

**Consideration of Response to Comments and Adoption of Amendments to §217.11  
(Standards of Nursing Practice) and of new rule 217.17 (Jurisprudence Exam)**

At the July Board meeting, the Board voted to propose amendments to § 217.11, addressing Standards of Nursing Practice, and to propose a new § 217.17, related to a jurisprudence exam requirement. The proposals were published in the *Texas Register* on August 3, 2007, and August 17, 2007, respectively.

Section 217.11 was amended to implement the requirement imposed by House Bill 2426 (Sunset Bill) that a “person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.” In addition SB 993 (addressed Nursing Peer Review) amended “grounds for reporting” to the following:

- (1) "Conduct subject to reporting" means conduct by a nurse that:
- (A) violates this chapter 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.

Section 217.11(K) which addresses mandatory reporting, was proposed for amendment to track the language of the statutory language in HB 2426 and SB 993.

Section 217.17 was proposed pursuant to bills passed in the 80<sup>th</sup> Legislative Session and the Board's Sunset Review. House Bill 2426 (Sunset Bill) amends the Nursing Practice Act by amending section 301.252 (License Application) of the Texas Occupations Code. This amendment requires all applicants for licensure after September 1, 2008, to take and pass a Jurisprudence Exam prior to licensure. The jurisprudence exam would encompass the Nursing Practice Act and the rules and regulations of the Board. Although the jurisprudence exam has not yet been developed and cannot be implemented until September 1, 2008, or later, the Sunset Bill requires the Board to adopt all rules required by the Sunset Bill by January 1, 2008. This proposed rule complied with this requirement.

One comment was received from Texas Nurses Association (TNA) in response to the amendment to § 217.11 and two comments, TNA and an individual, were received in response to proposed rule 217.17.

Section 217.11 (Standards of Nursing Practice)

**Comment:** It would be helpful to nurses to identify the references to Chapter 301 and “this chapter” as references to the Nursing Practice Act (NPA). Nurses may not know that chapter 301 is in fact the Nursing Practice Act.

**Response:** The Board agrees with this comment and will make the requested change.

Section 217.17 (Texas Nursing Jurisprudence Exam (NJE))

**Comment:** Proposed Subsection (a) states that if an applicant fails to achieve a minimum grade of 75 on the nursing jurisprudence exam (NJE) that the he or she “shall retake the NJE until such time as a “minimum average grade of 75 is achieved.” TNA is not entirely sure what the term “minimum average grade” means but assumes it means that if the applicant retakes the exam that the applicant’s score for meeting the 75 minimum score will be calculated as the average score on all of the exams taken/retaken and not just on the most recent exam.

TNA is concerned that if an applicant makes a low grade the first time she/he takes the exam that it may be difficult to achieve a “minimum average score” of 75 unless the exam is a relatively easy exam. The “minimum average score of 75” would mean that if an applicant makes a 60 on the exam, then she/he would have to make a 90 on the first retake to achieve an average score of 75. If makes only an 80 on the first retake, then would have to make an 85 on the second retake to average 75 over the three exams. If the nurse makes a 50 on the exam she/he would have to make a 100 on the first retake to achieve an average score of 75. If made only an 85 on the first retake, would have to make a 90 on the second retake to average 75 over the three exams.

The achieving of such high scores on retakes may require a relatively easy exam. Otherwise a low score on the exam may make it very difficult to achieve a 75 average score. While TNA believes that, assuming adequately preparation, the exam should generally be passable by a nurse that can pass NCLEX, it does believe the exam should be a rigorous examination of the jurisprudence knowledge necessary to be a competent nurse and patient advocate.

Another option for the board to consider would be to set a higher minimum score on retakes such as:

Exam	75
1st Retake	80
2 <sup>nd</sup> Retake	85
3 <sup>rd</sup> and Subsequent Retakes	??

**Response:** The Board agrees regarding the difficulty of averaging scores; therefore, the rule will be revised to require that an applicant must achieve a passing score of 75. Once an applicant receives a 75 on the NJE, the requirements of this rule will be met.

**Comment:** Commenter expressed concern regarding phrase, "...should fail one of the examinations" and requested clarification regarding what exams the Board was referencing, NCLEX or Nursing Jurisprudence Exam.

**Response:** The Board agrees; therefore, language will be inserted to clarify that it means the Nursing Jurisprudence Exam (NJE).

**The recommended changes to rules 217.11 (attachment #1) and 217.17 (attachment #2) are reflected in the attachments.**

**Recommended action:** Move to adopt the responses to comments and adopt the amendments to 217.11 with changes and submit for publication in the *Texas Register*.

Move to adopt the responses to comments to rule 217.17 and adopt the rule with changes, and submit for publication in the *Texas Register*.

## Attachment #1

### §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) - (J) (No change.)

(K) Comply with mandatory reporting requirements of Texas Occupations Code ch. 301 (Nursing Practice Act), Subchapter I, which include reporting a nurse :

(i) who violates ~~this chapter~~ 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 (Tex. Occ. Code §301.401(2), §301.419, 22 TAC §217.16), peer review (Tex. Occ. Code §§301.403, 303.007, 22 TAC §217.19), or peer assistance if no practice violation (Tex. Occ. Code §301.410) as stated in the Nursing Practice Act and Board rules (22 TAC ch. 217).

(L) - (V) (No change.)

(2) - (4) (No change.)

## Attachment #2

### **§217.17. Texas Nursing Jurisprudence Exam (NJE).**

- (a) In this chapter, when applicants are required to pass the NJE exam, applicants must pass the NJE with a score of 75 or better. Should the applicant fail to achieve a minimum grade of 75 on the NJE, such applicant, in order to be licensed, shall retake the NJE until such time as a ~~minimum average~~ grade of 75 is achieved.
- (b) An examinee shall not utilize a proxy or bring books, notes, or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress.
- (c) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.
- (d) 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.
- (e) If the applicant should fail one of the Nursing Jurisprudence examinations, the grade of the examination which the applicant initially passed may be used for the purpose of licensure by examination for a period of two years from the date of passing the initial examination.