

**Proposed Adoption of Amendments to §223.1 (relating to Fees), §217.2(a)(4)(B) (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), and §217.4(a)(1)(B) and (e)(relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdictions), Comments Received, and Board Responses to Comments**

---

**Summary of Request:** Consider final adoption of proposed amendment to Rule §217.2(a)(4)(B), concerning Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions. Currently, §217.2(a)(4)(B) permits an applicant for vocational nurse licensure who has attended a (Texas-based) professional nursing education program to substitute the completion of an acceptable level of a Board-approved professional nursing education program, as determined by the Board. The rule proposal eliminates this option.

\*\*The Board approved proposed rule amendments to §217.4(a)(1)(B) and (e) and §223.1 at the January 22-23, 2009 Board Meeting. **No comments were received regarding these proposed amendments.** However, they have not yet been adopted. The proposed amendments to §217.4(a)(1)(B) and (e) were published with the proposed amendments to §217.2(a)(4)(B) in one rule proposal because they were in the same chapter of rules. They should be adopted in one adoption order, as well. Further, because the proposed amendments to §223.1 implement the fee requirement in proposed §217.4(e), the amendments to §223.1 should be adopted at the same time the amendments to §217.4(e) are adopted. **No further Board action is required for the adoption of the proposed amendments to §217.4(a)(1)(B) and (e) and §223.1.**

***The only action pending before the Board at this time relates to the adoption of the proposed amendments to §217.2(a)(4)(B) because one negative public comment was received related to this proposed rule amendment.***

**Background:** At the January 22-23, 2009 Board Meeting, the Board proposed an amendment to 22 Texas Administrative Code §217.2(a)(4)(B), concerning Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions (published in the January 20, 2009 issue of the *Texas Register*). The rule amendment eliminates the option of a vocational nurse licensure applicant to substitute the completion of an acceptable level of a Board-approved professional nursing education program. This is because students in professional education programs are prepared for the professional role and typically do not study the differentiation of professional versus vocational roles. The rule amendment results in a requirement that all vocational nurse licensure applicants complete approved vocational education programs for initial licensure under §217.2.

- “(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.”

Staff recommends the adoption of the proposed rule amendment based on the following factors:

- The Board is a member of the Nurse Licensure Compact (Compact) and one of the general purposes of the Compact is to ensure and encourage the cooperation of party states in the areas of nurse licensing and regulation.
- Most other states who are parties in the Compact do not offer the option for individuals who have attended a professional nursing educational program and who meet all of the requirements for licensure by examination to substitute completion of an acceptable level of a board approved professional nursing educational program, as determined by the board, and apply to take the NCLEX-PN® examination. These states do not allow these individuals to be licensed by endorsement.
- Concerns have been voiced that nurses who become licensed vocational nurses (LVNs) in Texas by means of utilizing the current option in §217.2 often lack education in the areas of role performance and scope of practice appropriate for an LVN.
- Deans and directors of professional nursing educational programs have expressed difficulty in completing the *Director Affidavit, For Out-of-State and US Territories PN/VN Graduates and RN Under-Grads ONLY* form because required vocational nursing (VN) educational curricula content and contact hours are not easily equated to the curricula content and contact hours in professional nursing educational programs, particularly in regard to content addressing the role, responsibilities, and scope of practice of the LVN. Great variation exists in the interpretation of equitable curricula content and contact hours.
- At the July 2008 Board meeting, the Board issued a charge to the Advisory Committee on Education (ACE) to study and make recommendations regarding the issues involved with permitting a student who has partially completed a professional nursing educational program or graduated from a professional nursing educational program and then failed the NCLEX-RN® Examination to apply for licensure as a vocational nurse in Texas by taking the NCLEX-PN® Examination.
- ACE addressed this charge during the November 17, 2008 ACE meeting in Austin and finalized the ACE recommendation to the Board during the December 15, 2008 ACE conference call meeting.
- Current data from the National Council of State Boards of Nursing (NCSBN) covering the time period of 01/01/2003 through 12/30/2008 shows that an average of approximately thirty-nine (39) individuals each year partially complete a professional nursing educational program and become an LVN in Texas by taking the NCLEX-PN® examination and an average of approximately seven (7) individuals each year

graduate from a professional nursing educational program, fail the NCLEXRN® examination, and then become an LVN in Texas by taking the NCLEX-PN® examination.

- The ACE recommendation related to the above referenced charge is: “Eliminate the possibility for anyone who has not completed a state-board approved vocational nursing educational program to apply for licensure in Texas as a licensed vocational nurse by either examination or endorsement and to recommend applicable amendments to Rule 217.2 and Rule 217.4.”

**Negative Comment Received:** There was one letter comment received in response to the proposed rule and was submitted by the College of the Mainland. (See Exhibit “A”).

The commenter states that she believes that the proposed amendment will contribute to further decline in the number of nurses for the state of Texas. She further states that her institution has had students who did not complete the entire AND program, but met the Board’s required educational hours to take the NCLEX-PN examination. She states that these students passed the NCLEX-PN examination on their first attempt and from all reports have become safe practicing vocational nurses. The commenter states that some students have returned to enroll in the LVN to RN Transition program and went on to become registered nurses. The commenter states that she would hate to see her institution’s students have to “jump through hoops” and possibly not have the opportunity to become a LVN after completing all but a portion of the final semester of a 2 year AND program, as well as risk the chance of never becoming a registered nurse.

The commenter also states that if the Board believes that this group of candidates lack understanding of the “role performance and scope of practice appropriate for a licensed vocational nurse”, the Board could offer a short on-line course to teach and test this content. The commenter states that her institution’s AND Program includes the role of the vocational nurse versus the registered nurse in the Introduction to Professional Nursing Course. The commenter states that her institution also includes discussion of the different practices established in the DELC’s from the Vocational Nurses versus the Registered Nurse. The students also implement these different role concepts in their Leadership clinical rotation. Lastly, the commenter states that since there is such a small number of individuals affected by the current licensure code (39 from 2003-2008) and because of the benefits of the current ruling to the nursing profession, she urges the Board to reconsider and deny approval of the proposed amendment to §217.2(a)(4)(B).

Staff's response is attached hereto as "Exhibit B".

## **Pros and Cons:**

### **Pros:**

The rule amendment to Rule 217.2 will:

- reflect the intent of the ACE recommendation to eliminate the possibility for anyone who has not completed a state-board approved VN educational program to apply for licensure in Texas as an LVN by either examination or endorsement;
- eliminate the need for deans and directors of professional nursing educational programs to complete the *Director Affidavit, For Out-of-State and US Territories PN/VN*

*Graduates and RN Under-Grads ONLY* form and will ensure that individuals applying for licensure as an LVN in Texas have required content and contact hours addressing the role, responsibilities, and scope of practice of the LVN;

- eliminate the option in Texas that most other states who are parties in the Compact do not offer for individuals who have attended a professional nursing educational program to substitute completion of an acceptable level of a board-approved professional nursing educational program as determined by the board, and apply to take the NCLEX-PN® examination or allow these individuals to be licensed by endorsement; and

- affect only an average of approximately thirty-nine (39) individuals each year, based on data from the NCSBN between 01/01/2003 through 12/30/2008, who partially complete a professional nursing educational program and become an LVN in Texas by taking the NCLEX-PN® examination and only an average of approximately seven (7) individuals each year, based on data from the NCSBN between 01/01/2003 through 12/30/2008, who graduate from a professional nursing educational program, fail the NCLEX-RN® examination and then become an LVN in Texas by taking the NCLEX-PN® examination.

Currently, individuals completing an acceptable level of a state board-approved professional nursing educational program have at least two other options for vocational nursing licensure in Texas. These options include enrolling in a state board-approved:

- MEEP (multi entry/exit VN educational program), as determined by the program, completing the required VN course of study and graduating from the MEEP; or
- traditional VN educational program utilizing advance placement credit and completing only required portions of the VN course of study, as determined by the program, and graduating from the traditional VN program.

### **Cons:**

The amendments will affect two of the available options for vocational nursing licensure for those students not completing an entire professional nursing educational program or those graduates who are not successful on the NCLEX-RN® examination. Other available options for these individuals to become an LVN in Texas are:

- enrollment in, completion of a MEEP, and graduation from the MEEP; or
- enrollment in, completion of select portions of a traditional VN educational program utilizing advance placement credit, and graduation from the traditional VN program.

**Staff's Recommendation:** Move to adopt Rule 217.2(a)(4)(B), as published in the *Texas Register* on January 20, 2009. Further, authorize Staff to publish the summary and response to comments as attached hereto as Exhibit "B".

**Abel, Jena**

---

**Subject:** FW: Comments Re Proposed Amendments to 22 Tex.Admin.Code, Section 217.2(a)(4)(B)

---

**From:** Reeves, Gay [mailto:GReeves@com.edu]

**Sent:** Wednesday, March 04, 2009 3:50 PM

**To:** Johnston, Dusty

**Subject:** Comments Re Proposed Amendments to 22 Tex.Admin.Code, Section 217.2(a)(4)(B)

Dear Mr. Johnston,

have I am writing regarding the proposed amendments to 22 TEX.ADMIN.CODE, SECTION 217.4(a)(4)(B), pertaining to restricting LVN licensure for students not completing an entire professional vocational nursing educational program or who were not successful on the NCLEX-RN examination. I believe that this proposed amendment will contribute to further decline in the number of nurses for the state of Texas.

We have had students who did not complete the entire ADN program, but met TBON's required educational hours to take the NCLEX-PN examination. These students passed the NCLEX-PN on their first attempt and from all reports have become safe practicing vocational nurses. Furthermore, some have returned to enroll in the LVN to RN Transition program and went on to become registered nurses. I would hate to see our students have to "jump through hoops" and possibly not have the opportunity to become a LVN after completing all but a portion of the final semester of a 2 year ADN program, as well as risk the chance of never becoming a registered nurse.

If the TBON believes this group of candidates lack understanding of the "role performance and scope of practice appropriate for a licensed vocational nurse," maybe they could offer a short on-line course to teach and test this content. Our ADN Program includes the role of the vocational nurse versus the registered nurse in our Introduction to Professional Nursing Course. We also include discussion of the different practices established in the DELC's for the Vocational Nurses versus the Registered Nurse.

The student also implements these different role concepts in their Leadership clinical rotation.

Since there is such a small number of individuals affected by the current licensure code (39 from 2003-2008), and because of the benefits of the current ruling to the nursing profession identified above, I urge the TBON to reconsider and deny approval of the proposed amendment to 22 Tex.Admin.Code, Section 217u.4(a)(4)(B).

Gay Reeves, RN, MSN, EdD  
College of the Mainland  
Nursing, Department Chair/Director  
(409) 938-1211, ext. 278  
Fax: (409) 933-4369  
email: greeves@com.edu

3/9/2009

## Exhibit “B”

### 4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

#### §217.2(a)(4)(B).

**Comment:** A commenter states that she believes that the proposed amendment to §217.2(a)(4)(B) will contribute to further decline in the number of nurses for the state of Texas. She further states that her institution has had students who did not complete the entire ADN program, but met the Board’s required educational hours to take the NCLEX-PN examination. Further, these students passed the NCLEX-PN examination on their first attempt and, from all reports, have become safe practicing vocational nurses. The commenter states that some students have returned to enroll in the LVN to RN Transition program and went on to become registered nurses. The commenter states that she would hate to see her institution’s students have to “jump through hoops” and possibly not have the opportunity to become a LVN after completing all but a portion of the final semester of a 2 year ADN program, as well as risk the chance of never becoming a registered nurse. The commenter also states that if the Board believes that this group of candidates lack understanding of the “role performance and scope of practice appropriate for a licensed vocational nurse”, maybe the Board could offer a short on-line course to teach and test this content. The commenter states that her institution’s ADN Program includes the role of the vocational nurse versus the registered nurse in the Introduction to Professional Nursing Course. The commenter states that her institution also includes discussion of the different practices established in the DELC’s for the Vocational Nurses versus the Registered Nurse. The students also implement these different role concepts in their Leadership clinical

rotation. Lastly, the commenter states that since there is such a small number of individuals affected by the current licensure code (39 from 2003-2008) and because of the benefits of the current ruling to the nursing profession identified in her comment, she urges the Board to reconsider and deny approval of the proposed amendment to §217.2(a)(4)(B).

**Board Response:** The Board declines to deny adoption of the proposed amendments to §217.2(a)(4)(B). First, the Board disagrees that the adopted amendments to §217.2(a)(4)(B) will have a measurable impact on the number of nurses in the state of Texas. Current data from the National Council of State Boards of Nursing (NCSBN) covering the time period of January 1, 2003 through December 30, 2008 shows that only an average of approximately 39 individuals each year partially complete a professional nursing educational program and become a licensed vocational nurse in Texas by taking the NCLEX-PN® examination. Further, only an average of approximately seven individuals each year graduate from a professional nursing educational program, fail the NCLEX RN® examination, and go on to become a licensed vocational nurse in Texas by taking the NCLEX-PN® examination. Based on these figures, the Board anticipates that the adopted amendments will only impact approximately 46 licensed vocational nurse applicants each year. In comparison, approximately 5,800 licensed vocational nurse applicants will not be affected by the adopted amendments each year, as these applicants typically complete a traditional vocational educational program prior to taking the NCLEX-PN® examination. Further, the Board anticipates that the benefits of the adopted amendments will outweigh any negative effects the adopted amendments may have on the 46 licensed vocational nurse applicants each year. The primary intention of the adopted amendments is to ensure that applicants for vocational nurse licensure complete an appropriate education program

for the vocational scope of practice. The Board has been made aware of public concern that applicants who become licensed vocational nurses in Texas by substituting the completion of a professional nursing education program for the completion of an approved vocational nursing education program often lack education in the areas of role performance and scope of practice. This is particularly concerning to the Board because licensed vocational nurses are limited in their scopes of practice and should be aware of such limitations. Further, deans and directors of professional nursing educational programs have expressed difficulty in completing required forms for out-of-state and United States territories' vocational nurse graduates and registered nurse undergraduates because required vocational nursing educational curricula content and contact hours are not easily equated to the curricula content and contact hours in professional nursing educational programs. This is particularly true in regard to content addressing the role, responsibilities, and scope of practice of the licensed vocational nurse. Great variation exists in the interpretation of equitable curricula content and contact hours. The adopted amendments will eliminate the need for deans and directors of professional nursing educational programs to calculate equitable curricula content and contact hours in this context, which should alleviate any perceived unfairness surrounding this process. Further, the adoption of the proposed amendments will result in better compatibility with other states and ensure the appropriate level of competence of all licensed vocational nurse applicants. The Board is a member of the Nurse Licensure Compact (Compact). One of the general purposes of the Compact is to ensure and encourage the cooperation of party states in the areas of nurse licensing and regulation. Most other Compact party states do not offer vocational nurse applicants who have attended a professional nursing educational program the option

of substituting the completion of their professional nursing educational program for the completion of a vocational educational program in order that they may take the NCLEX-PN® examination. These Compact party states also do not allow individuals utilizing such an option in another state to be licensed by endorsement in their state. The adopted amendments will eliminate this option in Texas, thus aligning Texas' licensing requirements for vocational nurses more closely with other Compact party states. The elimination of this option in Texas should also enable more vocational nurse licensures by endorsement in other Compact party states. Lastly, at the Board's regularly scheduled July 2008 meeting, the Board issued a charge to the Advisory Committee on Education (Committee) to study and make recommendations regarding the issues involved with permitting a student who has partially completed a professional nursing educational program or graduated from a professional nursing educational program and then failed the NCLEX-RN® Examination to apply for licensure as a vocational nurse in Texas by taking the NCLEX-PN® Examination. The Committee addressed this charge during the November 17, 2008 Committee meeting in Austin and finalized its recommendation to the Board during the December 15, 2008 Committee conference call meeting. After a thorough discussion and review of the issue, the Committee recommended eliminating the possibility for anyone who has not completed a state-board approved vocational nursing educational program to apply for licensure in Texas as a licensed vocational nurse by either examination or endorsement and recommended any necessary amendments to Rule 217.2 to achieve this end. The Board's adoption of the proposed amendments to §217.2(a)(4)(B) is consistent with the Committee's recommendations on this issue. Further, the Board does not necessarily disagree that an on-line course and/or exam may be an appropriate method to teach and

test the role performance and scope of practice appropriate for a licensed vocational nurse. However, no such course and/or exam presently exists, and the Board has not considered the feasibility of such an option. As such, while an online course and/or exam may be an option for further consideration in the future, the Board declines to delay or deny adoption of the proposed amendments to §217.2(a)(4)(B) based upon that possibility.