request must include a minimum of the following information:
(i) the conduct assigned or requested, including the name and title of the person making the assignment or request;
(ii) a description of the practice setting, e.g., the nurse's responsibilities, resources available, extenuating or contributing circumstances impacting the situation;
(iii) a detailed description of how the requested conduct or assignment would have violated the nurse's duty to a patient or any other provision of the NPA and Board Rules. If possible, reference the specific standard (§217.11 of this title) or other section of the NPA and/or Board rules the nurse believes would have been violated.
(iv) If applicable, the rationale for the nurse's not engaging in the requested conduct or assignment awaiting the nursing peer review committee's determination as to the nurse's duty. The rationale should refer to one of the justifications described in subsection (g)(2) of this section for not engaging in the conduct or assignment awaiting a peer review determination.
(v) any other copies of pertinent documentation available at the time. Additional documents may be submitted to the committee when available at a later time; and
(vi) the nurse's name, title, and relationship to the supervisor making the assignment or request.
(B) The BON Comprehensive Request for Safe Harbor Form may be used when submitting the detailed request for Safe Harbor, but use of the form is not required. The comprehensive written request may be in any written format provided the above minimum information is included.
(5) The nurse invoking Safe Harbor is responsible for keeping a copy of the request for Safe Harbor.
(6) A nurse may invoke Safe Harbor to question the medical reasonableness of a physician's order in accordance with TOC §303.005(e) (NPR Law). In this situation, the medical staff or medical director shall determine whether the order was reasonable.

(e) Safe Harbor Protections.
(1) To activate protections outlined in TOC §303.005(c) and paragraph (2) of this subsection, the nurse shall:
(A) invoke Safe Harbor in good faith;

(B) notify the supervisor in writing that he/she intends to invoke Safe Harbor in accordance with subsection (d) of this section. This must be done prior to engaging in the conduct or assignment for which safe harbor is requested and at any of the following times:
(i) when the conduct is requested or assignment made;
(ii) when changes occur in the request or assignment that so modify the level of nursing care or supervision required compared to what was originally requested or assigned that a nurse believes in good faith that patient harm may result; or
(iii) when the nurse refuses to engage in the requested conduct or assignment.

(2) TOC §303.005(c) and (h) (NPR Law) and §301.352 provide the following protections:
(A) A nurse may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for requesting Safe Harbor in good faith.
(B) A nurse or other person may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for advising a nurse in good faith of the nurse's right to request a determination, or of the procedures for requesting a determination.
(C) A nurse is not subject to being reported to the Board and may not be disciplined by the Board for engaging in the conduct awaiting the determination of the peer review committee as permitted by subsection (g) of this section. A nurse's protections from disciplinary action by the Board for engaging in the conduct or assignment awaiting peer review determination remain in place for 48 hours after the nurse is advised of the peer review committee's determination. This time limitation does not affect the nurse's protections from retaliation by the facility, agency, entity or employer under TOC §303.005(h)(NPR Law) for requesting Safe Harbor.

(3) If retaliation occurs, TOC §301.413 (NPA) provides a nurse the right to file civil suit to recover damages. The nurse may also file a complaint with the appropriate regulatory agency that licenses or regulates the nurse's practice setting. The BON does not have regulatory authority over practice settings or civil liability.

(4) Safe Harbor protections do not apply to any civil action for patient injury that may result from the nurse's practice.

(f) Exclusions to Safe Harbor Protections.
(1) A nurse's protections from disciplinary action by the Board under subsection (e)(2) of this section do not apply to:
(A) the nurse who invokes Safe Harbor in bad faith;
(B) conduct the nurse engages in prior to the request for Safe Harbor; or
(C) conduct unrelated to the reason for which the nurse requested Safe Harbor.

(2) If the peer review committee determines that a nurse has engaged in conduct subject to reporting that is not related to the request for Safe Harbor, the committee must comply with the requirements of §217.19 of this title.

(g) Nurse's Right to Refuse to Engage in Certain Conduct Pending Nursing Safe Harbor Peer Review Determination.
(1) A nurse invoking safe harbor may engage in the requested conduct or assignment while awaiting peer review determination unless the conduct or assignment is one in which:
(A) the nurse lacks the basic knowledge, skills, and abilities that would be necessary to render the care or engage in the conduct requested or assigned at a minimally competent level such that engaging in the requested conduct or assignment would expose one or more patients to an unjustifiable risk of harm; or
(B) the requested conduct or assignment would constitute unprofessional conduct and/or criminal conduct such as fraud, theft, patient abuse, exploitation, or falsification.

(2) If a nurse refuses to engage in the conduct or assignment because it is beyond the nurse's scope as described under paragraph (1)(A) of this subsection:
(A) the nurse and supervisor must collaborate in an attempt to identify an acceptable assignment that is within the nurse's scope and enhances the delivery of safe patient care; and
(B) the results of this collaborative effort must be documented in writing and maintained in peer review records by the chair of the peer review committee.

(h) Minimum Due Process.
(1) A person or entity required by TOC §303.005(i) to provide nursing peer review shall adopt and implement a policy to inform nurses of their right to request a nursing peer review committee determination (Safe Harbor Nursing Peer Review) and the procedure for making a request.

(2) In order to meet the minimum due process required by TOC Chapter 303, the nursing peer review committee shall:
(A) comply with the membership and voting requirements as set forth in TOC §303.003;
(B) exclude from the committee membership, any persons or person with administrative authority for personnel decisions directly affecting the nurse;

(C) limit attendance at the Safe Harbor Nursing Peer Review hearing by a CNO, nurse administrator, or other individual with administrative authority over the nurse, including the individual who requested the conduct or made the assignment, to appearing before the safe harbor peer review committee to speak as a fact witness; and

(D) Permit the nurse requesting safe harbor to:

(i) appear before the committee;

(ii) ask questions and respond to questions of the committee; and

(iii) make a verbal and/or written statement to explain why he or she believes the requested conduct or assignment would have violated a nurse's duty to a patient.

(i) Safe Harbor Timelines.

(1) The Safe Harbor Nursing Peer Review committee shall complete its review and notify the CNO or nurse administrator within 14 calendar days of when the nurse requested Safe Harbor.

(2) Within 48 hours of receiving the committee's determination, the CNO or nurse administrator shall review these findings and notify the nurse requesting safe harbor of both the committee's determination and whether the administrator believes in good faith that the committee's findings are correct or incorrect.

(3) The nurse's protection from disciplinary action by the Board for engaging in the conduct or assignment awaiting peer review determination expires 48 hours after the nurse is advised of the peer review committee's determination. The expiration of this protection does not affect the nurse's protections from retaliation by the facility, agency, entity or employer under TOC §303.005(h) for requesting Safe Harbor.

(j) General Provisions.

(1) The Chief Nursing Officer (CNO) or nurse administrator of a facility, association, school, agency, or of any other setting that utilizes the services of nurses is responsible for knowing the requirements of this Rule and for taking reasonable steps to assure that peer review is implemented and conducted in compliance with the NPA and the NPR law.

(2) Safe Harbor Nursing Peer Review must be conducted in good faith. A nurse who knowingly participates in nursing peer review in bad faith is subject to disciplinary action by the Board.

(3) The peer review committee and participants shall comply with the confidentiality requirement of TOC §303.006 and §303.007 relating to confidentiality and limited disclosure of peer review information.

(4) If a nurse requests a Safe Harbor Peer Review determination under TOC §303.005(b) and refuses to engage in the requested conduct or assignment pending the safe harbor peer review, the determinations of the committee are not binding if the CNO or nurse administrator believes in good faith that the committee has incorrectly determined a nurse's duty.

(A) In accordance with TOC §303.005(d), the determination of the safe harbor peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct.

(B) If the CNO or nurse administrator in good faith disagrees with the committee's determination, the rationale for disagreeing must be recorded and retained with the peer review records.

(C) If the CNO or nurse administrator believes the peer review was conducted in bad faith, she/he has a duty to report the nurses involved under TOC §301.402 (NPA) and §217.11(1)(K) of this title.

(D) This section does not affect the protections under TOC §303.005(c)(1) and §301.352 relating to a nurse's protection from disciplinary action or discrimination for making a request for Safe Harbor Peer Review.

(k) Use of Informal Work Group In Safe Harbor Nursing Peer Review. A facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee provided that the final determination of the nurse's duty complies with the time lines set out in this rule and there are written policies for the informal workgroup that require:

(1) the nurse to:

(A) be informed how the informal workgroup will function and that the nurse does not waive any right to peer review by accepting or rejecting the use of an informal workgroup; and

(B) consent, in writing, to the use of an informal workgroup;

(2) the informal workgroup to comply with the membership and voting requirements of subsection (h) of this section;

(3) the nurse to be provided the opportunity to meet with the informal workgroup;

(4) the nurse to have the right to reject any decision of the informal workgroup and have the entire committee determine if the requested conduct or assignment violates the nurse's duty to the patient(s), in which event members of the informal workgroup shall not participate in that determination;

(5) ratification by the safe harbor peer review committee chair person of any decision made by the informal workgroup. If the chair person disagrees with a determination of the informal workgroup, the chair person shall convene the full peer review committee to review the conduct in question; and

(6) the peer review chair person communicate any decision of the informal work group to the CNO or nurse administrator.

(l) Reporting Conduct of other Practitioners or Entities; Whistleblower Protections.
  (1) This subsection does not expand the authority of any safe harbor peer review committee or the Board to make determinations outside the practice of nursing.
  (2) In a written, signed report to the appropriate licensing Board or accrediting body, and in accordance with TOC §301.4025, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:
    (A) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or
    (B) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.
  (3) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.
  (4) A person may not suspend or terminate the employment of, or otherwise discipline, retaliate, or discriminate against, a person who reports, in good faith, under this section or advises a nurse of the nurse's rights and obligations under this section. A violation of this subsection is subject to TOC §301.413 that provides a nurse the right to file civil suit to recover damages. The nurse may also file a complaint with the regulatory agency that licenses or regulates the nurse's practice setting. The BON does not have regulatory authority over practice settings or civil liability.

The provisions of this §217.20 adopted to be effective May 11, 2008, 33 TexReg 3633; amended to be effective July 29, 2008, 33 TexReg 5930; amended to be effective January 9, 2012, 37 TexReg 62.

§217.21. Remedial Education Course Providers and Remedial Education Courses.

(a) Purpose. In situations where an individual has demonstrated a knowledge, judgment, or skills deficit, the Board believes that educational courses can serve as an effective form of remediation provided that the courses are well developed, based on sound educational principles, and taught by qualified instructors. This section establishes the requirements for the approval of remedial education course providers and remedial education courses.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
  (1) Remedial education course--An educational course that:
    (A) meets the requirements of subsection (e) of this section;
    (B) is not currently accredited or approved by a licensing authority or organization recognized by the Board;
    (C) is designed to address an individual's competency deficiencies; and
    (D) is required to be completed by the Board as part of a disciplinary and/or eligibility order.
  (2) Remedial education course provider--An individual or organization that meets the requirements of subsection (d) of this section and is approved by the Board to offer a remedial education course to an individual.

(c) Approval Required. A remedial education course in nursing jurisprudence and ethics, medication administration, physical assessment, pharmacology, and nursing documentation must be approved by the Board. A remedial education course provider seeking to offer one of these remedial education courses must be approved by the Board prior to offering the course to an individual.

(d) Remedial Education Course Providers. A remedial education course provider applicant seeking initial approval from the Board must submit a completed remedial education course provider application to the Board. The provider applicant must verify the application by attesting to the truth and accuracy of the information in the application.
  (1) Application. The Board may require the following items in order to approve or disapprove the application:
    (A) the name, physical address, and mailing address of the provider applicant;
    (B) the name and contact information of the provider applicant's designated authorized representative;
    (C) the process used by the provider applicant for evaluating the credentials and teaching competency of its instructors;
    (D) a statement certifying that the provider applicant will comply with all requirements set forth in this section; and
    (E) any other relevant information reasonably necessary to approve or disapprove the application, as specified by the Board.

(2) Course Instructors. Provider applicants must certify that all course instructors meet the following requirements:
  (A) An instructor must hold a current license or privilege to practice as a registered nurse (RN) in the state in which the remedial education course will be provided;
  (B) An instructor must hold a master's degree in nursing from an approved or accredited institution or a doctoral degree, that in the Board's opinion, relates to an area of study relevant to the course content;
  (C) An instructor must show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach;
  (D) An instructor must have a minimum of three years recent professional nursing experience. Professional nursing experience includes any activity, assignment, or task in which a nurse utilizes his/her nursing knowledge, judgment, or skills; and
  (E) An instructor may not be the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or have a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.
(3) Records.
  (A) An approved remedial education course provider must maintain as a part of the provider's records a written statement from each instructor certifying that the instructor is qualified as an instructor, the basis of qualification, and that the instructor agrees to comply with all course requirements outlined in this section.
  (B) An approved remedial education course provider must maintain verification of an individual's participation and completion of a remedial education course and all information described or required under this section for a period of not less than five years.
(4) Renewal. The Board's approval of a remedial education course provider is valid for a period of up to twenty four months from the date of issuance and shall expire on the last day of the month of March in odd numbered years. A remedial education course provider must renew its Board approval by submitting a renewal application to the Board in advance of its renewal date. A remedial education course provider that has been approved by the Board prior to, or on the effective date of this section, is not required to renew its approval, but must seek the Board's approval and the renewal of such approval for each remedial education course it seeks to offer.

(e) Remedial Education Courses. A remedial education course provider must submit a completed remedial education course application to the Board for each course the provider wishes to offer and pay the required fee specified by §223.1 of this title (relating to Fees), which is not refundable.
(1) Application. A remedial education course application must include the following:
  (A) a statement identifying the knowledge, skills, or abilities an individual is expected to obtain through completion of the remedial education course;
  (B) a detailed course content outline, measurable learning objectives, and the length of the remedial education course in hours;
  (C) a description of how adult educational and learning principles are reflected in the remedial education course;
  (D) a method of verifying an individual's participation and successful completion of the remedial education course;
  (E) a method of evaluation by which a remedial education course provider measures how effectively the remedial education course meets its objectives and provides for input; and
  (F) any other relevant information reasonably necessary to approve or disapprove the application, as specified by the Board.
(2) Course content. The course content must:
  (A) meet the requirements specified by the Board for each type of course; and
  (B) be consistent with the following:
    (i) the Occupations Code Chapters 301, 303, 304, and 305;
    (ii) Chapters 211 - 227 of this title;
    (iii) Board position statements 15.1 - 15.26;
    (iv) the Board's adopted Eligibility and Disciplinary Sanction Policies regarding Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification; and
    (v) the Board's adopted Guidelines for Criminal Conduct.

(f) Remedial education courses may consist of classroom, classroom equivalent, or clinical courses, as specified by the Board.

(g) Renewal. Unless withdrawn or otherwise provided herein, a remedial education course is approved until the approval of the sponsoring remedial education course provider expires. The approval of a remedial education course may be renewed simultaneously with the renewal of the approval of the sponsoring remedial education

course provider if the provider certifies on the renewal application that the remedial education course continues to meet the requirements of this section. The approval of a remedial education course that has been approved by the Board prior to, or on the effective date of this section, will expire on March 31, 2013, and must be timely renewed. Its renewal will be valid for up to twenty four months from the date of issuance and shall expire on the last day of the month of March in odd numbered years. All remedial education course providers must pay the required remedial education course renewal fee specified by §223.1 of this title, which is not refundable.

(h) Withdrawal of Approval. The Board may withdraw the approval of a remedial education course provider that fails to maintain compliance with the requirements of this section. If the Board withdraws the approval of a remedial education course provider, the provider shall cease offering all remedial education courses upon notice from the Board. The Board may withdraw the approval of a remedial education course if it fails to comply with the requirements of this section. If the Board withdraws the approval of a remedial education course, the sponsoring remedial education course provider shall cease offering the course upon notice from the Board. Notice is presumed to be effective on the third day after the date on which the Board mails the notice.

The provisions of this §217.21 adopted to be effective August 11, 2011, 36 TexReg 4953.

§217.22. Special Accommodations.

(a) The Board will provide reasonable accommodations for its licensing examinations as set forth in this section.

(b) Individuals requesting special accommodations must submit the following information to the Board:
  (1) A completed Special Accommodations Request Form;
  (2) A Professional Documentation of Disability Form, completed within the three years immediately preceding the accommodation request by a diagnostician meeting the Board's requirements;
  (3) A completed Consent to Release Information Form; and
  (4) A Nursing Program Verification Form completed by the dean or director of the nursing program attended.

(c) An individual requesting special accommodations must submit the information required by this section to the Board at least 30 calendar days prior to registering for the licensing examination. The Board will process the accommodation request once all of the required information and documentation is received.

(d) The Board's requirements for diagnosticians and the forms referenced in subsection (b) of this section may be found on the Board's website, located at http://www.bon.texas.gov/olv/pdfs/SPECACC.pdf.

The provisions of this §217.22 adopted to be effective January 9, 2012, 37 TexReg 66.

CHAPTER 219. ADVANCED PRACTICE NURSE EDUCATION

§219.1. General Requirements and Purpose.

(a) General Requirements. Advanced practice nursing educational programs in the State of Texas shall be approved by the Board until the program is accredited or approved by a national advanced practice nursing education accrediting body recognized by the Board.
   (1) An educational institution located in Texas may apply for Board approval for advanced practice nursing educational programs that prepare either nurse practitioners or clinical nurse specialists. Only that portion of the program of study that qualifies registered nurses for authorization to practice in an advanced role and specialty recognized by the Board is eligible for approval. Board approval shall be limited to only those programs seeking initial approval that do not otherwise hold national accreditation or approval from a national nursing education accrediting body for master's or doctoral level nursing education.
   (2) To be eligible to apply for Board approval, the new advanced practice nursing educational program must be at or beyond the master's level of nursing education.

(b) The director and faculty are accountable for complying with the Nursing Practice Act and Board rules and regulations.

(c) Advanced practice nursing educational programs shall provide reasonable and uniform standards based upon sound educational principles.

(d) Purpose. This rule has been developed for use by nurse practitioner and clinical nurse specialist programs seeking approval by the Board in order to:
   (1) Promote safe and effective advanced practice nursing,
   (2) Serve as a guide for development of new advanced practice nursing educational programs that prepare nurse practitioners and clinical nurse specialists, and
   (3) Provide criteria for the evaluation of new advanced practice nursing educational programs that prepare nurse practitioners and clinical nurse specialists.

The provisions of this §219.1 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accredited program—A program that has been determined to have met the standards set by a national advanced practice nursing education accrediting body recognized by the Board.

(2) Advanced practice nurse—A registered nurse authorized by the Board to practice as an advanced practice nurse based on completing an advanced practice nursing educational program acceptable to the Board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including, but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services.

(3) Advanced practice nursing educational program—A post-basic advanced practice nursing educational program at or beyond the master's level.

(4) Affiliating agency—Agencies outside the institution that are utilized in providing learning experiences for the students.

(5) Approved advanced practice nursing educational program—An advanced practice nursing educational program approved by the Texas Board of Nursing.

(6) Board—The Texas Board of Nursing.

(7) Clinical learning experiences—Planned, faculty-guided learning experiences that involve direct contact with patients or simulation.

(8) Course—Organized subject content and related activities, that may include didactic, laboratory and/or clinical experiences, planned to achieve specific objectives within a given time period.

(9) Curriculum—Course offerings that, in aggregate, compose the total learning activities in a program of study.

(10) Diagnosis and management course—A course offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions. Supervised clinical practice must include the opportunity to provide pharmacological and non-pharmacological management of diseases and conditions considered within the full scope of practice of the advanced practice nurse's authorized specialty and role.

(11) Didactic learning experiences—Any faculty-guided learning activities that take place in the classroom, learning resource center, skills laboratory, or similar settings, or by distance education.

(12) Director—A registered nurse responsible for the administration of the advanced practice nursing educational program who meets the requirements as stated in §219.6(f) of this chapter (relating to Administration and Organization).

(13) Faculty member—An individual employed or appointed to teach in the advanced practice nursing educational program who meets the requirements as stated in §219.7 of this chapter (related to Faculty Qualification and Faculty Organization).

(14) Governing institution—A college or university responsible for the administration and operation of the program.

(15) Objectives/Outcomes—Clear statements of expected behaviors that are attainable and measurable.
(A) Program Objectives/Outcomes—Broad statements used to direct the overall student learning toward the achievement of expected program outcomes.
(B) Clinical Objectives/Outcomes—Statements describing expected student behaviors throughout the curriculum that represent progression of students' cognitive, affective and psychomotor achievement in clinical practice across the curriculum.
(C) Course Objectives/Outcomes—Statements describing expected behavioral changes in the learner upon successful completion of specific curriculum content that serve as the mechanism for evaluation of student progression.

(16) Philosophy/Mission—Statement of concepts expressing fundamental values and beliefs regarding human nature as they apply to advanced practice nursing education and practice and upon which the curriculum is based.

(17) Practicum—That portion of the program consisting of clinical experiences for the purpose of integrating theory with practice, including, but not limited to, preceptorship and/or residency and integration.

(18) Program of study—The courses and learning experiences that constitute the requirements for completion of an advanced practice nursing educational program.

(19) Qualified preceptor—An advanced practice nurse, physician or other health care professional acceptable to the Board who meets the following requirements:
(A) Holds an active, unencumbered license;
(B) Is in current practice in the advanced specialty area;
(C) Is committed to the concept of the advanced practice nurse; and
(D) Functions as a supervisor and teacher and evaluates the student's performance in the clinical setting.

(20) Recommendation—A suggestion based upon program assessment indirectly related to the rules to which the program must respond in a method of their choosing.

(21) Requirement—mandatory criterion based upon program assessment that is specified in rule and must be addressed in the manner prescribed.

(22) Shall—Denotes mandatory requirements.

(23) Texas Higher Education Coordinating Board (THECB)—A state agency created by the Legislature to provide coordination for the Texas higher education system, institutions and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, facilities and physical plants (Texas Education Code, Title 3, Subchapter B, chapter 61).

(24) Unencumbered license—A professional license that does not have stipulations against it.

The provisions of this §219.2 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.3. Program Development, Closure, and Transfer of Administrative Control.

(a) New Programs.
  (1) Proposal to develop an advanced practice nursing educational program
    (A) A college or university regionally accredited by an agency recognized by the THECB is eligible to submit a proposal to develop a new advanced practice nursing educational program.
    (B) The process to establish a new advanced practice nursing educational program shall be initiated with the Board office one year prior to the anticipated start of the program.
    (C) The proposal shall be completed under the direction/consultation of a registered nurse who meets the approved qualifications for a program director according to §219.6 of this chapter.
    (D) Sufficient nursing faculty with appropriate expertise shall be in place for development of the curriculum component of the program.
    (E) The proposal shall include information outlined in Board guidelines.
    (F) After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.
    (G) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.
    (H) The program shall not admit students until the Board approves the proposal and grants initial approval.
    (I) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.
    (J) When the proposal is submitted, an initial non-refundable approval fee shall be assessed per §223.1 (related to Fees) of this title.
    (K) A proposal without action for one calendar year shall be inactivated.
  (2) Survey visits shall be conducted, as necessary, by Board staff until full accreditation by a Board recognized national nursing education accrediting body is granted.

(b) Transfer of Administrative Control by Governing Institutions. A governing institution that wishes to transfer administrative control of the advanced practice nursing educational program to another governing institution shall follow the procedures specified in Board guidelines.

(c) Closing a Program or Portion Thereof.
  (1) When the decision to close a program or portion thereof has been made, the director shall notify the Board and submit a written plan for closure that includes the following:
    (A) Reason for closing the program or portion thereof;
    (B) Date of intended closing;
    (C) Academic provisions for students;
    (D) Provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and
    (E) Methods to be used to maintain requirements and standards until the program or portion thereof closes.
  (2) The program or portion thereof shall continue within standards until all classes that are enrolled at the time of the decision to close have graduated. In the event this is not possible, a plan must be developed whereby students may transfer to other accredited or approved programs.

The provisions of this §219.3 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.4. Approval.

(a) Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations . Change from one status to another is based on survey visits or other factors listed under this subsection. Types of approval include:
  (1) Approval. Approval initially provides written authorization to admit students and is granted if the program meets the requirements of the Board. Ongoing approval is contingent upon the program continuing to meet the Board's legal and educational requirements.
  (2) Approval With Warning.
    (A) Issuance of warning. When the Board determines that a program is not meeting the Board's legal and/or education requirements, the program is issued a warning, is provided a list of the deficiencies, and is given a specified time in which to correct the deficiencies.
    (B) Failure to correct deficiencies. If the program fails to correct the deficiencies within the prescribed period, the Board may:
      (i) Restrict admissions or other program activities until the deficiencies are corrected,
      (ii) Place the program on conditional approval, or

(iii) Deny approval.

(3) Conditional Approval. Conditional approval is granted for a time specified by the Board in order to provide additional time to correct the deficiencies.
   (A) The program shall not admit students while on conditional approval.
   (B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be removed.
   (C) Depending upon the degree to which the Board's legal and/or educational requirements are met, the Board may change the approval status to approved, approval with warning, or deny approval.

(4) Denial of Approval. The Board may deny initial or ongoing approval of a program that fails to meet legal and/or educational requirements within the specified time. The program shall be removed from the list of Board-approved advanced practice nursing educational programs.

(b) Factors Jeopardizing Program Approval Status. Approval may be changed or denied for any of the following reasons:
   (1) Deficiencies in compliance with the rule;
   (2) Noncompliance with the school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;
   (3) Failure to submit records and reports to the Board office within designated time frames;
   (4) Failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;
   (5) Failure to comply with Board requirements or to respond to recommendations within the specified time;
   (6) Student enrollments without sufficient faculty, facilities and/or preceptor sites;
   (7) Failure to recruit qualified faculty and preceptors with appropriate role preparation for program type;
   (8) Failure to obtain national accreditation or approval within five years from the date the first class completes the program; or
   (9) Other activities or situations that demonstrate to the Board that a program is not meeting legal and/or educational requirements and standards.

(c) Determination of Approval Status.
   (1) Survey visit. Each advanced practice nursing educational program will be visited as necessary once approval has been granted. A written report of the survey visit will be reviewed by the Board at a regularly scheduled meeting.
   (2) Ongoing approval may be continued on the basis of pertinent data as determined by the Board when a program is not visited by staff.
   (3) Notice of a program's approval status will be sent to the director, chief administrative officer of the governing institution, and others as determined by the Board.

(d) Withdrawal from the Approval Process.
   (1) Board approval of an advanced practice nursing educational program shall automatically be withdrawn with the first occurrence of any of the following:
      (A) The program obtains accreditation by a national advanced practice nursing education accrediting agency recognized by the Board;
      (B) Five years from the date the first class completes the program; or
      (C) The program is denied national accreditation.
   (2) An advanced practice nursing educational program approved by the Board may elect to withdraw from the Board approval process by notifying the Board of its intention to withdraw in writing.
   (3) After withdrawal from the Board approval process, the advanced practice nursing educational program shall be removed from the list of Board approved nursing educational programs.
   (4) Withdrawal of approval status will become effective on a date agreed upon by the Board and the program unless otherwise indicated in this subsection.
   (5) Programs may reapply for initial approval at any time. Programs that have had Board approval withdrawn for failure to obtain accreditation by a national nursing education accrediting agency recognized by the Board must reapply for initial approval by submitting a new proposal as described in this chapter and in Board guidelines.

The provisions of this §219.4 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.5. Mission/Philosophy and Objectives/Outcomes.

(a) The philosophy/mission and objectives/outcomes of the advanced practice nursing educational program shall be developed by the faculty.

(b) The philosophy/mission and objectives/outcomes shall be consistent with:
   (1) The philosophy/mission of the governing institution;

(2) The scope of practice of the advanced specialty and role;
(3) The targeted population or setting for delivery of advanced practice nursing care; and
(4) Professional, educational, and ethical standards of nursing.

(c) The program objectives/outcomes shall be consistent with the program's philosophy/mission and shall describe the capabilities of the graduates of the program. Objectives/Outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The written philosophy/mission and objectives/outcomes shall be used as a basis for planning, organizing, implementing and evaluating the program and shall be shared with the students.

(e) The faculty shall periodically review the philosophy/mission and objectives/outcomes, consider student input as appropriate, and make necessary revisions.

The provisions of this §219.5 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.6. Administration and Organization.

(a) The advanced practice nursing educational program shall operate within or be affiliated with a college or university authorized to award graduate degrees.

(b) The governing institution shall be regionally accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(c) There shall be an organizational chart that demonstrates the relationship of the advanced practice nursing educational program to the governing institution and indicates lines of responsibility and authority.

(d) The governing institution shall provide financial support and resources needed to operate a program that meets the legal and educational requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment and qualified administrative and instructional personnel.

(e) In colleges and universities, the program shall have comparable status with other academic units in order to adequately recruit, employ, and retain sufficient qualified faculty members with graduate preparation and expertise necessary for students to meet program goals.

(f) Program faculty shall have comparable status with other academic units in areas such as rank, promotion, tenure, leave, benefits, academic rights, and professional development.

(g) Each advanced practice nursing educational program shall be administered by a qualified individual who is accountable for the planning, implementation and evaluation of the advanced practice nursing educational program. The director shall:
(1) Hold a current, valid, unencumbered license or privilege to practice as a registered nurse in the State of Texas;
(2) Hold a minimum of a master's degree in nursing or the equivalent thereof as determined by the Board;
(3) Be authorized to practice as an advanced practice nurse in a role and specialty appropriate to the type of program;
(4) Have a minimum of three years teaching experience in a program appropriately related to the type of program being administered; and
(5) Have demonstrated knowledge, skills, and abilities in administration within graduate level advanced practice nursing educational programs.

(h) Sufficient time shall be provided for the director to administer the program. The teaching load shall not negatively impact program administration responsibilities.

(i) If the director of the program changes, the director shall submit to the Board written notification of the change indicating the final date in the position.
(1) A new director qualification form shall be submitted to the Board office by the governing institution for approval prior to appointment in a Board-approved advanced practice nursing educational program.
(2) A vitae and all official transcripts shall be submitted with the new director qualification form.

The provisions of this §219.6 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.7. Faculty Qualifications and Faculty Organization.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the governing institution to the extent possible. Variations of these

policies may be necessary because of the nature of the curriculum for which the faculty must have authority and responsibility.
(1) Policies concerning workload for faculty and the director shall be in writing.
(2) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process as well as meet other responsibilities/expectations such as scholarly activities, practice, and research.

(b) An advanced practice nursing educational program shall employ sufficient faculty members with appropriate graduate preparation and expertise necessary to enable students to meet the program goals. The number of faculty members shall:
(1) Provide students with a level of instruction and supervision that is compatible with safe practice including educational experiences necessary to meet students' learning needs; and
(2) Be determined by such factors as:
(A) The number and level of students enrolled;
(B) The curriculum plan;
(C) Activities and responsibilities required of faculty;
(D) The number and geographic locations of preceptors, affiliate agencies, and clinical practice settings; and
(E) The complexity of care and acuity of patients.

(c) Faculty Qualifications and Responsibilities.
(1) Documentation of faculty qualifications shall be included in the official files of the program. Each nurse faculty member shall:
(A) Hold a current, valid license or privilege to practice as a registered nurse in the state of Texas;
(B) Hold a minimum of a master's degree in nursing or the equivalent thereof as determined by the Board;
(C) Be qualified through academic preparation to teach the subject assigned; and
(D) Shall meet the standards for faculty appointment by the governing institution.
(2) There shall be written personnel policies for non-nursing faculty who teach nursing courses that are in keeping with accepted educational standards and are consistent with those of the governing institution to the extent possible. Variations of these policies may be necessary because of the nature of the curriculum for which the faculty must have authority and responsibility. Non-nursing faculty shall have graduate level educational preparation verified by the director as appropriate to the subject area.
(3) Teaching assignments shall be commensurate with the faculty member's education and experience as an advanced practice nurse.
(4) Faculty responsible for clinical management courses or involved in clinical teaching and supervision shall also:
(A) Be authorized to practice as an advanced practice nurse;
(B) Have clinical practice experience at the advanced practice nursing level of at least two years. If a faculty member has less than two years advanced practice nursing experience, that faculty member must be responsible to a qualified faculty member; and
(C) Maintain clinical practice within the advanced practice role and specialty.

(d) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities. The policies, procedures, and/or bylaws shall be consistent with the governing institution.

(e) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the program. Such participation includes, but is not limited to, the initiation and/or change of academic policies, personnel policies, curriculum, utilization of affiliate agencies, and program evaluation.
(1) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.
(2) Minutes of faculty organization and/or committee meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(f) There shall be written plans for faculty orientation, development, and evaluation.
(1) Orientation of new faculty members shall be initiated at the onset of employment.
(2) A program of faculty development shall be offered to encourage and assist faculty members to meet the program's needs as well as individual faculty member's professional development needs.
(3) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluations.

The provisions of this §219.7 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.8. Students.

(a) Students should have a mechanism for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(b) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.

(c) Written policies regarding student admission and progression shall be developed and implemented in accordance with the requirements that the governing institution must meet to maintain accreditation. Student policies that differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(d) Students shall hold a current, valid license or privilege to practice as a registered nurse in the state(s) in which they participate in any clinical learning experiences, including, but not limited to, laboratory or observational experiences involving patient contact or having the potential to involve patient contact, including contact via telehealth.

(e) There shall be written policies for student grievance, health, safety, and welfare.

(f) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

The provisions of this §219.8 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.9. Program of Study.

(a) The program of study shall be:
  (1) At least the equivalent of one academic year;
  (2) Planned, implemented, and evaluated by the faculty;
  (3) Based on the philosophy/mission and objectives/outcomes;
  (4) Organized logically and sequenced appropriately;
  (5) Based on educational principles acceptable to the Board; and
  (6) At or beyond the master's degree level.

(b) For clinical nurse specialist programs, the program of study must also qualify the graduate for a minimum of a master's degree in nursing.

(c) The curriculum content shall include:
  (1) Didactic and clinical learning experiences necessary to meet the objectives/outcomes;
  (2) Concepts and principles critical to advanced practice nursing;
  (3) Professional and legal implications of the nurse in the advanced role;
  (4) Knowledge and skills relevant to practice in the area of specialty; and
  (5) Evidence of inclusion of the following curricular requirements:
    (A) Separate courses in pharmacotherapeutics, advanced assessment and pathophysiology and/or psychopathology (psychopathology accepted for advanced practice nurses prepared in the psychiatric/mental health specialty only). These courses must be graduate level academic courses;
    (B) Evidence of theoretical and clinical role preparation;
    (C) Evidence of clinical major courses in the specialty area;
    (D) Evidence of a practicum/preceptorship/internship to integrate clinical experiences as reflected in essential content and the clinical major courses.
    (E) In this subsection, the following terms have the following definitions:
      (i) Advanced Assessment Course means a course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans.
      (ii) Pharmacotherapeutics means a course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.
      (iii) Pathophysiology means a course that offers content that provides a comprehensive, system-focused pathology course that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathological phenomena produced by altered states across the life span.
      (iv) Role preparation means formal didactic and clinical experiences/content that prepare nurses to function in an advanced nursing role.

(v) Clinical major courses means courses that include didactic content and offer clinical experiences in a specific clinical specialty/practice area.
(vi) Clinical specialty area means specialty area of clinical practice based upon formal didactic preparation and clinical experiences.
(vii) Essential content means didactic and clinical content essential for the educational preparation of individuals to function within the scope of advanced nursing practice. The essential content includes but is not limited to: advanced assessment, pharmacotherapeutics, role preparation, nursing specialty practice theory, physiology/pathology, diagnosis and clinical management of health status, and research.
(viii) Practicum/Preceptorship/Internship means a designated portion of a formal educational program that is offered in a health care setting and affords students the opportunity to integrate theory and role in both the clinical specialty/practice area and advanced nursing practice through direct patient care/client management. Practicums/Preceptorships/Internships are planned and monitored by either a designated faculty member or qualified preceptor.

(d) For clinical nurse specialist programs, the curriculum must also contain a minimum of nine (9) semester credit hours or the equivalent in a specific clinical major. Clinical major courses must include didactic content and offer clinical experiences in a specific clinical specialty/practice area recognized by the Board.

(e) If a clinical nurse specialist program has as a goal or outcome the preparation of graduates for approval for prescriptive authority, then the program must also include at a minimum a separate course in diagnosis and management of diseases and conditions within the clinical specialty area recognized by the Board. This course(s) must be an advanced level academic course(s) with a minimum of 45 clock hours.

(f) Individuals prepared in more than one advanced practice role and/or specialty (including blended role or dual specialty programs) shall be considered to have completed separate advanced practice nursing educational programs of study for each role and/or specialty area.

(g) The program of study shall include a minimum of 500 separate, non-duplicated clinical hours for each advanced role and specialty within the advanced practice nursing education program.

(h) Post-master's preparation may be offered as graduate level course work through master's or higher level advanced practice nursing educational programs that include the desired role and specialty and otherwise meet the standards in this chapter.
(1) Post-master's students are required to complete a minimum of 500 clinical hours in addition to the entire role, clinical major, and curricular requirements , or the equivalent set forth in this chapter . Courses may be waived if an individual's transcript indicates that an equivalent course has been successfully completed or if the student demonstrates proficiency, validating program outcomes according to written program policies. Clinical hours shall not be waived.
(2) Only registered nurses who hold master's degrees in nursing shall be eligible for post-master's preparation as clinical nurse specialists.

(i) Board staff approval is required prior to implementation of major curriculum changes. Proposed changes shall include information outlined in Board guidelines and shall be reviewed using Board standards. Changes that require approval include:
(1) Changes in program philosophy/mission and objectives/outcomes that result in a reorganization or reconceptualization of the entire curriculum, and/or
(2) An increase or decrease in program length by more than nine semester credit hours or 25%.

The provisions of this §219.9 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.10. Management of Clinical Learning Experiences and Resources.

(a) Faculty shall be responsible and accountable for managing clinical learning experiences of students.

(b) Faculty shall develop criteria for the selection of affiliating agencies/clinical facilities or clinical practice settings that address safety and the need for students to achieve the program outcomes (goals) through advanced practice nursing.

(c) Faculty shall select and evaluate affiliating agencies/clinical facilities or clinical practice settings that provide students with opportunities to achieve the goals of the program.

(d) Written agreements between the program and the affiliating agencies shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program. Such agreements shall be developed jointly with the affiliating agency, reviewed periodically according to the policies of the program and the affiliating agency, and include provisions for adequate notice of termination.

(e) When clinical preceptorships are used in an advanced practice nursing educational program, the following conditions shall be met:
  (1) Written agreements between the program, clinical preceptor and the affiliating agency/clinical facility, when applicable, shall delineate the functions and responsibilities of the parties involved.
  (2) Criteria for selecting clinical preceptors shall be developed in writing. Competent clinicians can be considered qualified to be preceptors if they are:
    (A) Authorized to practice as advanced practice nurses, or
    (B) Currently licensed health care professionals who can provide supervision and teaching in clinical settings appropriate for advanced practice nursing.
  (3) Written clinical objectives shall be specified and shared with the clinical preceptor prior to the experience.
  (4) The designated faculty member shall be responsible for the student's learning experiences and shall communicate regularly with the clinical preceptor and student for the purpose of monitoring and evaluating learning experiences. If site visits are not feasible, communication and evaluation are managed by alternatives such as telephone, written communications, or clinical simulations.

(f) The maximum number of students that one advanced practice nursing educational program faculty member supervises in a clinical course should not exceed six students.
  (1) If faculty are providing on-site clinical supervision of students, the ratio should not exceed two students to one faculty member during the clinical day.
  (2) If faculty are providing on-site clinical supervision of students while managing their own caseload of patients, the ratio should not exceed one student per faculty during the clinical day.

The provisions of this §219.10 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.11. Facilities, Resources, and Services.

(a) The governing institution shall be responsible for providing:
  (1) Educational facilities;
  (2) Resources; and
  (3) Services that support the effective development and implementation of the advanced practice nursing education program.

(b) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.
  (1) The director shall have a private office.
  (2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.
  (3) Space for clerical staff, records, files, and equipment shall be adequate.
  (4) There shall be mechanisms that provide for the security of sensitive materials, such as examinations and health records.
  (5) Classrooms, laboratories, and technology shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes.

(c) The director and faculty shall have appropriate technology and support services, including but not limited to secretarial and clerical assistance, appropriate to the needs of the program.

(d) The learning resources, library, and program holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.
  (1) Provisions shall be made for reasonable accessibility, availability, and timely delivery of information resources.
  (2) Facilities and policies shall promote effective use of resources, e.g., environment, accessibility, and hours of operation.

The provisions of this §219.11 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.12. Records and Reports.

(a) Accurate and current records shall be maintained in a confidential manner and be accessible to appropriate parties. Records shall include, but are not limited to:
  (1) Records of current students;
  (2) Transcripts/permanent record cards of graduates;
  (3) Faculty records;

(4) Administrative records that include minutes of faculty meetings for the past three years, annual reports of the program, and school catalogs;
(5) The current program of study and curriculum, including philosophy/mission and objectives/outcomes and course outlines;
(6) Agreements with affiliating agencies; and
(7) Master plan of evaluation with most recent data collection.

(b) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

The provisions of this §219.12 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

§219.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:
(1) Organization and administration of the program;
(2) Philosophy/mission and objectives/outcomes;
(3) Program of study, curriculum, and instructional techniques;
(4) Education facilities, resources, and services;
(5) Affiliating agencies and clinical learning activities;
(6) Student achievement, e.g., attrition rates, completion rates, length of time for program completion;
(7) Graduate outcomes, e.g., certification examination pass rates, graduate surveys, employer surveys; and
(8) Faculty's performance.

(b) All methods and instruments used for evaluative purposes shall be periodically reviewed and revised as necessary.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) There shall be documentation that the data obtained from the total program evaluation is reviewed and used for ongoing program improvement.

(e) Major changes in the nursing program shall be evidence-based and supported by rationale.

The provisions of this §219.13 adopted to be effective September 13, 2001, 26 TexReg 6889; amended to be effective January 8, 2008, 33 TexReg 184.

CHAPTER 220. NURSE LICENSURE COMPACT

§220.1. Definitions.

For the purpose of the Compact, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board—party state's regulatory body responsible for issuing nurse licenses.

(2) Information system—the coordinated licensure information system.

(3) Primary state of residence—the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(4) Public—any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

The provisions of this §220.1 adopted to be effective January 1, 2000, 24 TexReg 10331.

§220.2. Issuance of a License by a Compact Party State.

(a) As of July 1, 2005, no applicant for initial licensure will be issued a license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or its predecessor examinations used for licensure.

(b) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but are not limited to:
  (1) a driver's license with a home address;
  (2) voter registration card displaying a home address;
  (3) federal income tax return declaring the primary state of residence;
  (4) Military Form No. 2058 - state of legal residence certificate; or
  (5) W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.

(c) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

(d) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(e) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(f) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety (90) days.

(g) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ninety (90) day period stated in subsection (f) of this section shall be stayed until resolution of the pending investigation.

(h) The former home state license shall no longer be valid upon the issuance of a new home state license.

(i) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten business days and the former home state may take action in accordance with that state's laws and rules.

The provisions of this §220.2 adopted to be effective January 1, 2000, 24 TexReg 10331; amended to be effective April 11, 2005, 30 TexReg 2066; amended to be effective April 14, 2009, 34 TexReg 2378; amended to be effective April 21, 2013, 38 TexReg 2361.

§220.3. Limitations on Multistate Licensure Privilege-Discipline.

(a) All home state Board disciplinary orders, agreed or otherwise, which limit the scope of licensee's practice or require monitoring of the licensee as a condition of the order shall include the requirement that the licensee will limit his or her practice to the home state during the pendency of the order. This requirement may allow the licensee to practice in other party states with prior written authorization from both the home state and party state Boards.

(b) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

The provisions of this §220.3 adopted to be effective January 1, 2000, 24 TexReg 10331; amended to be effective April 14, 2009, 34 TexReg 2378.

§220.4. Information System.

(a) Levels of access.
  (1) The public shall have access to nurse licensure information limited to:
    (A) the nurse's name,
    (B) jurisdiction(s) of licensure,
    (C) license expiration date(s),
    (D) licensure classification(s) and status(es),
    (E) public emergency and final disciplinary actions, as defined by contributing state authority, and
    (F) the status of multistate licensure privileges.
  (2) Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.
  (3) Party State Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority.

(b) The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten business days correct inaccurate data to the Information System.

(c) The Board shall report to the Information System within 10 business days, a disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority), dismissal of complaint, and changes in status of disciplinary action, or licensure encumbrance.

(d) Current significant investigative information shall be deleted from the Information System within ten business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

(e) Changes to licensure information in the Information System shall be completed within ten business days upon notification by a Board.

The provisions of this §220.4 adopted to be effective January 1, 2000, 24 TexReg 10331.

CHAPTER 221. ADVANCED PRACTICE NURSES

§221.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accredited program—A program which has been deemed to have met certain standards set by the board or by a national accrediting body recognized by the board.

(2) Advanced educational program—A post-basic advanced practice nurse program at the certificate, master's degree, or higher level. Beginning January 1, 2003, a minimum of a master's degree in the advanced practice role and population focus area will be required for recognition as an Advanced Practice Registered Nurse.

(3) Advanced practice nurse—A registered nurse approved by the board to practice as an advanced practice nurse based on completing an advanced educational program acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services.

(4) Authorization to practice—The process of reviewing the educational, licensing, certification and other credentials of the registered nurse to determine compliance with the board's requirements for approval as an advanced practice nurse.

(5) Board—The Texas Board of Nursing.

(6) Current certification—Initial certification and maintenance of certification by national certifying bodies recognized by the board.

(7) Current practice—Maintaining competence as an advanced practice nurse by practicing in the advanced role and specialty in the clinical setting, practicing as an educator in the clinical and/or didactic portion of an advanced educational program of study, or practicing as a consultant or an administrator within the advanced specialty and role.

(8) Graduate advanced practice nurse—A registered nurse who has completed an advanced educational program of study and has been granted provisional or interim authorization by the board to practice in the advanced specialty and role.

(9) Monitored anesthesia care—Refers to situations where a patient undergoing a diagnostic or therapeutic procedure receive doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway for the majority of the procedure. If, for an extended period of time, the patient is rendered unconscious and/or loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(10) Outpatient setting—Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of all of the following:
- (A) clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed under 25 U.S.C. Section 479-1 or as listed under a successor federal statute or regulation;
- (B) a facility maintained or operated by a state or governmental entity;
- (C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and
- (D) an outpatient setting accredited by either the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers, the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(11) Party state—Any state that has entered into the Nurse Licensure Compact.

(12) Protocols or other written authorization—Written authorization to provide medical aspects of patient care which are agreed upon and signed by the advanced practice nurse and the physician, reviewed and signed at least annually, and maintained in the practice setting of the advanced practice nurse. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the advanced practice nurse commensurate with his/her education and experience. Such protocols or other written authorization need not describe the exact steps that the advanced practice nurse must take with respect to

each specific condition, disease, or symptom and may state types or categories of drugs which may be prescribed rather that just list specific drugs.

(13) Shall and must—Mandatory requirements.

(14) Should—A recommendation.

(15) Unencumbered—A license to practice registered nursing which does not have stipulations against the license.

The provisions of this §221.1 adopted to be effective February 25, 2001, 26 TexReg 1509; amended to be effective June 29, 2010, 35 TexReg 5561.

§221.2. Authorization and Restrictions to Use of Advanced Practice Titles.

(a) Effective January 1, 2006, a registered nurse holding him or herself out to be an advanced practice nurse shall be authorized to practice and hold a title in the following categories:
  (1) nurse anesthetist;
  (2) nurse-midwife;
  (3) nurse practitioner in the following specialties:
    (A) Acute Care Adult;
    (B) Acute Care Pediatric;
    (C) Adult;
    (D) Family;
    (E) Gerontological;
    (F) Neonatal;
    (G) Pediatric;
    (H) Psychiatric/Mental Health;
    (I) Women's Health; and/or
  (4) clinical nurse specialist in the following specialties:
    (A) Adult Health/Medical-Surgical Nursing;
    (B) Community Health Nursing;
    (C) Critical Care Nursing;
    (D) Gerontological Nursing;
    (E) Pediatric Nursing; and
    (F) Psychiatric/ Mental Health Nursing.

(b) A registered nurse who holds current authorization to practice as an advanced practice nurse issued by the board in any of the categories indicated in the previous subsection shall use that title when functioning in the advanced practice role. A registered nurse who was granted authorization to practice in an advanced role and specialty not indicated in the previous subsection prior to January 1, 2006, may continue to use the advanced practice title approved by the Board provided all requirements for maintenance of advanced practice authorization are met. "Advanced practice nurse" shall not be used as a title.

(c) Unless authorized as an advanced practice nurse by the board as provided for by §§221.4 - 221.8 of this chapter (relating to Full Authorization, Provisional Authorization; Interim Approval; Petitions for Waiver; and Maintaining Active Authorization as an Advanced Practice Nurse), a registered nurse shall not:
  (1) claim to be an advanced practice nurse or hold himself/herself out to be an advanced practice nurse in this state; and/or
  (2) use a title or any other designation tending to imply that the person is authorized as an advanced practice nurse.

(d) A registered nurse who violates subsection (c) of this section may be subject to an administrative penalty under §301.501 of the Nursing Practice Act.

The provisions of this §221.2 adopted to be effective February 25, 2001, 26 TexReg 1509; amended to be effective May 15, 2005, 30 TexReg 2668.

§221.3. Education.

(a) In order to be eligible to apply for authorization as an advanced practice nurse, the registered nurse must have completed a post-basic advanced educational program of study appropriate for practice in an advanced nursing specialty and role recognized by the Board. RN to BSN programs shall not be considered post-basic programs for the purpose of this rule.

(b) Individuals prepared in more than one advanced practice role and/or specialty (including blended role or dual specialty programs) shall be considered to have completed separate advanced educational programs of study for each role and/or specialty area.

(c) Applicants for licensure to practice in an advanced practice role and population focus area recognized by the Board must submit verification of completion of all requirements of an advanced educational program that meets the following criteria:
  (1) Advanced educational programs in the State of Texas shall be approved by the Board or accredited by a national accrediting body recognized by the Board.
  (2) Programs in states other than Texas shall be accredited by a national accrediting body recognized by the board or by the appropriate licensing body in that state. A state licensing body's accreditation process must meet or exceed the requirements of accrediting bodies specified in board policy.
  (3) Programs of study shall be at least one academic year in length and shall include a formal preceptorship.
  (4) Beginning January 1, 2003, the program of study shall be at the master's degree or higher level.
  (5) Applicants prepared in more than one advanced practice role and/or specialty shall demonstrate that all curricular requirements set forth in this subsection have been met for each role and/or specialty.

(d) Applicants for licensure as clinical nurse specialists must submit verification of the following requirements in addition to those specified in subsection (c) of this section:
  (1) completion of a master's degree or higher level in the discipline of nursing, and
  (2) completion of a minimum of nine semester credit hours or the equivalent in a specific clinical major. Clinical major courses must include didactic content and offer clinical experiences in a specific clinical specialty/practice area.

(e) Those applicants who completed nurse practitioner or clinical nurse specialist programs on or after January 1, 1998 must demonstrate evidence of completion of the following curricular requirements:
  (1) separate, dedicated courses in pharmacotherapeutics, advanced assessment and pathophysiology and/or psychopathology (psychopathology accepted for advanced practice nurses prepared in the psychiatric/mental health specialty only). These must be graduate level academic courses;
  (2) evidence of theoretical and clinical role preparation;
  (3) evidence of clinical major courses in the specialty area; and
  (4) evidence of a practicum/preceptorship/internship to integrate clinical experiences as reflected in essential content and the clinical major courses.
  (5) In this subsection, the following terms have the following definitions:
    (A) Advanced Assessment Course means a course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans.
    (B) Pharmacotherapeutics means a course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.
    (C) Pathophysiology means a course that offers content that provides a comprehensive, system-focused pathology course that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathological phenomena produced by altered states across the life span.
    (D) Role preparation means formal didactic and clinical experiences/content that prepare nurses to function in an advanced nursing role.
    (E) Clinical major courses means courses that include didactic content and offer clinical experiences in a specific clinical specialty/practice area.
    (F) Clinical specialty area means specialty area of clinical practice based upon formal didactic preparation and clinical experiences.
    (G) Essential content means didactic and clinical content essential for the educational preparation of individuals to function within the scope of advanced nursing practice. The essential content includes but is not limited to: advanced assessment, pharmacotherapeutics, role preparation, nursing specialty practice theory, physiology/pathology, diagnosis and clinical management of health status, and research.
    (H) Practicum/Preceptorship/Internship means a designated portion of a formal educational program that is offered in a health care setting and affords students the opportunity to integrate theory and role in both the clinical specialty/practice area and advanced nursing practice through direct patient care/client management. Practicums/Preceptorships/Internships are planned and monitored by either a designated faculty member or qualified preceptor.

(f) Those applicants who complete nurse practitioner or clinical nurse specialist programs on or after January 1, 2003 must demonstrate evidence of completion of a minimum of 500 separate, non-duplicated clinical hours for each advanced role and specialty within the advanced educational program.

The provisions of this §221.3 adopted to be effective February 25, 2001, 26 TexReg 1509; amended to be effective January 2, 2006, 30 TexReg 8881; amended to be effective June 29, 2010, 35 TexReg 5561.

§221.4. Advanced Practice Registered Nurse Licensure Requirements.

(a) Advanced practice registered nurse licensure is issued for the purpose of authorizing a registered nurse to practice in a specific advanced practice role and population-focus area.

(b) The applicant for licensure as an advanced practice registered nurse shall:
  (1) Hold a current, valid, unencumbered license or privilege to practice as a registered nurse in the State of Texas;
  (2) Submit to the board such evidence as required by the board to insure compliance with the advanced practice educational requirements set forth in this chapter. Such evidence shall include official documentation verifying graduation from a graduate level advanced practice registered nurse educational program accredited by a national nursing education accrediting body that is recognized by the U.S. Department of Education and the Board. This documentation shall verify the date of graduation, credential conferred and provide evidence of meeting the standards of advanced practice registered nursing education in this state as described in this chapter. All applicants, including those seeking licensure by endorsement, must demonstrate that the educational requirements set forth in this chapter have been met. A transcript is required prior to the issuance of a permanent license.
  (3) Attest, on forms provided by the board, to having completed a minimum of 400 hours of current practice within the last 24 calendar months in the advanced practice role and population-focus area for which the applicant is applying unless the applicant has completed an advanced practice registered nursing educational program in this advanced practice role and population-focus area within the last 24 calendar months.
    (A) If less than four years but more than two years have lapsed since completion of the advanced practice nursing educational program and/or the applicant does not have 400 hours of current practice in the advanced practice role and population focus area during the previous 24 calendar months, the advanced practice registered nurse shall be required to demonstrate proof of completion of 400 hours of current practice obtained under the direct supervision of an advanced practice registered nurse licensed by the board in the same role and population focus area or by a physician in the same specialty.
    (B) If more than four years have lapsed since completion of the advanced practice nursing educational program and/or the applicant has not practiced in the advanced practice role during the previous four years, the applicant shall successfully complete a refresher course or extensive orientation in the appropriate advanced practice role and population focus area that includes a supervised clinical component by a qualified instructor/sponsor.
      (i) The course(s)/orientation shall be of sufficient length to satisfy the learning needs of the applicant and to assure that he/she meets the minimum standard for safe, competent care and include a minimum of 400 hours of current practice as described in subparagraph (A) of this paragraph. The course(s)/orientation shall cover the entire scope of the authorized advanced practice role and population focus area. Content shall include, but not be limited to that which is specified in board guidelines.
      (ii) The instructor/sponsor must provide written verification of satisfactory completion of the refresher course/extensive orientation on forms provided by the board and assurance that the individual has reviewed current practice-related information pertinent to his/her advanced practice role and population focus area.
  (4) Attest, on forms provided by the board, to having obtained 20 contact hours of continuing education within the last 24 calendar months appropriate for the advanced practice role and population-focus area for which the applicant is applying. Continuing education in the advanced practice role and population-focus area must meet the requirements of Chapter 216 of this title (relating to Continuing Education). The 20 contact hours required for RN licensure may be met by the 20 hours required by this subsection; and
  (5) Respond to questions regarding personal background, including, but not limited to, information relating to:
    (A) Disciplinary action or investigation regarding any professional license or credential;
    (B) Criminal offenses, including those pending appeal;
    (C) Current investigation by a grand jury or governmental agency;
    (D) Any chemical, physical or mental impairment and/or disability or treatment for such that impacts the advanced practice registered nurse's ability to practice nursing safely, and a description of accommodations and/or practice limitations needed, if any;
    (E) Any current substance use, misuse, or abuse; and,
    (F) A detailed explanation and supporting documentation regarding any background information disclosed.
  (6) Submit the required, non-refundable application fee.

(c) Applicants who completed their advanced practice nursing educational programs on or after January 1, 1996 must submit evidence of current certification in an advanced practice role and population focus area recognized by the Board that is congruent with the advanced practice nursing educational preparation.

The certification examination shall be recognized by the Board for the role and population-focus area. If a specific certification examination does not exist for the role and population focus area, the board reserves the right to designate a national certification examination in a closely related population focus area. If the Board has not designated an alternate examination, the applicant may petition the board for waiver from the certification requirement, according to the exceptions specified in this chapter.

(d) Advanced practice registered nurse applicants who wish to practice in more than one role and/or population-focus area shall complete additional education in the desired area(s) of licensure in compliance with the educational requirements set forth in this chapter and meet all requirements for licensure in each additional role or population-focus area. To apply for licensure for more than one title, the applicant shall submit a separate application and fee for each desired title. Additional licensure is required for those licensed advanced practice registered nurses seeking to include an additional:
  (1) Advanced practice role and population-focus area,
  (2) Population-focus area within the same advanced practice role, or
  (3) Advanced practice role within the same population focus area.

(e) After review by the board and verification that all requirements have been met, a certificate verifying licensure shall be sent to the advanced practice registered nurse.

The provisions of this §221.4 adopted to be effective February 25, 2001, 26 TexReg 1509; amended to be effective March 14, 2002, 27 TexReg 1736; amended to be effective February 20, 2003, 28 TexReg 1383; amended to be effective November 23, 2008, 33 TexReg 9237.

§221.6. Interim Approval.

(a) Interim approval is a time-limited permit to practice nursing in a specific advanced practice role and population-focus area. The Board may grant interim approval to eligible advanced practice registered nurse applicants.

(b) Interim approval permits the advanced practice registered nurse applicant to practice without prescriptive authority while the application is reviewed.
  (1) The advanced practice registered nurse applicant who meets all requirements and applies for interim approval must complete documents provided by the Board attesting that:
    (A) He/She meets all requirements for full licensure in an advanced practice registered nurse role and population-focus area in the state of Texas; and
    (B) Has completed and submitted the appropriate documents to the advanced practice nursing educational program or designated organization for completion.
  (2) Unless otherwise indicated in this chapter, evidence of current national certification in the advanced practice role and population focus area shall be provided before interim approval may be granted.
  (3) Interim approval may be granted for a period of up to 120 days. An eligible applicant may be granted interim approval one time only per role and population-focus area. Extensions or renewals of the interim approval period shall not be granted.

(c) An advanced practice registered nurse applicant who submits a request for waiver from the requirements for licensure set forth in this chapter shall not be eligible for interim approval unless otherwise indicated in this chapter.

(d) If an advanced practice registered nurse applicant is deemed ineligible for licensure, the interim approval will be rescinded immediately, effective on the date the notice is sent by mail. The applicant must cease practicing as an advanced practice registered nurse and may no longer use any titles that imply to the public that he/she is an advanced practice registered nurse.

The provisions of this §221.6 adopted to be effective February 25, 2001, 26 TexReg 1509; amended to be effective November 23, 2008, 33 TexReg 9237; amended to be effective July 26, 2011, 36 TexReg 4665.

§221.7. Petitions for Waiver and Exemptions.

(a) A registered nurse who submits a request for waiver from requirements of the rules must submit documentation as required by the board to support his or her petition and assure the board that he or she possesses the knowledge, skills and abilities appropriate for the role and specialty desired. Those petitioners who are under investigation or current board order are not eligible for waiver.

(b) Petitions for waiver from the program accreditation requirements of §221.3 of this chapter (relating to Education), may be granted by the board for individuals who completed their educational programs on or before December 31, 1996. Petitioners must meet the length of academic program requirements of §221.3 of this chapter and obtain national certification in the advanced role and specialty area.

(c) Petitions for waiver from the current certification requirements of §221.4 of this chapter (relating to Requirements for Full Authorization to Practice) and §221.8 of this chapter (relating to Maintaining Active Authorization as an Advanced Practice Nurse) may be granted by the board.
  (1) Under this section, only those petitioners for which no national certification examination within the advanced role and specialty or a related advanced specialty exists will be considered for waiver by the board.
  (2) The board may determine that an available national certification examination in a related specialty and/or role must be taken in lieu of an examination specific to the advanced specialty area.

(d) Waivers from the master's degree requirement will be granted to qualified certificate-prepared nurse-midwives and women's health care nurse practitioners who complete their programs on or after January 1, 2003 through December 31, 2006. Applicants must meet all other requirements as stated in §221.4 of this chapter.
  (1) Those individuals approved on the basis of this waiver shall be limited to providing advanced practice nursing care within the geographical boundaries of the State of Texas. This shall not prevent the individual from utilizing Nurse Licensure Compact privileges to function as a registered nurse.
  (2) The applicant must submit all required documentation necessary to demonstrate that the requirements (except for the master's degree) for authorization to practice have been met.
  (3) The applicant must submit a written request for waiver of the master's degree requirement.
  (4) Interim, provisional or full authorization may be granted to qualified certificate-prepared nurse-midwives and women's health care nurse practitioners.

(e) Exemptions granting authorization to utilize titles not authorized by §221.2 of this chapter may be granted to qualified applicants who complete their advanced educational programs prior to January 1, 2010. Applicants must meet all other requirements as stated in §221.4 of this chapter,
  (1) The following specialty titles may be considered for exemption if the individual is not qualified for authorization to utilize a title authorized by §221.2 of this chapter:
    (A) Acute Care Clinical Nurse Specialist,
    (B) Critical Care Nurse Practitioner;
    (C) Cardiovascular Clinical Nurse Specialist;
    (D) Emergency Nurse Practitioner or Clinical Nurse Specialist;
    (E) Family Clinical Nurse Specialist;
    (F) Home Health Clinical Nurse Specialist;
    (G) Maternal (Parent)-Child Health Clinical Nurse Specialist (with or without subspecialization);
    (H) Neonatal Clinical Nurse Specialist;
    (I) Oncology Nurse Practitioner or Clinical Nurse Specialist;
    (J) Pediatric Critical Care Nurse Practitioner;
    (K) Perinatal Nurse Practitioner or Clinical Nurse Specialist;
    (L) School Nurse Practitioner; and
    (M) Women's Health Clinical Nurse Specialist.
  (2) Those individuals authorized on the basis of this exemption shall be limited to providing advanced practice nursing care within the geographical boundaries of the State of Texas. This shall not prevent the individual from utilizing Nurse Licensure Compact privileges to function as a registered nurse.
  (3) The applicant must submit all required documentation necessary to demonstrate that all requirements for authorization to practice have been met.
  (4) The applicant must submit a written request for exemption to §221.2 of this chapter and indicate the desired title
  (5) Interim, provisional, or full authorization may be granted to qualified applicants.
  (6) Advanced practice nurses authorized to practice on the basis of this exemption shall use the advanced practice title specified on the authorization to practice document provided by the board.

The provisions of this §221.7 adopted to be effective February 25, 2001, 26 TexReg 1509; amended to be effective May 15, 2005, 30 TexReg 2668.

§221.8. Maintaining Active Authorization as an Advanced Practice Nurse.

(a) In conjunction with RN license renewal, the advanced practice nurse seeking to maintain active advanced practice authorization(s) shall:
  (1) attest on forms provided by the board to maintaining current national certification by the appropriate certifying body recognized by the board. This requirement shall apply to advanced practice nurses who:
    (A) completed an advanced educational program on or after January 1, 1996, or
    (B) were authorized as advanced practice nurses based upon obtaining national certification.
  (2) attest, on forms provided by the board, to having a minimum of 400 hours of current practice within the preceding biennium;

(3) attest, on forms provided by the board, to having obtained 20 contact hours of continuing education in the advanced specialty area and role within the preceding biennium. Continuing education in the advanced practice specialty and role must meet requirements of Chapter 216 of this title (relating to Continuing Education). The 20 contact hours required for RN licensure may be met by the 20 hours required by this subsection; and
(4) submit the required fee, which is not refundable.

(b) Failure to renew the registered nurse license or to provide the required fee and documentation for maintaining authorization shall result in expiration of the board's authorization as an advanced practice nurse and limited prescriptive authority where applicable. The individual whose advanced practice authorization has expired may not practice as or use titles to imply that he/she is an advanced practice nurse.

The provisions of this §221.8 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.9. Inactive Status.

(a) The advanced practice nurse may choose to change advanced practice nurse status to inactive by providing a written request for such change.

(b) Inactive advanced practice status means that the registered professional nurse may not practice in the advanced practice specialty and role and may not hold himself/herself out to be an advanced practice nurse by using titles which imply that he/she is an advanced practice nurse. The inactive advanced practice nurse may not utilize his/her limited prescriptive authority.

The provisions of this §221.9 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.10. Reinstatement or Reactivation of Advanced Practice Nurse Status.

(a) To reinstate an authorization which has expired due to non-payment of renewal fees for registered nurse licensure and/or advanced practice authorization, the advanced practice nurse shall meet the requirements as stated in §221.8 of this chapter (relating to Maintaining Active Authorization as an Advanced Practice Nurse) and pay all required fees.

(b) If less than four years but more than two years have lapsed since completion of the advanced educational program and/or the applicant does not have 400 hours of current practice in the advanced role and specialty during the previous biennium, the advanced practice nurse shall meet the requirements as stated in §221.8 of this chapter and pay all required fees. The applicant shall be required to demonstrate proof of completion of 400 hours of current practice as well as the continuing education requirement as outlined in Chapter 216 of this title (relating to Continuing Education). The 400 hours of current practice shall be obtained under the direct supervision of an advanced practice nurse authorized by the board in the same role and specialty or by a physician the same specialty.

(c) If more than four years have lapsed since completion of the advanced practice educational program and/or the applicant has not practiced in the advanced role during the previous four years, the applicant shall apply for reactivation and meet current requirements for maintaining authorization to practice under §221.8 of this chapter and shall:
(1) hold a current, valid, unencumbered license as a registered nurse in the State of Texas or reside in any party state and hold a current, valid, unencumbered registered nurse license in that state; and
(2) successfully complete a refresher course or extensive orientation in the appropriate advanced practice specialty and role which includes a supervised clinical component by a qualified instructor/sponsor.
(A) The course(s)/orientation shall be of sufficient length to satisfy the learning needs of the inactive advanced practice nurse and to assure that he/she meets the minimum standard for safe, competent care. The course(s)/orientation shall cover the entire scope of the authorized advanced specialty area. Content shall include, but not be limited to that which is specified in board guidelines.
(B) The instructor/sponsor must provide written verification of satisfactory completion of the course/orientation on forms provided by the board and assurance that the individual has reviewed current practice-related information pertinent to his/her advanced specialty and role.

The provisions of this §221.10 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.11. Identification.

When providing advanced practice nursing care to patients, the advanced practice nurse shall wear clear identification which indicates the individual is a registered nurse with the appropriate advanced practice designation authorized by the board.

The provisions of this §221.11 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.12. Scope of Practice.

The advanced practice nurse provides a broad range of health services, the scope of which shall be based upon educational preparation, continued advanced practice experience and the accepted scope of professional practice of the particular specialty area. Advanced practice nurses practice in a variety of settings and, according to their practice specialty and role, they provide a broad range of health care services to a variety of patient populations.

(1) The scope of practice of particular specialty areas shall be defined by national professional specialty organizations or advanced practice nursing organizations recognized by the Board. The advanced practice nurse may perform only those functions which are within that scope of practice and which are consistent with the Nursing Practice Act, Board rules, and other laws and regulations of the State of Texas.

(2) The advanced practice nurse's scope of practice shall be in addition to the scope of practice permitted a registered nurse and does not prohibit the advanced practice nurse from practicing in those areas deemed to be within the scope of practice of a registered nurse.

The provisions of this §221.12 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.13. Core Standards for Advanced Practice.

(a) The advanced practice nurse shall know and conform to the Texas Nursing Practice Act; current board rules, regulations, and standards of professional nursing; and all federal, state, and local laws, rules, and regulations affecting the advanced role and specialty area. When collaborating with other health care providers, the advanced practice nurse shall be accountable for knowledge of the statutes and rules relating to advanced practice nursing and function within the boundaries of the appropriate advanced practice category.

(b) The advanced practice nurse shall practice within the advanced specialty and role appropriate to his/her advanced educational preparation.

(c) The advanced practice nurse acts independently and/or in collaboration with the health team in the observation, assessment, diagnosis, intervention, evaluation, rehabilitation, care and counsel, and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; and in the promotion and maintenance of health or prevention of illness.

(d) When providing medical aspects of care, advanced practice nurses shall utilize mechanisms which provide authority for that care. These mechanisms may include, but are not limited to, Protocols or other written authorization. This shall not be construed as requiring authority for nursing aspects of care.
   (1) Protocols or other written authorization shall promote the exercise of professional judgment by the advanced practice nurse commensurate with his/her education and experience. The degree of detail within protocols/policies/practice guidelines/clinical practice privileges may vary in relation to the complexity of the situations covered by such Protocols, the advanced specialty area of practice, the advanced educational preparation of the individual, and the experience level of the individual advanced practice nurse.
   (2) Protocols or other written authorization:
      (A) should be jointly developed by the advanced practice nurse and the appropriate physician(s),
      (B) shall be signed by both the advanced practice nurse and the physician(s),
      (C) shall be reviewed and re-signed at least annually,
      (D) shall be maintained in the practice setting of the advanced practice nurse, and
      (E) shall be made available as necessary to verify authority to provide medical aspects of care.

(e) The advanced practice nurse shall retain professional accountability for advanced practice nursing care.

The provisions of this §221.13 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.14. Nurse-Midwives Providing Controlled Substances.

(a) In this section "provide" means to supply, for a term not to exceed 48 hours, one or more unit doses of a controlled substance for the immediate needs of a patient;

(b) An advanced practice nurse recognized by the board as a nurse-midwife may provide one or more unit doses of a controlled substance during intra-partum or immediate post-partum care subject to the following conditions:
   (1) Physician delegation of authority to provide controlled substances must be made through a physician's order, medical order, standing delegation order, or protocol that requires adequate and documented availability for access to medical care. Delegation may not include the use of a prescription sticker or the use or issuance of an official prescription form under §481.075, Health and Safety Code;
   (2) The nurse-midwife's protocols or other orders must require the reporting of or monitoring of each patient's progress, including complications of pregnancy and delivery and the administration and provision of controlled substances to the patient;

(3) delegation is limited to three full-time equivalent nurse-midwives at the designated facility where the nurse-midwife practices; and
(4) the controlled substance must be supplied in a suitable container that is labeled in compliance with the applicable drug laws and must include:
(A) the patient's name and address;
(B) the drug to be provided;
(C) the name, address, and telephone number of the physician;
(D) the name, address, and telephone number of the nurse-midwife; and
(E) the date.

The provisions of this §221.14 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.15. Provision of Anesthesia Services by Nurse Anesthetists in Licensed Hospitals or Ambulatory Surgical Centers.

(a) In a licensed hospital or ambulatory surgical center, consistent with facility policy or medical staff bylaws, a nurse anesthetist may select, obtain, and administer drugs including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status pursuant to a physician's order for anesthesia or an anesthesia-related service. This order need not be drug specific, dosage specific, or administration-technique specific.

(b) Pursuant to a physician's order for anesthesia or an anesthesia-related service, the nurse anesthetist may order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia. Another RN may carry out these orders.

(c) In providing anesthesia or an anesthesia-related service, the nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

The provisions of this §221.15 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.16. Provision of Anesthesia Services by Nurse Anesthetists in Outpatient Settings.

(a) Purpose. The purpose of these rules is to identify the roles, and responsibilities of certified registered nurse anesthetists authorized to provide anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.
(1) On or after August 31, 2000 certified registered nurse anesthetists shall comply with subsections (b)(2)-(e) of this section in order to be authorized to provide general anesthesia, regional anesthesia, or monitored anesthesia care in outpatient settings. This requirement shall include certified registered nurse anesthetists administering any inhaled anesthetic agents, including, but not limited to, nitrous oxide, due to the significant variability in patient response to such drugs.
(2) Subsections (b)(2)-(e) of this section do not apply to the registered nurse anesthetist who practices in the following:
(A) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;
(B) an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes;
(C) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;
(D) a licensed ambulatory surgical center;
(E) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479-1 or as listed under a successor federal statute or regulation
(F) a facility maintained or operated by a state or governmental entity;
(G) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and
(H) an outpatient setting accredited by
(i) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;
(ii) the American Association for the Accreditation of Ambulatory Surgery Facilities,
(iii) the Accreditation Association for Ambulatory Health Care.

(b) Roles and Responsibilities

(1) Certified registered nurse anesthetists shall follow current, applicable standards and guidelines as put forth by the American Association of Nurse Anesthetists (AANA) and other relevant national standards regarding the practice of nurse anesthesia as adopted by the AANA or the Board.

(2) Certified registered nurse anesthetists shall comply with all building, fire, and safety codes. A two-way communication source not dependent on electrical current shall be available. Each location should have sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.

(3) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

(c) Standards.

(1) The certified registered nurse anesthetist shall perform a pre-anesthetic assessment, counsel the patient, and prepare the patient for anesthesia per current AANA standards. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained per indications and assessment findings.

(2) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O_2 analyzer and end-tidal CO_2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current AANA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure by the certified registered nurse anesthetist. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current AANA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored.

(3) All anesthesia-related equipment and monitors shall be maintained to current operating room standards. All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations. Service/maintenance checks shall be performed by appropriately qualified biomedical personnel. Prior to the administration of anesthesia, all equipment/monitors shall be checked using the current FDA recommendations as a guideline. Records of equipment checks shall be maintained in a separate, dedicated log which must be made available upon request. Documentation of any criteria deemed to be substandard shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy. All documentation relating to equipment shall be maintained for a period of time as determined by board guidelines.

(4) Each location must have emergency supplies immediately available. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. This must include a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia. Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply

checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be maintained for a period of time as determined by board guidelines.

(5) Certified registered nurse anesthetists shall maintain current competency in advanced cardiac life support and must demonstrate proof of continued competency upon re-registration with the Board. Competency in pediatric advanced life support shall be maintained for those certified registered nurse anesthetists whose practice includes pediatric patients. Certified registered nurse anesthetists shall verify that at least one person in the setting other than the person performing the operative procedure maintains current competency in basic life support (BLS) at a minimum.

(6) Certified registered nurse anesthetists shall verify that the appropriate policies or procedures are in place. Policies, procedures, or protocols shall be evaluated and reviewed at least annually. Agreements with local emergency medical service (EMS) shall be in place for purposes of transfer of patients to the hospital in case of an emergency. EMS agreements shall be evaluated and re-signed at least annually. Policies, procedures, and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request. Policies or procedures must include, but are not limited to:

(A) Management of outpatient anesthesia-At a minimum, these must address:

(i) Patient selection criteria

(ii) Patients/providers with latex allergy

(iii) Pediatric drug dosage calculations, where applicable

(iv) ACLS algorithms

(v) Infection control

(vi) Documentation and tracking use of pharmaceuticals: including controlled substances, expired drugs and wasting of drugs

(vii) Discharge criteria

(B) Management of emergencies to include, but not be limited to:

(i) Cardiopulmonary emergencies

(ii) Fire

(iii) Bomb threat

(iv) Chemical spill

(v) Natural disasters

(vi) Power outage

(C) EMS response and transport—Delineation of responsibilities of the certified registered nurse anesthetist and person performing the procedure upon arrival of EMS personnel. This policy should be developed jointly with EMS personnel to allow for greater accuracy.

(D) Pursuant to §217.11(16) of this title (relating to Standards of Professional Nursing Practice), adverse reactions/events, including but not limited to those resulting in a patient's death intraoperatively or within the immediate postoperative period shall be reported in writing to the Board and other applicable agencies within 15 days. Immediate postoperative period shall be defined as 72 hours.

(d) Registration.

(1) Beginning April 1, 2000, each certified registered nurse anesthetist who intends to provide anesthesia services in an outpatient setting must register with the board and submit the required registration fee, which is non-refundable. The information provided on the registration form shall include, but not be limited to, the name and business address of each outpatient setting(s) and proof of current competency in advanced life support.

(2) Registration as an outpatient anesthesia provider must be renewed and the registration renewal fee paid on a biennial basis, at the time of registered nurse licensure renewal.

(e) Inspections and Advisory Opinions.

(1) The Board may conduct on-site inspections of outpatient settings, including inspections of the equipment owned or leased by a certified registered nurse anesthetist and of documents that relate to provision of anesthesia in an outpatient setting, for the purpose of enforcing compliance with the minimum standards. Inspections may be conducted as an audit to determine compliance with the minimum standards or in response to a complaint. The Board may contract with another state agency or qualified person to conduct these inspections. Unless it would jeopardize an ongoing investigation, the board shall provide the certified registered nurse anesthetist at least five business days' notice before conducting an on-site inspection.

(2) The Board may, at its discretion and on payment of a fee, conduct on-site inspections of outpatient settings in response to a request from a certified registered nurse anesthetist for an inspection and advisory opinion.

(A) The Board may require a certified registered nurse anesthetist to submit and comply with a corrective action plan to remedy or address current or potential deficiencies with the nurse anesthetist's provision of anesthesia in an outpatient setting.

(B) A certified registered nurse anesthetist who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding by the board to impose an administrative penalty or assess a monetary fine. The board shall take proof of reliance on an advisory opinion into

consideration and mitigate the imposition of administrative penalties or the assessment of a monetary fine accordingly.

(C) An advisory opinion issued by the board is not binding on the board and the board except as provided for in subsection (a) of this section, may take any action in relation to the situation addressed by the advisory opinion that the Board considers appropriate.

The provisions of this §221.16 adopted to be effective February 25, 2001, 26 TexReg 1509.

§221.17. Enforcement.

(a) The board may conduct an audit to determine compliance with §221.4 of this chapter (relating to Requirements for Full Authorization to Practice), §221.8 of this chapter (relating to Maintaining Active Authorization as an Advanced Practice Nurse), and §221.16 of this chapter (relating to Provision of Anesthesia Services by Nurse Anesthetists in Outpatient Settings).

(b) Any nurse who violates the rules set forth in this chapter shall be subject to disciplinary action and/or termination of the authorization by the board under Texas Occupations Code, §301.452.

The provisions of this §221.17 adopted to be effective February 25, 2001, 26 TexReg 1509.

CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

§222.1. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(1) Advanced health assessment--A course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status, and formulate effective clinical management plans. Content must include assessment of all human systems, advanced assessment techniques, concepts, and approaches.

(2) Advanced Pharmacotherapeutics--A course that offers advanced content in pharmacokinetics, pharmacodynamics, pharmacotherapeutics of all broad categories of agents, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(3) Advanced Physiology and Pathophysiology--A dedicated, comprehensive, system-focused pathology course(s) that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathological phenomena produced by altered states across the life span.

(4) Advanced practice registered nurse (APRN)--As defined by §301.152, Occupations Code. The term includes an advanced nurse practitioner and advanced practice nurse.

(5) Board--The Texas Board of Nursing.

(6) Controlled Substance--As defined by §481.002, Health and Safety Code.

(7) Dangerous Drug--As defined by §483.001, Health and Safety Code.

(8) Device--As defined by §551.003, Occupations Code, and includes durable medical equipment.

(9) Diagnosis and management course--A course offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions. Supervised clinical practice must include the opportunity to provide pharmacological and non-pharmacological management of diseases and conditions considered within the scope of practice of the APRN's population focus area and role.

(10) Facility-based practice--A hospital, as defined by §157.051(6), Occupations Code, or a licensed long term care facility. A facility based practice does not include a freestanding clinic, center, or other medical practice associated with or owned or operated by a hospital or licensed long term care facility.

(11) Health professional shortage area--
- (A) An urban or rural area of this state that:
  - (i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;
  - (ii) the Secretary of Health and Human Services determines has a health professional shortage; and
  - (iii) is not reasonably accessible to an adequately served area;
- (B) A population group that the Secretary of Health and Human Services determines has a health professional shortage; or
- (C) A public or non-profit private medical facility or other facility that the Secretary of Health and Human Services determines has a health profession shortage as described by 42 U.S.C. §254e(a)(1).

(12) Hospital--A facility that:
- (A) is:
  - (i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by a state; or
  - (ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and
- (B) has an organized medical staff.

(13) Medication order--As defined by §551.003, Occupations Code and §481.002, Health and Safety Code.

(14) Non-prescription drug--As defined by §551.003, Occupations Code.

(15) Physician group practice--An entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:
- (A) owned and operated by two or more physicians; or
- (B) a freestanding clinic, center, or office of a non-profit health organization certified by the Texas Medical Board under §162.001(b), Occupations Code, that complies with the requirements of Chapter 162.

(16) Population focus area--The section of the population with which the APRN has been licensed to practice by the Board.

(17) Practice serving a medically under-served population--
- (A) A practice in a health professional shortage area;
- (B) A clinic designated as a rural health clinic under 42 U.S.C.§1395x(aa);
- (C) A public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;
- (D) A clinic designated as a federally qualified health center under 42 U.S.C. §1396d(1)(2)(B);
- (E) A county, state, or federal correctional facility;
- (F) A practice:
  - (i) that either:
    - (I) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or
    - (II) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and
  - (ii) for which the Department of State Health Services publishes notice of the department's determination in the *Texas Register* and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or
- (G) A practice at which a physician was delegating prescriptive authority to an APRN or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically under-served population.

(18) Prescribe or order a drug or device--Prescribing or ordering a drug or device, including the issuing of a prescription drug order or a medication order.

(19) Prescription drug--As defined by §551.003, Occupations Code.

(20) Prescriptive authority agreement--An agreement entered into by a physician and an APRN or physician assistant through which the physician delegates to the APRN or physician assistant the act of prescribing or ordering a drug or device.

(21) Protocols or other written authorization--Written authorization to provide medical aspects of patient care that are agreed upon and signed by the APRN and delegating physician, reviewed and signed at least annually, and maintained in the practice setting of the APRN. The term "protocols or other written authorization" is separate and distinct from a prescriptive authority agreement. However, a prescriptive authority agreement may reference or include the terms of a protocol or other written authorization. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the APRN commensurate with his/her education and experience. Such protocols or other written authorization need not describe the exact steps that the APRN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs or devices that may be prescribed or ordered rather than just list specific drugs or devices.

(22) Shall and must--Mandatory requirements.

(23) Should--A recommendation.

The provisions of this §222.1 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.2. Approval for Prescriptive Authority.

(a) To be issued a prescription authorization number to prescribe or order a drug or device, a registered nurse (RN) shall:
- (1) have full licensure from the Board to practice as an APRN. RNs with Interim Approval to practice as APRNs are not eligible for prescriptive authority; and
- (2) file a complete application for Prescriptive Authority and submit such evidence as required by the Board to verify successful completion of graduate level courses in advanced pharmacotherapeutics, advanced pathophysiology, advanced health assessment, and diagnosis and management of diseases and conditions within the role and population focus area.
  - (A) Nurse Practitioners, Nurse-Midwives, and Nurse Anesthetists will be considered to have met the course requirements of this section on the basis of courses completed in the advanced practice nursing educational program.
  - (B) Clinical Nurse Specialists shall submit documentation of successful completion of separate, dedicated, graduate level courses in the content areas described in paragraph (2) of this subsection. These courses

shall be academic courses with a minimum of 45 clock hours per course from a nursing program accredited by an organization recognized by the Board.

(C) Clinical Nurse Specialists who were previously approved by the Board as APRNs by petition on the basis of completion of a non-nursing master's degree shall not be eligible for prescriptive authority.

(b) APRNs applying for prescriptive authority on the basis of endorsement of advanced practice licensure and prescriptive authority issued in another state must provide evidence that all education requirements for prescriptive authority in this state have been met.

The provisions of this §222.2 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.3. Renewal of Prescriptive Authority.

(a) The APRN shall renew the privilege to sign prescription drug orders and medication orders in conjunction with the RN and advanced practice license renewal application.

(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. In every licensure cycle 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.

(c) The continuing education requirements in subsection (b) of this section shall be in addition to continuing education required under Chapter 216 of this title (relating to Continuing Competency) for APRNs.

The provisions of this §222.3 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.4. Minimum Standards for Prescribing or Ordering Drugs and Devices.

(a) The APRN with full licensure and 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 the prescriptive authority agreement; 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.

(b) Prescription Information. The format and essential elements of a prescription drug order shall comply with the requirements of the Texas State Board of Pharmacy. The following information must be provided on each prescription:
  (1) the patient's name and address;
  (2) the name, strength, and quantity of the drug to be dispensed;
  (3) directions to the patient regarding taking of the drug and the dosage;
  (4) the intended use of the drug, if appropriate;
  (5) the name, address, and telephone number of the physician with whom the APRN has a prescriptive authority agreement or facility-based protocols or other written authorization;
  (6) address and telephone number of the site at which the prescription drug order was issued;
  (7) the date of issuance;
  (8) the number of refills permitted;
  (9) the name, prescription authorization number, and original signature of the APRN who authorized the prescription drug order; and
  (10) the United States Drug Enforcement Administration numbers of the APRN and the delegating physician, if the prescription drug order is for a controlled substance.

(c) Generic Substitution. The APRN shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to generic substitution.

(d) An APRN may order or prescribe medications for sexually transmitted diseases for partners of an established patient, if the APRN assesses the patient and determines that the patient may have been infected with a sexually transmitted disease. Nothing in this subsection shall be construed to require the APRN to issue prescriptions for partners of patients.

(e) APRNs may order or prescribe only those medications that are FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial. "Off label" use, or prescription of FDA-approved medications for uses other than that indicated by the FDA, is permitted when such practices are:
  (1) within the current standard of care for treatment of the disease or condition; and
  (2) supported by evidence-based research.

(f) The APRN with full licensure and a valid prescriptive authorization number shall cooperate with representatives of the Board and the Texas Medical Board during an inspection and audit relating to the operation and implementation of a prescriptive authority agreement.

The provisions of this §222.4 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.5. Prescriptive Authority Agreement.

(a) The prescriptive authority agreement is a mechanism by which an APRN is delegated the authority to order or prescribe drugs or devices by a physician.

(b) An APRN with full licensure and a valid prescriptive authorization number 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, an APRN is in good standing if the APRN's license and prescriptive authorization number are not encumbered by a disciplinary action;
  (2) is not currently prohibited by the Board from executing a prescriptive authority agreement; and
  (3) before executing the prescriptive authority agreement, the APRN and the physician disclose to the other prospective party to the agreement any prior disciplinary action by the applicable licensing board.

(c) A prescriptive authority agreement must, at a minimum:
  (1) be in writing and signed and dated by the parties to the agreement;
  (2) state the name, address, and all professional license numbers of the parties to the agreement;
  (3) state the nature of the practice, practice locations, or practice settings;
  (4) identify either:
    (A) the types or categories of drugs or devices that may be ordered or prescribed; or
    (B) the types of categories of drugs or devices that may not be ordered or prescribed;
  (5) provide a general plan for addressing consultation and referral;
  (6) provide a plan for addressing patient emergencies;
  (7) state the general process for communication and the sharing of information between the APRN and the physician related to the care and treatment of patients;
  (8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:
    (A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of Chapter 157, Subchapter B, Occupations Code; and
    (B) participate in the prescriptive authority quality assurance and improvement plan meetings required under §157.0512, Occupations Code;
  (9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:
    (A) chart review, with the number of charts to be reviewed determined by the APRN and physician; and
    (B) periodic face to face meetings between the APRN and the physician at a location agreed upon by both providers.

(d) The periodic face to face meetings described by subsection (c)(9)(B) of this section must:
  (1) include:
    (A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and
    (B) discussion of patient care improvement; and
  (2) be documented and occur:
    (A) except as provided by subparagraph (B) of this paragraph:
      (i) at least monthly until the third anniversary of the date the agreement is executed; and
      (ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet; or
    (B) if during the seven years preceding the date the agreement is executed, the APRN for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision:
      (i) at least monthly until the first anniversary of the date the agreement is executed; and

(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet.

(e) Although a prescriptive authority agreement must include the information specified by this section, the agreement may include other provisions agreed to by the APRN and physician, including provisions that were previously contained in protocols or other written authorization.

(f) The APRN shall participate in quality assurance meetings with an alternate physician if the alternate physician has been designated in the prescriptive authority agreement to conduct and document the meeting.

(g) The prescriptive authority agreement is not required to describe the exact steps that an APRN must take with respect to each specific condition, disease, or symptom.

(h) An APRN who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(i) A party to the prescriptive authority agreement may not by contract waive, void, or nullify any provision of this rule or §157.0512 or §157.0513, Occupations Code.

(j) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the respective licensing board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(k) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement shall be made available to the Board, the Texas Medical Board, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of the request from the respective licensing board.

(l) The prescriptive authority agreement should promote the exercise of professional judgment by the APRN commensurate with the APRN's education and experience and the relationship between the APRN and the physician.

(m) The calculation under Chapter 157, Occupations Code, of the amount of time an APRN has practiced under the delegated prescriptive authority of a physician under a prescriptive authority agreement shall include the amount of time the APRN practiced under the delegated prescriptive authority of that physician before November 1, 2013.

The provisions of this §222.5 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.6. Prescribing at Facility-Based Practices.

(a) An APRN with full licensure and a valid prescriptive authorization number may order or prescribe a drug or device at a facility based practice pursuant to a prescriptive authority agreement or through protocols or other written authorization developed in accordance with facility medical staff policies.
  (1) If ordering or prescribing at a facility based practice pursuant to a prescriptive authority agreement, the APRN must maintain a prescriptive authority agreement that meets the requirements of §222.5 (relating to Prescriptive Authority Agreement) of this chapter.
  (2) If ordering or prescribing at a facility based practice pursuant to protocols or other written authorization developed in accordance with facility medical staff policies, the APRN must:
    (A) review the authorizing documents with the appropriate medical staff at least annually;
    (B) order or prescribe drugs and devices in a hospital based facility in which the delegating physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair, or a physician who consents to the request of the medical director or chief of the medical staff to delegate;
    (C) order or prescribe drugs and devices in a long term care facility in which the delegating physician is the medical director; and
    (D) order or prescribe drugs and devices for the care or treatment of only those patients for whom physicians have given their prior consent.

(b) Protocols or other written authorization is authorization to provide medical aspects of patient care that are agreed upon and signed by the APRN and the physician, reviewed and signed at least annually, and maintained in the practice setting of the APRN. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the APRN commensurate with his/her education and experience. Protocols or other written authorization need not describe the exact steps that the APRN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs or devices that may be ordered or prescribed.

(c) A facility based physician may not be prohibited from delegating the prescribing or ordering of drugs or devices to an APRN under §157.0512, Occupations Code or §222.5 of this chapter at other practice locations, including hospitals or long term care facilities, provided that the delegation at those locations complies with all of the requirements of §157.0512 and §222.5 of this chapter.

The provisions of this §222.6 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.7. Authority to Order and Prescribe Non-prescription Drugs, Dangerous Drugs, and Devices.

An APRN who has been issued full licensure and a valid prescription authorization number by the Board may 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. However, if the APRN wishes to also order or prescribe controlled substances, the APRN must also meet the additional requirements of §222.8 (relating to Authority to Order and Prescribe Controlled Substances) of this chapter.

The provisions of this §222.7 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.8. Authority to Order and Prescribe Controlled Substances.

(a) APRNs with full licensure and a valid prescription authorization number are eligible to obtain authority to order and prescribe certain categories of controlled substances. The APRN must comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to, requirements set forth by the Texas Department of Public Safety and the United States Drug Enforcement Administration.

(b) Orders and prescriptions for controlled substances in Schedules III through V may be authorized, provided the following criteria are met:
   (1) Prescriptions for a controlled substance in Schedules III through V, including a refill of the prescription, shall not exceed a 90 day supply. This requirement includes a prescription, either in the form of a new prescription or in the form of a refill, for the same controlled substance that a patient has been previously issued within the time period described by this subsection.
   (2) Beyond the initial 90 days, the refill of a prescription for a controlled substance in Schedules III through V shall not be authorized prior to consultation with the delegating physician and notation of the consultation in the patient's chart.
   (3) A prescription of a controlled substance in Schedules III through V shall not be authorized for a child less than two years of age prior to consultation with the delegating physician and notation of the consultation in the patient's chart.

(c) Orders and prescriptions for controlled substances in Schedule II may be authorized only:
   (1) in a hospital facility-based practice, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital's bylaws to ensure patient safety and as part of care provided to a patient who:
      (A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or
      (B) is receiving services in the emergency department of the hospital; or
   (2) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

The provisions of this §222.8 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.9. Conditions for Obtaining and Distributing Drug Samples.

The APRN with full licensure and a valid prescription authorization number may request, receive, possess, and distribute prescription drug samples provided:

(1) all requirements for the APRN to order and prescribe medications and devices are met;

(2) a prescriptive authority agreement or facility-based protocols or other written authorization authorizes the APRN to order and prescribe the medications and devices;

(3) the samples are for only those drugs or devices that the APRN is eligible to order or prescribe in accordance with the standards and requirements set forth in this chapter; and

(4) a record of the sample is maintained and samples are labeled as specified in the Dangerous Drug Act (Chapter 483, Health and Safety Code) or the Texas Controlled Substances Act (Chapter 481, Health and Safety Code) and 37 Texas Administrative Code Chapter 13.

The provisions of this §222.9 adopted to be effective November 20, 2013, 38 TexReg 8212.

§222.10. Enforcement.

(a) Any APRN who violates the sections of this rule or orders or prescribes in a manner that is not consistent with the standard of care shall be subject to removal of the authority to order or prescribe under this section and disciplinary action by the Board. Behaviors associated with ordering and prescribing medications for which the Board may impose disciplinary action include, but are not limited to:
  (1) ordering, prescribing, dispensing, or administering medications or devices for other than evidenced based therapeutic or prophylactic purposes that meet the minimum standards of care;
  (2) ordering, prescribing, or dispensing medications or devices for personal use;
  (3) failing to properly assess and document the assessment prior to ordering, prescribing, dispensing, or administering a medication or device;
  (4) selling, purchasing, trading, or offering to sell, purchase, or trade a prescription drug sample; and
  (5) delegation of authority to any other person to order, prescribe, or dispense of an order or prescription for a drug or device.

(b) Failure to cooperate with a representative of the Board who conducts an onsite investigation may result in disciplinary action. Failure to cooperate with a representative of the Board or the Texas Medical Board who inspects and audits the practice relating to the implementation and operation of the prescriptive authority agreement may result in disciplinary action.

(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) Upon receipt of notice from the Texas Medical Board and/or the Texas Physician Assistant Board that a licensee of one of those boards is under investigation involving the delegation and supervision of prescriptive authority, the Board may open an investigation against an APRN who is a party to the prescriptive authority agreement with the licensee who is under investigation by the board that provided the notice.

(e) The Board shall report to the Texas Department of Public Safety and the United States Drug Enforcement Administration any of the following:
  (1) any significant changes in the status of the RN license or advanced practice license; or
  (2) disciplinary action impacting an APRN's ability to authorize or issue prescription drug orders and medication orders.

(f) The practice of the APRN approved by the Board to order and prescribe is subject to monitoring by the Board on a periodic basis.

(g) The Board shall maintain a list of APRNs who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

(h) The Board shall provide information to the public regarding APRNs who are prohibited from entering into or practicing under a prescriptive authority agreement.

The provisions of this §222.10 adopted to be effective November 20, 2013, 38 TexReg 8212.

CHAPTER 223. FEES

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.
- (1) Examination: $100;
- (2) Endorsement: $161;
- (3) Licensure renewal (each biennium):
  - (A) Registered Nurse (RN): $60;
  - (B) Licensed Vocational Nurse (LVN): $45;
- (4) reactivating from inactive status:
  - (A) less than four years—$10 plus current renewal fee;
  - (B) more than four years—$20 plus current renewal fee;
- (5) late fee for reactivation from delinquent status:
  - (A) less than 90 days—$60 plus current licensure renewal fee;
  - (B) more than 90 days—$120 plus current licensure renewal fee;
- (6) duplicate or substitute permanent certificate: $25;
- (7) issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit: $25;
- (8) approval of new nursing education programs: $2,500;
- (9) verification of licensure: $5;
- (10) verification of records: $25;
- (11) bad checks: $30;
- (12) Advanced Practice Nurse initial credentials: $100;
- (13) declaratory order of eligibility: $150;
- (14) eligibility determination: $150;
- (15) Licensed Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP): $10;
- (16) Advanced Practice Nurse renewal: $50;
- (17) Initial Prescriptive Authority: $50;
- (18) outpatient anesthesia registry renewal: $35;
- (19) outpatient anesthesia inspection and advisory opinion: $625;
- (20) fee for Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants as determined by fees imposed by the Criminal Justice Information Services (CJIS) Division and the Texas Department of Public Safety;
- (21) Disciplinary monitoring fees as stated in a Board order;
- (22) Nursing Jurisprudence Examination fee: not to exceed $25;
- (23) approval of remedial education course: $300 per course;
- (24) renewal of remedial education course: $100 per course; and
- (25) approval of a nursing education program outside Texas' jurisdiction to conduct clinical learning experiences in Texas: $500.

(b) All fees are non-refundable.

The provisions of this §223.1 adopted to be effective August 11, 2005, 30 TexReg 4481; amended to be effective January 2, 2006, 30 TexReg 8882; amended to be effective September 25, 2007, 32 TexReg 6520; amended to be effective April 8, 2008, 33 TexReg 2820; amended to be effective June 24, 2008, 33 TexReg 4884; amended to be effective October 19, 2008, 33 TexReg 8512; amended to be effective May 14, 2009, 34 TexReg 2769; amended to be effective July 7, 2010, 35 TexReg 5832; amended to be effective August 11, 2011, 36 TexReg 4960; amended to be effective October 11, 2011, 36 TexReg 6766; amended to be effective October 1, 2013, 38 TexReg 6598; amended to be effective September 28, 2014, 39 TexReg 7737; amended to be effective January 11, 2015, 40 TexReg 380.

§223.2. Charges for Public Records.

In accordance with Texas Government Code §552.262, the Board of Nurse Examiners will make copies of public records and charge the fees established by the Attorney General's Office.

The provisions of this §223.2 adopted to be effective December 12, 1994, 19 TexReg 9492; amended to be effective July 5, 2004, 29 TexReg 6298; amended to be effective January 2, 2006, 30 TexReg 8882.

CHAPTER 224. DELEGATION OF NURSING TASKS BY REGISTERED PROFESSIONAL NURSES TO UNLICENSED PERSONNEL FOR CLIENTS WITH ACUTE CONDITIONS OR IN ACUTE CARE ENVIRONMENTS

§224.1. Application of Chapter.

This chapter applies to situations where:

(1) the client has an acute health condition that is unstable or unpredictable; or

(2) the client is in an acute care environment where nursing services are continuously provided. Settings include, but are not limited to, hospitals, rehabilitation centers, skilled nursing facilities, clinics, correctional health, private practice physician offices and settings that do not otherwise meet the definition of independent living environment {§225.4(9)}.

The provisions of this §224.1 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.2. Exclusions from Chapter.

This chapter does not apply to:

(1) tasks provided in compliance with Government Code §531.051(e) relating to Consumer Direction of Certain Services for Persons With Disability and Elderly Persons; or

(2) RNs who:
  (A) supervise or instruct others in the gratuitous nursing care of the sick;
  (B) are qualified nursing faculty or preceptors directly supervising or instructing nursing students in the performance of nursing tasks while enrolled in accredited nursing programs;
  (C) instruct and/or supervise an unlicensed person in the proper performance of nursing tasks as a part of an education course designed to prepare persons to obtain a state license, certificate or permit that authorizes the person to perform such tasks; and
  (D) assign tasks to or supervise LVNs or other licensed practitioners practicing within the scope of their license.

The provisions of this §224.2 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.3. Purpose.

(a) The Texas Board of Nursing (BON or Board) recognizes that changes in health care delivery have and will continue to influence the way nursing care is delivered. The Board believes that the registered nurse (RN) is in a unique position to develop and implement a nursing plan of care that incorporates a professional relationship between the RN and the client. The Board recognizes that the RN's responsibility may vary from that of the nurse providing care at the bedside of an acutely ill client to that of the nurse managing health care delivery in institutional and community settings. Assessment of the nursing needs of the client, the plan of nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the responsibilities of the RN.

(b) The full utilization of the services of an RN, to include advanced practice registered nurses (APRN), may require delegation of selected nursing tasks to unlicensed personnel. The scope of delegation and the level of supervision by the RN may vary depending on the setting, the complexity of the task, the skills and experience of the unlicensed person, and the client's physical and mental status. The following sections govern the RN in delegating nursing tasks to unlicensed personnel across a variety of settings where nursing care services are delivered.

The provisions of this §224.3 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activities of daily living—Limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, and range of motion.

(2) Client—the individual receiving care.

(3) Delegation—Authorizing an unlicensed person to provide nursing services while retaining accountability for how the unlicensed person performs the task. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing tasks in the presence of a RN.

(4) Unlicensed person—An individual, not licensed as a health care provider:
   (A) who is monetarily compensated to provide certain health related tasks and functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions;
   (B) including, but is not limited to, nurse aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by a state agency, and other individuals providing personal care/ assistance of health related services; or
   (C) who is a professional nursing student, not licensed as a RN or LVN, providing care for monetary compensation and not as part of their formal educational program shall be considered to be unlicensed persons and must provide that care in conformity with this chapter.

The provisions of this §224.4 adopted to be effective February 19, 2003, 28 TexReg 1384.

§224.5. RN Accountability for Delegated Tasks.

(a) The RN's accountability to the BON with respect to its taking disciplinary action against the RN's license is met when the delegating RN has complied with and can verify compliance with this chapter and specifically with §224.6 and §224.8(b)(1) of this title (relating to General Criteria for Delegation and Discretionary Delegation Tasks) as appropriate.

(b) This chapter does not change or apply to an RN's civil liability.

(c) The RN nurse administrator or the RN who is responsible for nursing services in settings that utilize RN delegation in clients with acute care conditions or acute care environments shall be responsible for knowing the requirements of this rule and for taking reasonable steps to assure that registered nurse delegation is implemented and conducted in compliance with the Texas Nursing Practice Act and this chapter.

The provisions of this §224.5 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.6. General Criteria for Delegation.

The following standards must be met before the RN delegates nursing tasks to unlicensed persons. These criteria apply to all instances of RN delegation. Additional criteria, if appropriate to the particular task being delegated, may also be found in §224.8(b)(1) of this title (relating to Discretionary Delegation Tasks).

(1) The RN must make an assessment of the client's nursing care needs. The RN should, when the client's status allows, consult with the client, and when appropriate the client's family and/or significant other(s), to identify the client's nursing needs prior to delegating nursing tasks.

(2) The nursing task must be one that a reasonable and prudent RN would find is within the scope of sound nursing judgment to delegate. The RN should consider the five rights of delegation: the right task, the right person to whom the delegation is made, the right circumstances, the right direction and communication by the RN, and the right supervision as determined by the RN.

(3) The nursing task must be one that, in the opinion of the delegating RN, can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare.

(4) The nursing task must not require the unlicensed person to exercise professional nursing judgment; however, the unlicensed person may take any action that a reasonable, prudent non-health care professional would take in an emergency situation.

(5) The unlicensed person to whom the nursing task is delegated must be adequately identified. The identification may be by individual or, if appropriate, by training, education, and/or certification/permit of the unlicensed person.

(6) The RN shall have either instructed the unlicensed person in the delegated task, or verified the unlicensed person's competency to perform the nursing task. The verification of competence may be done by the RN making the decision to delegate or, if appropriate, by training, education, experience and/or certification/ permit of the unlicensed person.

(7) The RN shall adequately supervise the performance of the delegated nursing task in accordance with the requirements of §224.7 of this title (relating to Supervision).

(8) If the delegation continues over time, the RN shall periodically evaluate, review, and when a change in condition occurs reevaluate the delegation of tasks. For example, the evaluation would be appropriate when

the client's Nursing Care Plan is reviewed and revised. The RN's evaluation of a delegated task(s) will be incorporated into the client's Nursing Care Plan.

The provisions of this §224.6 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.7. Supervision.

The registered professional nurse shall provide supervision of all nursing tasks delegated to unlicensed persons in accordance with the following conditions. These criteria apply to all instances of RN delegation and supervision of delegation for clients with acute conditions or in acute care environments.

(1) The degree of supervision required shall be determined by the delegating RN or the RN who assumes supervisory responsibilities after an evaluation of appropriate factors involved including, but not limited to, the following:
  (A) the stability of the client's status in relation to the task(s) to be delegated;
  (B) the training, experience, and capability of the unlicensed person to whom the nursing task is delegated;
  (C) the nature of the nursing task being delegated; and
  (D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed.

(2) The RN or an RN who assumes supervisory responsibilities under this section shall be available in person or by telecommunications, and shall make decisions about appropriate levels of supervision using the following examples as guidelines:
  (A) In situations where the RN's regularly scheduled presence is required to provide nursing services, including assessment, planning, intervention and evaluation of the client whose health status is changing and/or to evaluate the client's health status, the RN must be readily available to supervise the unlicensed person in the performance of delegated tasks. Settings include, but are not limited to acute care, long term care, rehabilitation centers, and/or clinics providing public health services.
  (B) In situations where nursing care is provided in the client's residence but the client's status is unstable and unpredictable and the RN is required to assess, plan, intervene, and evaluate the client's unstable and unpredictable status and need for skilled nursing services, the RN shall make supervisory visits at least every fourteen calendar days. The RN shall assess the relationship between the unlicensed person and the client to determine whether health care goals are being met. Settings include, but are not limited to group homes, foster homes and/or the client's residence.
  (C) In situations where the RN assumes supervision of UAPs performing tasks that have been delegated by another RN, if performance of the tasks by the UAP poses a risk of patient harm, the supervising RN must intervene as required to stabilize a patient's condition and prevent complications and then communicate with the delegating RN.

The provisions of this §224.7 adopted to be effective February 19, 2003, 28 TexReg 1384 ; amended to be effective January 27, 2015, 40 TexReg 381.

§224.8. Delegation of Tasks.

(a) Tasks Which are Most Commonly Delegated. By way of example, and not in limitation, the following nursing tasks are ones that are most commonly the type of tasks within the scope of sound professional nursing practice to be considered for delegation, regardless of the setting, provided the delegation is in compliance with §224.6 of this title (relating to General Criteria for Delegation) and the level of supervision required is determined by the RN in accordance with §224.7 of this title (relating to Supervision):
  (1) non-invasive and non-sterile treatments;
  (2) the collecting, reporting, and documentation of data including, but not limited to:
    (A) vital signs, height, weight, intake and output, capillary blood and urine test;
    (B) environmental situations;
    (C) client or family comments relating to the client's care; and
    (D) behaviors related to the plan of care;
  (3) ambulation, positioning, and turning;
  (4) transportation of the client within a facility;
  (5) personal hygiene and elimination, including vaginal irrigations and cleansing enemas;
  (6) feeding, cutting up of food, or placing of meal trays;
  (7) socialization activities;
  (8) activities of daily living; and
  (9) reinforcement of health teaching planned and/or provided by the registered nurse.

(b) Discretionary Delegation Tasks.
  (1) In addition to General Criteria for Delegation outlined in §224.6 of this title, the nursing tasks which follow in paragraph (2) of this subsection may be delegated to an unlicensed person only:
    (A) if the RN delegating the task is directly responsible for the nursing care given to the client;
    (B) if the agency, facility, or institution employing or utilizing unlicensed personnel follows a current protocol for the delegation of the task and for the instruction and training of unlicensed personnel performing nursing tasks under this subsection and that the protocol is developed with input by registered nurses currently employed in the facility and includes:
      (i) the manner in which the instruction addresses the complexity of the delegated task;
      (ii) the manner in which the unlicensed person demonstrates competency of the delegated task;
      (iii) the mechanism for reevaluation of the competency;
      (iv) an established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated;
      (v) how the unlicensed person will report back to the delegating RN or supervising RN; and
      (vi) periodic re-demonstration of competency.
    (C) if the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the RN's professional judgment.
  (2) the following are nursing tasks that are not usually within the scope of sound professional nursing judgment to delegate and may be delegated only in accordance with, §224.6 of this title and paragraph (1) of this subsection. These types of tasks include:
    (A) sterile procedures—those procedures involving a wound or an anatomical site which could potentially become infected;
    (B) non-sterile procedures, such as dressing or cleansing penetrating wounds and deep burns;
    (C) invasive procedures—inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube; and
    (D) care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatment.

(c) Nursing Tasks Prohibited from Delegation By way of example, and not in limitation, the following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:
  (1) physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;
  (2) formulation of the nursing care plan and evaluation of the client's response to the care rendered;
  (3) specific tasks involved in the implementation of the care plan which require professional nursing judgment or intervention;
  (4) the responsibility and accountability for client health teaching and health counseling which promotes client education and involves the client's significant others in accomplishing health goals; and
  (5) administration of medications, including intravenous fluids, except by medication aides as permitted under §224.9 of this title (relating to The Medication Aide Permit Holder).

The provisions of this §224.8 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.9. The Medication Aide Permit Holder.

(a) An RN may delegate to medication aides the administration of medication to clients in correctional health, long term care facilities, home health agencies, and other facilities as authorized by law if:
  (1) the medication aide holds a valid permit issued by the appropriate state agency to administer medications in that facility or agency;
  (2) the RN assures that the medication aide functions in compliance with the laws and regulations of the agency issuing the permit; and
  (3) the route of administration is oral, via a permanently placed feeding tube, sublingual or topical including eye, ear or nose drops and vaginal or rectal suppositories.

(b) The following tasks may not be delegated to the Medication Aide Permit Holder unless allowed and in compliance with Chapter 225 of this title (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions):
  (1) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;
  (2) administration of the initial dose of a medication that has not been previously administered to the client;
  (3) administration of medications by an injectable route except as permitted in independent living environments for administration of insulin as outlined in §225.12 (relating to Delegation of Insulin or Other Injectable Medications Prescribed in the Treatment of Diabetes Mellitus);

(4) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments in independent living environments except as permitted in §225.10(10)(F) (relating to Tasks That May Be Delegated);
(5) administration of medications by way of a tube inserted in a cavity of the body in independent living environments except as permitted in §225.10(10)(A) (relating to Tasks That May be Delegated);
(6) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and
(7) responsibility for ordering a client's medication from the pharmacy.

The provisions of this §224.9 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.10. Supervising Unlicensed Personnel Performing Tasks Delegated by Non RN Practitioners

(a) The following applies to the registered professional nurse who practices in a collegial relationship with another licensed practitioner, who has delegated tasks to an unlicensed person over whom the RN has supervisory responsibilities. The RN's accountability to the BON, with respect to its taking disciplinary action against the RN's license, is met if the RN:
(1) verifies the training of the unlicensed person;
(2) verifies that the unlicensed person can properly and adequately perform the delegated task without jeopardizing the client's welfare; and
(3) adequately supervises the unlicensed person.

(b) If the RN cannot verify the unlicensed person's capability to perform the delegated task, the RN must communicate this fact to the licensee who delegated the task.

(c) If performance of the task(s) by UAP poses risk of harm to the patient, the RN must intervene as required to stabilize a patient's condition and prevent complications; and then communicate with the delegating practitioner.

The provisions of this §224.10 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

§224.11. Application of Other Laws and Regulations.

(a) BON §217.11(1)(A) of this title (relating to Standards of Nursing Practice) requires RNs to know and conform to all laws and regulations affecting their area of practice.

(b) The RN delegating tasks to an unlicensed person should be aware that, in addition to this chapter, various laws and regulations may apply to, including but not limited to, laws and regulations governing facility licensing, home and community support services agencies, Medicare and Medicaid regulations, and Medication Aide regulations.

(c) In situations where an RN's practice is governed by multiple laws and regulations that impose different requirements, the RN must comply with them all and if inconsistent, the most restrictive requirement(s) governs. For example, if one regulation requires an RN to make a supervisory visit every 14 days and another leaves it to the RN's professional judgment, the RN would have to visit at least every 14 days or more frequently, if that is what the RN's professional judgment indicated.

The provisions of this §224.11 adopted to be effective February 19, 2003, 28 TexReg 1384; amended to be effective January 27, 2015, 40 TexReg 381.

CHAPTER 225. RN DELEGATION TO UNLICENSED PERSONNEL AND TASKS NOT REQUIRING DELEGATION IN INDEPENDENT LIVING ENVIRONMENTS FOR CLIENTS WITH STABLE AND PREDICTABLE CONDITIONS

§225.1. Application of Chapter.

(a) This chapter applies only to situations meeting the following criteria:
  (1) the client is in an independent living environment;
  (2) the client, if 16 or older, or client's responsible adult is willing and able to participate in decisions about the overall management of the client's health care; and
  (3) the task is for a stable, predictable condition as defined by §225.4 of this title (relating to Definitions).

(b) If the situation does not meet the above criteria in subsection (a) of this section, any delegation of nursing tasks by the RN to an unlicensed person must comply with Chapter 224 of this title (relating to Delegation of Tasks Relating to Acute Conditions or Settings Other Than Independent Living Environments).

(c) Should a client develop an acute condition that is unstable or unpredictable, this chapter may still be applicable to tasks that relate solely to the client's stable and predictable condition(s) and not to the acute condition(s).

The provisions of this §225.1 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.2. Exclusions from Chapter.

This chapter does not apply to:

(1) tasks performed for acute, unstable, or unpredictable conditions;

(2) settings where nursing services are continuously provided;

(3) tasks performed under authority of Government Code §531.051(e) relating to Consumer Direction of Certain Services for Persons With Disability and Elderly Persons;

(4) RNs who:
  (A) supervise or instruct others in the gratuitous nursing care of the sick;
  (B) are qualified nursing faculty or preceptors directly supervising or instructing nursing students in the performance of nursing tasks while enrolled in accredited nursing programs;
  (C) instruct and/or supervise an unlicensed person in the proper performance of nursing tasks as a part of an education course designed to prepare persons to obtain a state license, certificate or permit that authorizes the person to perform such tasks; and
  (D) assign tasks to or supervise LVNs or other licensed practitioners practicing within the scope of their license.

The provisions of this §225.2 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.3. Purpose.

(a) The Texas Board of Nursing (BON or Board) recognizes that public preference in the provision of health care services includes a greater opportunity for clients to share with the RN in the choice and control for delivery of services in the community based setting. The Board also appreciates that the provision of health care is dynamic in nature and continually evolving. As professional nurses, regardless of practice setting, RNs are obligated to assess the nursing needs of the client, develop a plan of nursing actions, implement this plan, and evaluate the outcome. These are essential components of RN practice that identify professional nursing as a process discipline. Professional nursing while inclusive of tasks is not focused on tasks but rather on interventions or client-centered actions initiated to assist the client in accomplishing the goals defined in the nursing care plan.

(b) In the independent living environment, RNs encounter clients across the spectrum of health to illness. The primary goal is to assist the choice of the client to achieve the most integrated setting/least restrictive environment throughout the life span. This is regularly accomplished, in part, through the assistance of unlicensed personnel who work with the client to complete a variety of tasks on a daily basis. Some tasks that are considered nursing tasks in the acute care setting are considered support services necessary to assist the client to maintain client health, and thus the highest degree of independence and quality of life possible, in the independent living environment.

(c) The purpose of this chapter is to provide guidance to RNs which includes advanced practice registered nurses practicing in independent living environments in incorporating the use of unlicensed personnel to achieve optimal health benefits for the client. Clients in these settings have needs that may be categorized as activities of daily living (ADLs), health maintenance activities (HMAs), or nursing tasks. For some clients, ADLs and HMAs may be of a routine and supportive nature that minimizes the need for RN involvement.

(d) The RN shall collaborate with the client and/or the client's responsible adult in pursuit of the highest possible degree of independent living for the client. By adequately and accurately assessing the needs of the client in this setting, and considering the inter-related factors impacting the client's environment, the RN can effectively make decisions in utilizing unlicensed personnel to accomplish quality supportive services and care.

(e) The RN nurse administrator or the RN who is responsible for nursing services in settings that utilize RN delegation in independent living environments shall be responsible for knowing the requirements of this rule and for taking reasonable steps to assure that registered nurse delegation is implemented and conducted in compliance with the Texas Nursing Practice Act and this chapter.

The provisions of this §225.3 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activities of daily living (ADLs)—limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, range of motion, and assistance with self administered medications. The term does not include more specific tasks defined as health maintenance activities under paragraph (8) of this section (relating to Health Maintenance Activities).

(2) Administration of Medications—removal of an individual/unit dose from a previously dispensed, properly labeled container; verifying it with the medication order; giving the correct medication and the correct dose to the proper client at the proper time by the proper route; and accurately recording the time and dose given.

(3) Assistance with self-administered medication—any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy.

(4) Client—the individual receiving care.

(5) Client's Responsible Adult—an individual, 18 or older, normally chosen by the client, who is willing and able to participate in decisions about the overall management of the client's health care and to fulfill any other responsibilities required under this chapter for care of the client. The term includes but is not limited to parent, foster parent, family member, significant other, or legal guardian.

(6) Delegation—means that a registered nurse authorizes an unlicensed person to perform tasks of nursing care in selected situations and indicates that authorization in writing. The delegation process includes nursing assessment of a client in a specific situation, evaluation of the ability of the unlicensed persons, teaching the task, ensuring supervision of the unlicensed persons and re-evaluating the task at regular intervals. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing tasks in the presence of a RN.

(7) Functional Disability—a mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and ADLs.

(8) Health Maintenance Activities (HMAs)—tasks that may be exempt from delegation based on RN assessment that enable the client to remain in an independent living environment and go beyond ADLs because of the higher skill level required to perform. HMAs include the following:
   (A) administering oral medications that are normally self-administered, including administration through a permanently placed feeding tube with irrigation;
   (B) topically applied medications;
   (C) insulin or other injectable medications prescribed in the treatment of diabetes mellitus administered subcutaneously, nasally, or via an insulin pump;
   (D) unit dose medication administration by way of inhalation (MDIs) including medications administered as nebulizer treatments for prophylaxis and/or maintenance;

(E) routine administration of a prescribed dose of oxygen;
(F) noninvasive ventilation (NIV) such as continuous positive airway pressure (CPAP) and bi-level positive airway pressure (BiPAP) therapy;
(G) the administering of a bowel and bladder program, including suppositories, enemas, manual evacuation, intermittent catheterization, digital stimulation associated with a bowel program, tasks related to external stoma care including but not limited to pouch changes, measuring intake and output, and skin care surrounding the stoma area;
(H) routine preventive skin care and care of Stage 1 pressure ulcers;
(I) feeding and irrigation through a permanently placed feeding tube inserted in a surgically created orifice or stoma;
(J) those tasks that an RN may reasonably conclude as safe to exempt from delegation based on an assessment consistent with §225.6 of this title (relating to RN Assessment of the Client); and
(K) such other tasks as the Board may designate.

(9) Independent living environment—A client's individual residence which may include a home or homelike setting such as the client's home, an entity licensed or regulated by a state or federal agency or exempt from such licensure or regulation, (such as a group home, foster home, or assisted living facility), and includes where the client works, attends school, or engages in other community activities. The term does not include settings in which nursing services are continuously provided.

(10) Not Requiring Delegation—a determination by a RN that the performance of an ADL or HMA may be exempt from delegation for a particular client and does not constitute the practice of professional nursing based on criteria established by the Board/this chapter.

(11) Stable and predictable—a situation where the client's clinical and behavioral status is determined to be non-fluctuating and consistent. A stable/predictable condition involves long term health care needs which are not recuperative in nature and do not require the regularly scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition are situations where the client's clinical and behavioral status is expected to change rapidly or in need of the continuous/continual assessment and evaluation of a registered nurse or licensed vocational nurse. The condition of clients receiving hospice care in an independent living environment where deterioration is predictable shall be deemed to be stable and predictable.

(12) Unlicensed person—an individual, not licensed as a health care provider:
(A) who is monetarily compensated to provide certain health related tasks and functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions;
(B) who provides those tasks and functions as a volunteer but does not qualify as a friend providing gratuitous care for the sick under §301.004(1) of the Nursing Practice Act;
(C) including, but not limited to, nurse aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by a state agency, and other individuals providing personal care/assistance of health related services; or
(D) who is a professional nursing student, not licensed as a RN or LVN, providing care for monetary compensation and not as part of their formal educational program shall be considered to be unlicensed persons and must provide that care in conformity with this chapter.

The provisions of this §225.4 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.5. RN Accountability.

(a) The RN is responsible for proper performance of the assessment required by §225.6 of this title (relating to RN Assessment of the Client) and for the RN's decisions made as a result of that assessment including determining that performance of a particular ADL or HMA for a particular client qualifies as not requiring delegation.

(b) The RN is responsible for documenting the delegation assessment and delegation decision(s), and must provide the rationale for the delegation decisions upon request of the client or the client's responsible adult. When delegation decisions conflict or are in disagreement with the client or the client's responsible adult, the RN should collaborate with the client or the client's responsible adult through a dispute resolution process if available.

(c) The RN is not accountable for an unlicensed person's actual performance of ADLs or HMAs not requiring delegation.

(d) The RN's accountability to the BON with respect to its taking disciplinary action against the RN's license is met when the RN can verify compliance with this chapter.

(e) This chapter does not change a RN's civil liability.

The provisions of this §225.5 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.6. RN Assessment of the Client.

(a) The RN, in consultation with the client if 16 or older, and when appropriate the client's responsible adult, must make an assessment to determine if the care:
  (1) qualifies as an ADL or HMA not requiring delegation;
  (2) can be delegated to an unlicensed person; or
  (3) should not be delegated and only performed by a nurse.

(b) In making this determination, the RN shall consider each of the following elements of assessment to develop an overall picture of the client's health status:
  (1) the ability of the client or client's responsible adult to participate in the health care decision and ability and willingness to participate in the management and direction of the task;
  (2) the adequacy and reliability of support systems available to the client or client's responsible adult;
  (3) the degree of the stability and predictability of the client's health status relative to which the task is performed;
  (4) the knowledge base of the client or client's responsible adult about the client's health status;
  (5) the ability of the client or client's responsible adult to communicate with an unlicensed person in traditional or non-traditional ways; and
  (6) how frequently the client's status shall be reassessed.

(c) While each element must be assessed, strength in one factor may compensate/offset a weakness in another factor. The assessment under this section does not require the RN to know either the specific unlicensed person who will perform the tasks or the specific qualifications of the unlicensed person who will perform the tasks, thus the RN is not required to determine the competency of the unlicensed person.

The provisions of this §225.6 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.7. Activities of Daily Living Not Requiring Delegation.

(a) Activities of daily living (ADLs), as defined in this chapter, that do not fall within the practice of professional nursing may be performed by an unlicensed person in accordance with this section without being delegated. The Board has determined that in situations governed by this chapter ADLs do not fall within the practice of professional nursing when:
  (1) performed for a person with a functional disability and the client would perform the task(s) but for the functional disability; and
  (2) the RN determines, based on an assessment under §225.6 of this title (relating to RN Assessment of the Client) that the task(s) is such that it could be performed by any unlicensed person without RN supervision.

(b) If the above criteria cannot be met, an ADL may still be performed as a delegated task if it meets the criteria of §225.9 of this title (relating to Delegation Criteria).

The provisions of this §225.7 adopted to be effective February 19, 2003, 28 TexReg 1386.

§225.8. Health Maintenance Activities Not Requiring Delegation.

(a) Health Maintenance Activities (HMAs), as defined in this chapter that do not fall within the practice of professional nursing, may be performed by an unlicensed person in accordance with this section without being delegated. The Board has determined that in situations governed by this chapter HMAs do not fall within the practice of professional nursing when:
  (1) performed for a person with a functional disability;
  (2) in addition to the client assessment under §225.6 of this title (relating to RN Assessment of the Client), a RN determines all of the following conditions exist:
    (A) the client would perform the task(s) but for her/his functional disability;
    (B) the task(s) can be directed by the client or client's responsible adult to be performed by an unlicensed person without RN supervision;
    (C) the client or client's responsible adult is able, and has agreed in writing, to participate in directing the unlicensed person's actions in carrying out the HMA; and
    (D) Either
      (i) the client is willing and able to train the unlicensed person in the proper performance of the HMA, or

(ii) the client's responsible adult is capable of training the unlicensed person in the proper performance of the task and
(I) will be present when the task is performed, or
(II) if not present, will have observed the unlicensed person perform the task at least once to assure he/she can competently perform the task and will be immediately accessible in person or by telecommunications to the unlicensed person when the task is performed.

(b) If the above criteria cannot be met, an HMA may still be performed as a delegated task if it meets the criteria of §225.9 of this title (relating to Delegation Criteria).

The provisions of this §225.8 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.9. Delegation Criteria.

(a) When determining whether to delegate a nursing task or those ADLs or HMAs requiring delegation, the RN, in addition to the assessment under §225.6 of this title (relating to RN Assessment of the Client), shall:
(1) determine that the task does not require the unlicensed person to exercise nursing judgment;
(2) verify the experience and competency of the unlicensed person to perform the task, including the unlicensed person's ability to recognize and inform the RN of client changes related to the task. The RN must have either:
(A) instructed the unlicensed person in the delegated task; or
(B) verified the unlicensed person's competency to perform the nursing task based on personal knowledge of the training, education, experience and/or certification/permit of the unlicensed person.
(3) determine, in consultation with the client or the client's responsible adult, the level of supervision and frequency of supervisory visits required, taking into account:
(A) the stability of the client's status;
(B) the training, experience and capability of the unlicensed person to whom the nursing task is delegated;
(C) the nature of the nursing task being delegated;
(D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed; and
(E) the level of participation of client or client's responsible adult; and
(4) consider whether the five rights of delegation can be met: the right task; the right person to whom the delegation is made; the right circumstances; the right direction and communication by the RN; and the right supervision.

(b) The RN or another RN qualified to supervise the unlicensed person shall be available, in person or by telecommunications when the unlicensed person is performing the task.

(c) The competency of the unlicensed person to whom the nursing task is delegated must be adequately documented. The verification of competency may be by an individual or, if appropriate, by experience, training, education, and/or certification/permit of the unlicensed person.

(d) If the RN is employed, the employing entity must have a written policy acknowledging that the final decision to delegate shall be made by the RN in consultation with client or client's responsible adult.

The provisions of this §225.9 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.10. Tasks That May Be Delegated.

A RN may delegate the following tasks unless the RN's assessment under §225.6 of this title (relating to RN Assessment of the Client) and §225.9 of this title (relating to Delegation Criteria) determines that the task is not a task a reasonable and prudent nurse would delegate. Tasks include:

(1) an ADL the RN has determined requires delegation under §225.7 of this title (relating to Activities of Daily Living Not Requiring Delegation);

(2) a HMA the RN has determined requires delegation under §225.8 of this title (relating to Health Maintenance Activities Not Requiring Delegation);

(3) non-invasive and non-sterile treatments with low risk of infection;

(4) the collecting, reporting, and documentation of data including, but not limited to:
(A) vital signs, height, weight, intake and output, capillary blood and urine test;
(B) environmental situations/living conditions that affect the client's health status;

(C) client or significant other's comments relating to the client's care; and
(D) behaviors related to the plan of care;

(5) reinforcement of health teaching provided by the registered nurse;

(6) inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube limited to the following:
(A) insertion and/or irrigation of urinary catheters for purpose of intermittent catheterization; and
(B) irrigation of an indwelling tube such as a urinary catheter or permanently placed feeding tube;

(7) ventilator care or tracheal care; including instilling normal saline and suctioning of a tracheostomy with routine supplemental oxygen administration.

(8) care of broken skin with low risk of infection;

(9) sterile procedures those procedures involving a wound or an anatomical site that could potentially become infected;

(10) administration of medications that are administered:
(A) orally or via permanently placed feeding tube inserted in a surgically created orifice or stoma;
(B) sublingually;
(C) topically;
(D) eye and ear drops; nose drops and sprays;
(E) vaginal or rectal gels or suppositories;
(F) unit dose medication administration by way of inhalation for prophylaxis and/or maintenance; and
(G) oxygen administration for the purpose of non-acute respiratory maintenance.

(11) administration of oral unit dose medications from the client's daily pill reminder container in accordance with §225.11 of this title (relating to Delegation of Administration of Medications From Pill Reminder Container);

(12) administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus administered sub-cutaneously, nasally, or via an insulin pump in accordance with §225.12 of this title (relating to Delegation of Insulin or Other Injectable Medications Prescribed in the Treatment of Diabetes Mellitus);

(13) certain emergency measures as defined in §224.6(4) of this title (relating to General Criteria for Delegation);

(14) those tasks that an RN may reasonably conclude as safe to delegate based on an assessment consistent with §225.6 of this title; and

(15) other such tasks as the Board may designate.

The provisions of this §225.10 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.11. Delegation of Administration of Medications From Pill Reminder Container.

In addition to all previous criteria listed, when delegating the administration of oral unit dose medications from the client's daily pill reminder container, the RN must:

(1) ensure that the unit dose medication(s) are placed in the client's daily pill reminder container, from properly dispensed prescription bottle(s), by the RN or a person mutually agreed upon by the RN and client or client's responsible adult who has demonstrated the ability to complete the task properly;

(2) instruct the client or client's responsible adult and the unlicensed person involved in such delegation activity about each medication placed in such a container with regard to distinguishing characteristics of each medication, proper time, dose, route and adverse effects which may be associated with the medication;

(3) provide to the client, client's responsible adult if applicable, and the unlicensed person(s) instructions to contact the RN before the medication is administered when there are questions concerning the medications or changes in the client's status related to the medication being given. An example is when the medications appear to be rearranged or missing.

(4) make supervisory visits in the event there are changes in the client's status related to the medication being given and determine the frequency of supervisory visits in consultation with the client or the client's responsible adult to assure that safe and effective services are being provided; and

(5) ensure the client or client's responsible adult acknowledges in writing that the administration of medication(s) under this section will be delegated to an unlicensed person.

The provisions of this §225.11 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.12. Delegation of Insulin or Other Injectable Medications Prescribed in the Treatment of Diabetes Mellitus.

In addition to all previous criteria listed, when delegating administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus administered subcutaneously, nasally, or via insulin pump the RN must:

(1) arrange for a RN to be available on call for consultation/intervention 24 hours each day;

(2) provide teaching of all aspects of insulin or other injectable medications prescribed in the treatment of diabetes mellitus administered subcutaneously, nasally, or via insulin pump to the client and the unlicensed person to include, but not limited to proper technique for determination of the client's blood sugar prior to each administration of insulin or other medication, proper injection technique, risks, side effects and the correct response(s). The RN must leave written instructions for the performance of administering insulin or other injectable medications prescribed in the treatment of diabetes mellitus subcutaneously, nasally, or via insulin pump, including a copy of the physician's order or instructions, for the unlicensed person, client, or client's responsible adult to use as a reference;

(3) delegate the administration of insulin or other injectable medication prescribed in the treatment of diabetes mellitus subcutaneously, nasally, or via insulin pump to an unlicensed person, specific to one client. The RN must teach that the administration of insulin or other injectable medication prescribed in the treatment of diabetes mellitus subcutaneously, nasally, or via insulin pump is to be performed only for the patient for whom the instructions are provided and instruct the unlicensed person that the task is client specific and not transferable to other clients or providers;

(4) delegate the administration of insulin or other injectable medication prescribed in the treatment of diabetes mellitus subcutaneously, nasally, or via insulin pump to additional unlicensed persons providing care to the specific client provided the registered nurse limits the number of unlicensed persons to the number who will remain proficient in performing the task and can be safely supervised by the registered nurse;

(5) make supervisory visits to the client's location at least 3 times within the first 60 days (one within the first two weeks, one within the second two weeks and one in the last 30 days) to evaluate the proper medication administration of insulin by the unlicensed person(s). After the initial 60 days, the RN, in consultation with the client or client's responsible adult, shall determine the frequency for supervisory visits to assure the proper and safe administration of insulin by the unlicensed person(s). Separate visits shall be made for each unlicensed person administering insulin;

(6) make supervisory visits in the event there are changes in the client's status; and

(7) ensure that the client or client's responsible adult acknowledges in writing that the administration of medication(s) under this section will be delegated to an unlicensed person.

The provisions of this §225.12 adopted to be effective February 19, 2003, 28 TexReg 1386; amended to be effective February 24, 2014, 39 TexReg 1154.

§225.13. Tasks Prohibited From Delegation.

The following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:

(1) physical, psychological, and social assessment, which requires professional nursing judgment, intervention, referral, or follow-up;

(2) formulation of the nursing care plan and evaluation of the client's response to the care rendered;

(3) specific tasks involved in the implementation of the care plan that require professional nursing judgment or intervention;

(4) the responsibility and accountability for client or client's responsible adult health teaching and health counseling which promotes client or client's responsible adult education and involves the client's responsible adult in accomplishing health goals; and

(5) the following tasks related to medication administration:
   (A) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;
   (B) administration of medications by an injectable route except for subcutaneous injectable insulin or other injectable medication prescribed in the treatment of diabetes mellitus as permitted by §225.12 of this title (relating to Delegation of Administration of Insulin) or other injectable medication prescribed in the treatment of diabetes mellitus and in emergency situations as permitted by §224.6(4) of this title (relating to General Criteria for Delegation) and §225.10(13) of this title (relating to Tasks That May Be Delegated);

(C) administration of medications by way of a tube inserted in a cavity of the body except as permitted by §225.10(10) of this title;
(D) responsibility for receiving or requesting verbal or telephone orders from a physician, dentist, or podiatrist; and
(E) administration of the initial dose of a medication that has not been previously administered to the client unless the RN documents in the client's medical record the rationale for authorizing the unlicensed person to administer the initial dose.

The provisions of this §225.13 adopted to be effective February 24, 2014, 39 TexReg 1154.

§225.14. Supervising Unlicensed Personnel Performing Tasks Delegated by Other Practitioners.

(a) The following applies to the registered nurse who practices in a collegial relationship with another licensed practitioner who has delegated tasks to an unlicensed person over whom the RN has supervisory responsibilities. The RN's accountability to the BON, with respect to its taking disciplinary action against the RN's license, is met if the RN:
(1) verifies the training of the unlicensed person;
(2) verifies that the unlicensed person can properly and adequately perform the delegated task without jeopardizing the client's welfare; and
(3) adequately supervises the unlicensed person.

(b) If the RN cannot verify the unlicensed person's capability to perform the delegated task, the RN must communicate this fact to the licensee who delegated the task.

The provisions of this §225.14 adopted to be effective February 24, 2014, 39 TexReg 1154.

§225.15. Application of Other Laws and Regulations.

BON §217.11(1) of this title (relating to Standards of Nursing Practice) requires RNs to know and conform to all laws and regulations affecting their area of practice. The RN authorizing an unlicensed person to perform tasks in independent living environments should be aware that, in addition to this chapter, various laws and regulations may apply including, but not limited to, laws and regulations governing home and community support service agencies and Medicare and Medicaid regulations. In situations where a RN's practice is governed by multiple laws and regulations that impose different requirements, the RN must comply with them all and if inconsistent, the most restrictive requirement(s) governs. For example, if one regulation requires a RN to make a supervisory visit every 14 days and another leaves it to the RN's professional judgment, the RN would have to visit at least every 14 days or more frequently, if that is what the RN's professional judgment indicated.

The provisions of this §225.15 adopted to be effective February 24, 2014, 39 TexReg 1154.

CHAPTER 226. PATIENT SAFETY PILOT PROGRAMS ON NURSE REPORTING SYSTEMS

§226.1. Patient Safety Pilot Programs on Nurse Reporting Systems.

The purpose of this rule is to establish the procedures to assure that patient safety pilot programs conducted under Tex. Occ. Code §301.1606 are conducted in a manner consistent with the Board's role of protection of the public and are structured appropriately to evaluate the efficacy and effect on protection of the public of reporting systems designed to encourage identification of system errors.

The provisions of this §226.1 adopted to be effective December 29, 2003, 28 TexReg 11587.

§226.2. Initiation of Application and Approval of Patient Safety Pilot Programs.

(a) Patient safety pilot programs under this rule may be conducted:
  (1) by the Board on its own initiative; or
  (2) by a third party either through an application or request for proposal process.

(b) If by application, the application must be submitted on an application form developed by the Board and comply with all conditions set by the Board for applying for a pilot.

(c) If by request for proposal, the submitted proposal must comply with all conditions set out in the request for proposal.

(d) The Board shall have the right to limit the number of pilots that are approved and to refuse to accept an application on the basis that the Board is not accepting new pilot program applications.

(e) If an application or proposal is submitted with incomplete information, the Board may:
  (1) reject the application or proposal; or
  (2) request the incomplete information be provided.

(f) As a condition of approving an application or proposal, the Board may request changes be made in how the pilot is designed so as to better meet the purpose for pilots conducted under this rule as set out in §226.1.

The provisions of this §226.2 adopted to be effective December 29, 2003, 28 TexReg 11587.

§226.3. General Selection Criteria.

(a) Applications will be approved based on the patient safety pilot program's ability to meet the purpose of the rules. Selection criteria shall be based on:
  (1) Program quality as determined by the Board;
  (2) Description of the pilot program, including the body of knowledge that has influenced the development of the proposed program and the financial support for the proposed program;
  (3) Methodology of the pilot program, including research objectives and qualitative and/or quantitative metrics used to evaluate the program;
  (4) Efficacy/effect on the public and patient safety, including identification of vulnerabilities to the public created by the proposed program, appropriate measures taken to address such vulnerabilities, and the measures taken to adequately protect the public from an impaired or unsafe nurse;
  (5) Pilot program outcomes, including how the success of the program will improve nursing practice and enhance public safety;
  (6) Program innovation; and
  (7) Other factors including financial ability to perform the patient safety pilot program, State and regional needs and priorities, ability to continue the patient safety pilot program after the initial application period, past performance of the applicant, and other related factors as determined by the Board.

(b) Program Length Programs shall have a defined length, not to exceed two years.
  Programs may be extended upon approval of a written application submitted to the Board.

The provisions of this §226.3 adopted to be effective December 29, 2003, 28 TexReg 11587.

§226.4. Limited Exception to Mandatory Reporting Requirements.

(a) In approving a pilot program, the Board may grant a program an exception to the mandatory reporting requirements of sections 301.401-301.409 or to a rule adopted under chapters 301 or 303 that relate to the practice of professional nursing, including education and reporting requirements for registered nurses.

(b) The Board may not grant the exception to:
  (1) the education requirements of sections 301.303 through 301.304 unless the program includes alternative but substantially equivalent requirements; or

(2) the mandatory requirements sections 301.401-301.409 or to a rule adopted under chapters 301 or 303 unless the program:
(A) is designed to evaluate the efficiency of alternative reporting methods; and
(B) provides consumers adequate protection from registered nurses whose practice is a threat to public safety.

(c) To be eligible for an exception to mandatory reporting Sections 301.401-301.409 or to a rule adopted under Chapter 301 or Chapter 303 and in addition to the General Selection Criteria of §226.3, a pilot program must provide a replacement methodology designed to promote patient safety consistent with the exception requested. The criteria shall also be based on the ability of the patient safety pilot program to provide a framework for addressing the following issues:
(1) Provide for the remediation of the deficiencies of a registered nurse who has knowledge or skill deficiencies that unless corrected may result in an unreasonable risk to public safety;
(2) Provide for supervision of the nurse during remediation of deficiencies under paragraph (1); and
(3) Require reporting to the Board of a registered nurse:
(A) Who fails to satisfactorily complete remediation or who does not make satisfactory progress in remediation, under paragraph (1);
(B) Whose incompetence in the practice of professional nursing would pose a continued risk of harm to the public; or
(C) Whose error contributed to a patient death or serious patient injury.
(4) Provide for a nursing peer review committee or other acceptable pilot committee to review whether a registered nurse is appropriate for remediation under paragraph (1).

The provisions of this §226.4 adopted to be effective December 29, 2003, 28 TexReg 11587.

§226.5. Application and Review Process.

(a) The Board shall establish a pilot program review panel to evaluate and make recommendations to the Board. The Board may solicit recommendations from an advisory committee or others on topics for patient safety pilot programs, on priorities of those programs, and on the administration of the application and review process.

(b) The Executive Director shall screen applications and proposals to determine if they meet the criteria of sections 226.3 and 226.4. The Executive Director shall forward qualified applications and proposals to the pilot program review panel for evaluation within 30 days of the closing date of the Request for Proposal or receipt of an application. Eliminated applicants shall be so notified by the Board.

(c) The Board shall select individuals qualified in the patient safety pilot program topic areas to serve on the review panel based on the content of proposals submitted. Individuals who serve on the review panel shall demonstrate appropriate credentials to evaluate patient safety pilot program applications. At a minimum, there will be one panel member from each of the following areas: a registered nurse, a doctoral level researcher, a human factors expert, and a consumer representative. Review panel members shall not evaluate any applications or proposals for which they have a conflict of interest. Review panel members serve without compensation at the discretion of the Board.

(d) The Board shall use the pilot program review panel to evaluate the quality of applications and proposals based on the sections 226.3 and 226.4 listed above. The pilot program review panel shall evaluate applications and proposals, and assign scores based on the sections 226.3 and 226.4 as listed above. All evaluations and scores of the review panel are final.

(e) The Executive Director shall use the review scores to recommend a prioritized list of applications and proposals to the Board for consideration. The decision-making process of the Board shall give weight to scores and must provide a statement of explanation if the Board does not agree with the peer review recommendations.

(f) Not withstanding any provision stated herein, no patient safety pilot program will be approved by the Board if it does not provide consumers adequate protection from registered nurses whose continued practice is a threat to public safety.

The provisions of this §226.5 adopted to be effective December 29, 2003, 28 TexReg 11587.

§226.6. Monitoring and Evaluating Patient Safety Pilot Programs.

(a) All patient safety pilot programs shall be subject to monitoring and evaluating by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

(b) The Board may require that the entity conducting a patient safety pilot program under this rule reimburse the Board for the cost of monitoring and evaluating the patient safety pilot program.

(c) The Board may contract with a third party to perform the monitoring and evaluating of patient safety pilot programs.

(d) The Board may arrange for a patient safety pilot program to directly reimburse a third party for monitoring and evaluating of a patient safety pilot program.

The provisions of this §226.6 adopted to be effective December 29, 2003, 28 TexReg 11587.

§226.7. Contract Discussions.

(a) Contracts Following the approval of an application or proposal by the Board, the successful applicant must sign a contract issued by the Executive Director and based on the information contained in the application.

(b) Subcontracts With the prior written approval of the Board, the successful applicant may enter into third party contracts and subcontracts to conduct the patient safety pilot program.

(c) Cancellation or Suspension of Programs The Board has the right to reject all applications and proposals, and cancel any patient safety pilot program solicitations before a contract is signed. Breach of contract will result in termination of the patient safety pilot program.

(d) Requirements for Applications The full text of the administrative regulations and funding requirements for this patient safety pilot program are contained in the official Request for Proposal available on request from the Board.

The provisions of this §226.7 adopted to be effective December 29, 2003, 28 TexReg 11587.

CHAPTER 227. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO VOCATIONAL AND PROFESSIONAL NURSING EDUCATION

§227.1. Purpose.

The purpose of this rule is to establish the procedures that apply to pilot programs for innovative applications to nursing education under Tex. Occ. Code §301.1605 for both vocational and professional nursing programs. Pilot programs approved under this chapter must be conducted in a manner consistent with the Board's role of protection of the public and must be structured appropriately to evaluate the efficacy and effect on vocational and professional nursing students.

The provisions of this §227.1 adopted to be effective April 22, 2014, 39 TexReg 3230.

§227.2. Application and Approval.

(a) Eligibility. In order to be eligible for approval under this chapter, an applicant must be requesting an exception to a requirement in Chapter 214 of this title (relating to Vocational Nursing Education) or Chapter 215 of this title (relating to Professional Nursing Education) or an educational requirement of Tex. Occ. Code Chapter 301. If an applicant is requesting an exception to an educational requirement of Chapter 301, the applicant's pilot program must include an alternate, but substantially equivalent requirement.

(b) Approval Required. An applicant seeking approval from the Board under this chapter must submit a completed application to the Board. The applicant must verify the application by attesting to the truth and accuracy of the information in the application. An applicant must submit a completed application to the Board at least four months prior to the applicant's planned implementation date of the pilot program.

(c) Applications will be reviewed and evaluated to determine if they meet the requirements of this chapter. Qualified applications will be forwarded to the Board for deliberation and vote.

(d) The Board may approve the application; defer action on the application, pending receipt of further information; approve the application with conditions and/or restrictions; or deny approval of the application. As a condition of approving an application, the Board may request that changes be made in how a pilot program is designed.

(e) If the application is approved, the applicant must submit a written report of outcomes resulting from the pilot program to the Board within 90 days of completion of the program. The Board reserves the right to request additional and/or more frequent written reports of program outcomes during the duration of the pilot program.

(f) If an application is denied approval by the Board, an applicant must wait at least one calendar year from the date of the Board's denial before submitting a new application for Board consideration.

(g) An applicant seeking approval must meet the requirements outlined in the Board's Guidelines related to Innovation in Nursing Education and this chapter.

The provisions of this §227.2 adopted to be effective April 22, 2014, 39 TexReg 3230.

§227.3. General Selection Criteria.

(a) Applications will be evaluated on the following criteria:
  (1) Quality of the pilot program;
  (2) Description of the pilot program, including the rationale for the pilot program and the financial support for the program;
  (3) Methodological design of the pilot program;
  (4) Pilot program outcomes, including how the success of the program will improve nursing education and enhance nursing practice and how it will be measured;
  (5) Pilot program innovation;
  (6) Timeline for pilot program;
  (7) Controls to maintain quality education and ensure delivery of safe and competent nursing care:
    (A) Methods shall be incorporated into the pilot program to ensure that students in the pilot program receive an equivalent, quality education as students in standard program(s) (comparative group);
    (B) Ongoing evaluation shall be implemented to determine the students' progress in the pilot program; and
    (C) If evidence indicates that students in pilot program are not meeting objectives, a plan for corrective measures to re-mediate must be in place; and
  (8) Other relevant factors, including financial ability to implement the pilot program; state and regional needs and priorities; applicant's ability to continue the pilot program on a long-term basis; and the past performance of the applicant, if applicable.

(b) Pilot programs must have a defined length, not to exceed two years. The length of an approved pilot program may be extended upon applicant request and approval by the Board.

The provisions of this §227.3 adopted to be effective April 22, 2014, 39 TexReg 3230.

§227.4. Monitoring and Evaluation.

(a) All pilot programs shall be subject to intermittent monitoring and evaluation by the Board to ensure compliance with the criteria of this chapter and to obtain evidence that program goals are being met. Board monitoring may include the review and analysis of program reports; communication with program directors; and survey visits. The Board may also require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and any other information necessary to evaluate the status of the pilot program. Survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the pilot program. The Board may alter a monitoring plan as necessary toaddress the specific needs of a particular program.

(b) The Board may require an applicant to reimburse the Board for the cost of monitoring and evaluating a pilot program.

(c) The Board may contract with a third party to perform the monitoring and evaluation of pilot programs.

(d) The Board may arrange for an applicant to directly reimburse a third party for the monitoring and evaluation of a pilot program.

The provisions of this §227.4 adopted to be effective April 22, 2014, 39 TexReg 3230.

CHAPTER 228. PAIN MANAGEMENT

§228.1. Standards of Practice

(a) Definitions. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:
  (1) Controlled substance (also referred to as scheduled drugs)--A substance, including a drug, adulterant, and dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 of Chapter 481, Health and Safety Code (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.
  (2) Dangerous drug--A device or drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481, Health and Safety Code. The term includes a device or drug that bears, or is required to bear, the legend: "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law.
  (3) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner. The term includes durable medical equipment.
  (4) Medication--A dangerous drug, controlled substance, non-prescription drug, or device. For purposes of this chapter, the term also includes herbal and naturopathic remedies.
  (5) Non-prescription drug--A non-narcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.
  (6) Pain management clinic--As defined in Chapter 168, Occupations Code.

(b) Purpose. This section sets forth the minimum standards of nursing practice for an advanced practice registered nurse (APRN) who provides pain management services.
  (1) The goal of pain management is to therapeutically treat the patient's pain in relation to overall health, including physical function, psychological, social and work-related factors.
  (2) Medications must be prescribed in a therapeutic manner that helps, rather than harms, the patient. Medications must be recognized to be pharmacologically appropriate and safe for the diagnosis for which the medication is being used.
  (3) Proper treatment of pain must be based on careful and complete patient assessment and sound clinical judgment. Harm can result from failure to use sound clinical judgment, particularly in drug therapy. The APRN shall provide treatment of pain that is within the current standard of care and is supported by evidence based research.
  (4) Documentation in patient records shall be legible, complete, and accurate. All consultations and referrals with the delegating physician and other health care providers shall be documented.
  (5) Any treatment plan should be mutually agreed upon by the patient and the provider. Treatment of pain requires a reasonably detailed and documented plan of care to ensure that the patient's treatment is appropriately monitored. A documented explanation of the rationale for the particular treatment plan is required for cases in which treatment with scheduled drugs is difficult to relate to the patient's objective physical, radiographic, or laboratory findings. Ongoing consultation and referral to the delegating physician and other health care providers shall be documented.

(c) Evaluation of the Patient Seeking Treatment for Pain.
  (1) The APRN shall ensure that a current and complete health history is documented in the patient record. The APRN shall per-form and document a physical assessment that includes a problem focused exam specific to the chief presenting complaint of the patient. At a minimum, this assessment must be performed and documented when prescribing and/or ordering a new medication or a refill of a medication for the patient.
  (2) Pain assessment and documentation in the patient record shall include, as appropriate:
    (A) The nature and intensity of the pain;
    (B) All current and past treatments for pain, including relevant patient records from prior treating providers as available;
    (C) Underlying conditions and co-existing physical and psychiatric disorders;
    (D) The effect of pain on physical and psychological function;
    (E) History and potential for substance misuse, abuse, dependence, addiction or other substance use disorder, including relevant validated, objective testing and risk stratification tools; and
    (F) One or more recognized clinical indications for the use of a medication, if prescribed.

(d) Treatment Plan and Outcomes for Patients with Pain. The APRN who treats patients with pain shall ensure that there is a written treatment plan documented in the patient record. Information in the patient record shall include, as appropriate:
  (1) A written explanation of how the medication(s) ordered/prescribed relate(s) to the chief presenting complaint and treatment of pain;
  (2) The name, dosage, frequency, and quantity of any medication prescribed and number of refills authorized;

(3) Laboratory testing and diagnostic evaluations ordered;
(4) All other treatment options that are planned or considered;
(5) Plans for ongoing monitoring of the treatment plan and outcomes;
(6) Subjective and objective measures that will be used to determine treatment outcomes, such as pain relief and improved physical and psychosocial function;
(7) Any and all consultations and referrals, including the date the consultation and/or referral was made; to whom the consultation and/or referral was made; the time frame for completion of the consultation and/or referral; and the results of the consultation and/or referral; and
(8) Documentation of informed consent, as required by subsection (e) of this section.

(e) Informed consent includes a discussion with the patient, a person(s) designated by the patient, or with the patient's surrogate or guardian, if the patient is without medical decision-making capacity, of the risks and benefits of the use of medications for the treatment of pain. As appropriate, this discussion should be documented by either a written, signed document maintained in the patient record or a contemporaneous notation included in the patient record. Discussion of risks and benefits should include an explanation of the following:
(1) Diagnosis;
(2) Treatment plan;
(3) Expected therapeutic outcomes, including the realistic expectations for sustained pain relief, and possibilities for lack of pain relief;
(4) Non-pharmacological therapies;
(5) Potential side effects of treatments and drug therapy and how to manage common side effects;
(6) Adverse effects of medication use, including the potential for dependence, addiction, tolerance, and withdrawal; and
(7) Potential for impaired judgment and motor skills.

(f) If the treatment plan includes drug therapy beyond 90 days, the use of a written pain management agreement should be included, as appropriate. The written pain management agreement should outline patient responsibilities that, at a minimum require the patient to:
(1) Submit to laboratory testing for drug confirmation upon request of the APRN, the delegating physician, and/or any other health care providers;
(2) Adhere to the number and frequency of prescription refills;
(3) Use only one provider to prescribe controlled substances related to pain management, and to make consultations and referrals;
(4) Use only one pharmacy for all prescriptions for controlled substances related to pain management;
(5) Acknowledge potential consequences of non-compliance with the agreement; and
(6) Acknowledge processes following successful completion of treatment goals, including weaning of medications.

(g) Ongoing monitoring of the treatment of pain.
(1) The APRN shall see the patient for periodic review of the treatment plan at reasonable intervals.
(2) The periodic review shall include an assessment of the patient's progress toward reaching treatment plan goals, taking into consideration the history of medication usage, as well as any new information about the pain, and the patient's compliance with the pain management agreement.
(3) Each periodic review of the treatment plan shall be documented in the patient record.
(4) Any adjustment in the treatment plan based on individual needs of the patient shall be documented.
(5) Continuation or modification of the use of medications for pain management shall be based on an evaluation of progress toward treatment plan goals, as well as evaluation and consideration of any new factors that may influence the treatment plan.
(A) Progress or lack of progress in relieving pain and meeting treatment objectives shall be documented in the patient record. Progress may be indicated by the patient's decreased pain, increased level of function, and/or improved quality of life.
(B) Objective evidence of improved or diminished function shall be monitored. Information from the patient, family members, or other caregivers should be considered in determining the patient's response to treatment.
(C) If the patient's progress is unsatisfactory, the current treatment plan should be reevaluated, with consideration given to the use of other therapeutic modalities and/or services of other providers.
(6) Continuation of the use of scheduled drugs shall include consultation with the delegating physician and documentation of such consultation in the patient record, as required for delegation of prescriptive authority for controlled substances pursuant to §157.0511 and §168.201, Occupations Code.

(h) Consultation and Referral. In certain situations, further evaluation and treatment may be indicated.
  (1) Patients who are at risk for substance use disorders or addiction require special attention. Consideration should be given to consultation with and/or referral to a provider who is an expert in the treatment of patients with substance use disorders.
  (2) Patients with chronic pain and histories of substance use disorders or with co-existing psychological and/or psychiatric disorders may require consultation with and/or referral to an expert in the treatment of such patients. Consideration should be given to consultation with and/or referral to a provider who is an expert in the treatment of patients with these histories and/or disorders.
  (3) Information regarding the consideration of consultation and/or referral under this subsection should be documented in the patient record.

(i) Pain management clinics in the state of Texas. Prior to providing pain management services in these settings, APRNs who practice in pain management clinics shall verify that the clinic has been properly certified as a pain management clinic by the Texas Medical Board and that the certification is current.
  (1) The APRN shall be available on site with the physician at least 33 percent of a pain management clinic's total operating hours.
  (2) The APRN shall comply with the requirements of §168.201, Occupations Code for review of 33 percent of patient charts in pain management clinics.
  (3) The APRN shall ensure that s/he is in compliance with all other requirements for delegation of prescriptive authority for medications as set forth in Board rule.
  (4) An APRN who owns or operates a clinic in this state that meets the definition of a pain management clinic under this section is exempt from the certification requirements of the Occupations Code Chapter 168 and the Texas Medical Board if:
    (A) the APRN is treating patients in the APRN's area of specialty; and
    (B) the APRN personally uses other forms of treatment with the issuance of a prescription to the majority of the APRN's patients. A treatment under this subparagraph must be within the current standard of care, supported by evidence based research, and consistent with the treatment plan.
  (5) APRNs shall not own or operate a pain management clinic. This prohibition does not apply to an APRN who owns or operates a clinic in this state that is exempt from the certification requirements of the Occupations Code Chapter 168 and the Texas Medical Board.

The provisions of this §228.1 adopted to be effective February 23, 2014, 39 TexReg 989.