

**Proposed Adoption of Repeal of 22 Tex. Admin. Code Chapter 216, Pertaining to *Continuing Education* and New 22 Tex. Admin. Code, Chapter 216, Pertaining to *Continuing Competency* and Consideration of Written Comments Received, Oral Comments Received during Public Hearing Held on July 9, 2009, and Board Responses to Comments**

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**Summary of Request:** Consider final adoption of proposed repeal of 22 Tex. Admin. Code Chapter 216, Pertaining to *Continuing Education*, and proposed new 22 Tex. Admin. Code Chapter 216, Pertaining to *Continuing Competency*. The proposed repeal of Chapter 216 and proposed new Chapter 216 were approved by the Board at its April 23-24, 2009, meeting for submission to the *Texas Register* for public comment. The proposed amendments were published in the *Texas Register* on May 15, 2009, and the comment period ended on June 14, 2009. The Board received several written comments and a request for a public rule hearing. A public rule hearing was held on July 9, 2009, and oral and written comments were received. A copy of the written comments received are attached as Exhibit "A". A summary of the written comments and the oral testimony presented at the public rule hearing is attached as Exhibit "B".

The proposed rules provide a nurse with several options for demonstrating continuing competency for the renewal of the nurse's license, including: (1) completion of 20 contact hours of continuing education in the nurse's area of practice and in programs approved by a credentialing agency recognized by the Board; (2) achievement, maintenance, or renewal of an approved national nursing certification in the nurse's area of practice; or (3) attendance of an academic course meeting certain, specified criteria.

**Historical Perspective:**

Continuing competence in nursing has been discussed nationally and during several Board meetings during the last two years.

- April - 2006 Report on groups that are developing initiatives to evaluate and test graduate and continued nursing competency.
- October - 2006 Report on the North Texas Competency Consortium which included schools of nursing in the north Texas area that developed teaching strategies for 10 high risk, high volume, problem prone patient conditions.

- January - 2007 Report on recommendations for changes in the NPA to eliminate named groups out of Section 301.303 (d) to clarify that there are no “official” CE approval bodies of the Board.

- April - 2007 Report on the Texas Nurses Association’s (TNA) Continuing Competency Task Force which outlined four domains of competencies.

- October - 2007 Report on Board participation in the TNA Continuing Competency Task Force to provide LVN stakeholder input into the Committee.

- July - 2008 Report to the Board containing the *Nursing Competency: Movement Towards Assurance in Nursing Report* outlining suggested CE changes in the 2009 - 2011 and 2011 - 2013 Biennium and the proceedings of the Texas Nursing Competency Consortium Invitational Conference *Bridging the Gap Between Patient Safety and Nursing Competency*.

At the October 2008 Board meeting, the Board charged Staff with incorporating new methods in Chapter 216 of allowing nurses to document continued competency through either 20 hours of continuing education in their area of practice or national nursing certification in the nurse’s specialty area.

**Comments Received:**

A summary of the written comments received and the oral testimony presented at the public rule hearing on July 9, 2009, is attached as Exhibit “B”, along with Staff’s response to those comments. Staff’s suggested changes to the rule text as a result of those comments are attached hereto as Exhibit “C”.

**Staff’s Recommendation:** Move to adopt the repeal of Chapter 216, Pertaining to *Continuing Education*, as proposed and published in the *Texas Register* on May 15, 2009. Move to adopt proposed new Chapter 216, Pertaining to *Continuing Competency*, with changes. Further, move to adopt the revised rule text attached hereto as “Exhibit C” and authorize Staff to publish the revised rule text attached hereto as “Exhibit C” and the summary of comments and response to comments as attached hereto as Exhibit “B”.

Further, move to charge the Nursing Practice Advisory Committee (NPAC) and the Advisory Committee on Education (ACE) to study, develop, and recommend a rule regarding demonstrating continuing competency through continuing education in a nurse’s area of practice, including the effect upon non-traditional nursing occupations. Further, the topic of demonstrating continuing competency through continuing education in a nurse’s area of practice should be considered and studied in conjunction with the NPAC and ACE’s study and development of a rule related to failing to renew a license after a significant passage of time, which was charged by the Board at the January, 2009, Board meeting.

**WRITTEN TESTIMONY OF TEXAS NURSES ASSOCIATION  
BOARD OF NURSING PUBLIC HEARING (JULY 9, 2009) ON  
PROPOSED CONTINUING COMPETENCY RULES  
AS PUBLISHED AT 14 TEXREG 2865 (MAY 15, 2009)**

The Texas Nurses Association (TNA) would like to express its support for the Board's decision to permit nurses to demonstrate continued competency through means other than continuing education. This approach to demonstration of continued competency is one of the recommendations of TNA's Competency Task Force. The proposed rules permit a nurse to demonstrate continued competency through:

1. continuing education in the nurse's area of practice;
2. national certification in the nurse's area of practice; or
3. completion of an academic course in the nurse's area of practice.

TNA supports this model and believes implementing it should be the Board's and nursing goal. However, TNA believes that what constitutes a nurse's "area of practice" needs additional thought before being made a requirement for the continuing education component of this model.

While the concept of "area of practice" is one that nurses intuitively understand, it is a concept that is difficult to define with the precision needed for this rule. Defined too broadly and it fails to achieve the desired objective that continuing education enhance a nurse's competency in the specific knowledge and skills needed by the nurse in the nurse's area of practice. Defined too narrowly and it precludes the use of general continuing education such as jurisprudence from being used to fulfill the continuing education requirement.

Before "area of practice" can be satisfactorily defined, TNA believes there are some questions on which nursing needs to try to reach consensus:

1. Should a nurse be permitted to use continuing education (e.g., jurisprudence) applicable to all areas of practice to satisfy the continuing education component of the new model?

If so, to satisfy the entire continuing education requirement? Only some of it? If only some, how much?

2. If a nurse primarily practices in one area of practice but infrequently practices in several others, can the nurse take continuing education in any of these areas? Should the nurse have to take at least some in the primary area of practice?
3. What if the nurse does not engage in any nursing during the license renewal period, e.g., takes three years off to raise a family?
4. Does it make any difference in the type of continuing education a nurse should take if they are involved in direct patient care?

TNA does not believe the continuing education component of the new model can be satisfactorily addressed until more thought is devoted to these questions and some consensus achieved. Certainly, TNA's Competency Task Force did not work through all of the implications of these questions.

Consequently, TNA recommends that the continuing education component in the proposed rules be modified to delete the requirement that the continuing education be in the nurse's "area of practice." However, TNA also recommends the Board announce that its intent is to add such a requirement in the near future and immediately appoint a work group to begin working out the details how some of the previously identified questions should be answered and how "area of practice" should be defined.

TNA believes that any questions that may arise about "area of practice" as applied to national certification problems do not present the same level of difficulty and supports retaining the requirement that national certification be in the nurse's area of practice.

If the Board decides to proceed with immediately requiring that continuing education be in the nurse's area of practice, TNA believes the rules needs to incorporate some type of transition

to the new requirement. One possibility would be provide that nurse gets credit for any continuing education taken prior to the rules effective date or some other time certain.

Thank you for listening to TNA's comments. TNA is certainly willing to provide whatever assistance the Board would desire as it works on this important issue of trying to assure the continued competency of nurses.

**THE AMERICAN ASSOCIATION OF NURSE ATTORNEYS  
TEXAS CHAPTER**

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June 12, 2009

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*Via email: [dusty.johnston@bon.state.tx.us](mailto:dusty.johnston@bon.state.tx.us),  
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Re: Comments on Proposed Rules 216.1-216.11 published in May 15, 2009 issue of  
*Texas Register*

Dear Board Members:

The American Association of Nurse Attorneys – Texas chapter (TAANA-TX) respectfully submits the following comments to the above-referenced proposed rules. TAANA-TX supports continued competency of nurses who practice in the clinical setting and applauds all of the work the Board has done to promote patient safety. Texas law does not, however, impose a practice requirement on non-advanced practice nurses who renew a license. The proposed rules would indirectly require licensed nurses to engage in the practice of nursing by requiring all nurses who renew their licenses to have a practice area – the proposed rules require the nurse either to complete 20 contact hours of continuing education in the nurse's area of practice or to have national certification in the nurse's area of practice.

There are many nurses in Texas who renew their licenses every two years and do not practice nursing. For example, many members of TAANA-TX are nurses who renew their Texas licenses as professional nurses but do not practice nursing. Some members do not represent nurses or have health care-related legal practices. The Board's nurse investigators and Katherine Thomas, the Executive Director, are other examples of nurses who do not practice nursing. The Nursing Practice Act does not require a registered or licensed vocational nurse to maintain a nursing practice in order to maintain professional nursing licensure. Although a nurse who is not actively engaged in

professional nursing may submit a written request to the Board to request to be placed on inactive status, the Board cannot place a nurse on inactive status absent a request. TEX. OCC. CODE ANN. § 301.261 (Vernon 2004).

The Nursing Practice Act does not require a nurse to complete continuing education as a condition of licensure. The Board has the discretion to require continuing education as a condition of licensure. TEX. OCC. CODE ANN. § 301.303(a) (Vernon 2004). The Nursing Practice Act does not require participation in continuing competency programs as a condition of renewal of a license. The Board has the discretion to require participation in continuing competency programs as a condition of renewal of a license. TEX. OCC. CODE ANN. § 301.303(a) (Vernon 2004). If the Board exercises its discretion, the competency programs may allow a license holder to demonstrate competency through various methods not just the one enumerated in the statute. TEX. OCC. CODE ANN. § 301.303(a) (Vernon 2004).

The Board cannot exercise its discretion to require continuing education as a condition of licensure, or to require participation in continuing competency programs, in a manner that is inconsistent with the law. The Board cannot exercise its discretion in a way that deprives a nurse of the right to maintain an active license by indirectly requiring the nurse to be engaged in the practice of nursing. Although the Board may contend that the new CEU requirements will not impose a practice requirement on all nurses, that contention is not evident from the proposed rule as written.

The Board can further its goals of competency in the practice of nursing without indirectly requiring a nurse to be actively engaged in the practice of nursing. The Board can require a nurse to complete continuing education in his or her area of clinical practice if they have one and can require nurses who do not have one to complete 20 approved contact hours every two years. Proposed Rule § 216.3 could be modified as follows:

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 education within the two years immediately preceding renewal of registration. These hours shall be obtained in the nurse's area of practice and be in programs approved by a credentialing agency recognized by the board. If a nurse does not have a clinical area of practice, the nurse shall complete the 20 contact hours of continuing education within the two years immediately preceding renewal of registration in programs approved by the 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.

The Board could also further its goals of competency by promulgating rules requiring nurses who have not been engaged in the clinical practice of nursing for a certain period to complete a Board approved refresher course before engaging in the practice of nursing. For example, the Board could amend Rule 217.11 to include such a requirement.

Most members of TAANA-TX have worked hard to obtain and maintain their Texas nursing licenses. They are proud to be nurses, and having a license inures to the benefit of some of their practices. TAANA-TX would support Board rules requiring refresher courses before returning to clinical practice but does not believe the Board has authority to condition a nurse's licensure on ambiguous CEU requirements that could be interpreted to require the nurse to practice nursing.

TAANA-TX requests that the matter be set for a public hearing.

Respectfully submitted,



Kathleen M. Kearney, RN, MSN, JD, on behalf of  
The American Association of Nurse Attorneys  
Texas Chapter

cc: Denise Benbow, Nursing Practice Consultant, Texas Board of Nursing  
*Via email: denise.benbow@bon.state.tx.us and fax: (512) 305-8101*

**From:** dwilson77573@comcast.net [mailto:dwilson77573@comcast.net]

**Sent:** Thursday, June 11, 2009 10:19 PM

**To:** Johnston, Dusty

**Subject:** BON proposal regarding continuing education requirements

To whom it may concern:

As an RN licensed by the state of Texas for more than 30 years, I would ask you to reconsider the proposed change in continuing education requirements that has been proposed. To require any practicing RN to limit continuing education hours to only their "field of practice" is not what I would consider to be a good "best practice" policy. Some fields of nursing do not see regular continuing education opportunities, and to limit what areas an RN can seek their hours in is going to make completion of the hours very difficult to obtain.

Thank you for your consideration of this matter.

Sincerely,  
Donna Wilson, RN

6/12/2009

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## Exhibit “B”

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

#### Area of Practice Requirements

**Comment:** An individual commenter states that she does not consider it to be a good “best practice” policy to require any practicing RN to limit continuing education hours to only their “field of practice”. Further, the commenter states that some fields of nursing do not see regular continuing education opportunities and to limit what areas an RN can seek their hours in is going to make completion of the hours very difficult to obtain.

A commenter representing an organization states that the organization supports and applauds the Board’s efforts to ensure competency in nursing practice and does not want anything to demean the nursing practice. However, the commenter is concerned that those nurses who do not have a clinical practice or an area of practice may lose their license as a result of the proposed rules. The commenter states that Texas law does not impose a practice requirement on non-advanced practice nurses who renew a license. Further, the commenter states that the proposed rules would indirectly require licensed nurses to engage in the practice of nursing by requiring all nurses who renew their licenses to have a practice area. The commenter states that there are many nurses in Texas who renew their licenses every two years and do not practice nursing. The commenter gives examples of nurses who do not practice nursing, such as nurse attorneys who do not represent nurses or have health care-related legal practices, the Board’s own nurse investigators, and the Board’s Executive Director. The commenter states that the Nursing Practice Act does not require a registered or licensed vocational nurse to maintain a nursing practice in order to

maintain professional nursing licensure. Further, the commenter states that a nurse may submit a written request to the Board to request to be placed on inactive status. The commenter also argues that the Board cannot place a nurse on inactive status absent such a request, pursuant to the Occupations Code §301.261. The commenter states that although the Nursing Practice Act does not require continuing education as a condition of licensure or for renewal of a license, the Board has the discretion to require continuing education as a condition of licensure and as a condition for renewal of a license. However, the commenter states that the Board may not exercise this discretion in a way that deprives a nurse of the right to maintain an active license by indirectly requiring a nurse to be engaged in the practice of nursing. Further, the commenter states that the Board does not have the authority to condition a nurse's licensure on ambiguous continuing education requirements that could be interpreted to require the nurse to practice nursing.

Further, the commenter states that an indirect result of the proposed rule would make a dramatic change in nursing practice in Texas. The commenter also states that as long as there has been a Nursing Practice Act, a nurse has been able to renew his or her license without having an area of practice.

The commenter also states that the Board should be concerned about the indirect impact of the proposed rule on the shortage of nurses. In the Board's strategic plan published for 2009-2013, the Board largely focused on the shortage of nurses. The commenter points out that an entire section of that plan focused on how to retain nurses in practice. The commenter further states that, if a nurse were to have to lose his or license to take time off to have a family, to take time out for a hiatus, or if the nurse didn't have an

area of practice to do continuing education in, that would be a barrier to nurses coming back to nursing practice and exacerbate the nursing shortage we have.

The commenter further states that she has reviewed the documents supporting the rules, including the Texas Nurses Association (TNA) Task Force Report, and has come to the conclusion that the Board didn't really intend for nurses to lose their licenses. The commenter bases this conclusion on the fact that the reports primarily focused on patient safety issues and clinical settings and that there was nothing in the reports regarding nurses who did not have practice areas. The commenter states that although the Board contends that the new requirements will not impose such a practice requirement on all nurses, that contention is not evident from the proposed rule as written.

The commenter states that both the TNA paper and the preamble to the proposed rule indicate that general application of continuing education is an appropriate mechanism for demonstrating competency, but the Board has come to the conclusion as a result of its studies that it might be better if a nurse did continuing education in the nurse's specific area of practice if the nurse had one.

The commenter states that her organization's proposed solution would further the goal of patient safety and would be consistent with the rule's preamble and the TNA report. The commenter states that the Board can further its goals of competency in the practice of nursing without indirectly requiring a nurse to be actively engaged in the practice of nursing. The commenter suggests that the Board require a nurse to complete continuing education in his or her area of clinical practice if they have one and require nurses who do not have one to complete 20 approved contact hours every two years.

The commenter believes that the proposed alternative allowing certification by a national organization will be helpful to many nurses. The commenter also states that the members of her organization do not object to a nurse having to do continuing education for the renewal of a license, and that if a nurse who did not have a practice area decided to re-enter nursing practice, they would not object to having to do a major refresher course because it would be required in order for that nurse to be competent. Further, the commenter states that her organization would be very supportive of stronger rules with regard to refresher courses for nurses re-entering practice in clinical settings.

A commenter representing another organization states that the organization supports the Board's decision to permit nurses to demonstrate competency through means other than continuing education. The commenter states that the proposed rules permit a nurse to demonstrate continued competency through continuing education in the nurse's area of practice; national certification in the nurse's area of practice; or completion of an academic course in the nurse's area of practice. The commenter's organization supports this model because implementing it should be the Board's and nursing's goal. The commenter states that her organization has studied this issue for over five years and has compiled a short and long version. Her organization believes nursing has taken, like other health professions, a very long time in addressing competency. For that reason, her organization encourages the Board to move forward with the rule it proposed, but she states that her organization is quick to say it does not have all the answers with regard to area of practice and would recommend that the Board put into place all aspects of the proposed rules, but delete that section to see if, after a short period of time of study (3-6 months), her organization and others can come up with answers to questions that nurses are just beginning to ask. The

commenter states that this is a very complex issue and she believes an agreement can be reached, but at this point in time, there are more questions arising than can be answered.

The commenter states that, while the concept of “area of practice” is one that nurses intuitively understand, it is a concept that is difficult to define with the precision needed for this rule. The commenter states that if area of practice is defined too broadly, it becomes diluted as being a measure of true competency and fails to achieve the desired objective that continuing education enhance a nurse’s competency in the specific knowledge and skills needed by the nurse in the nurse’s area of practice. However, the commenter states that if it is defined too narrowly, there will be many outliers in the nursing profession that don’t fit into the mainstream and it precludes the use of general continuing education, such as jurisprudence from being used to fulfill the continuing education requirement.

The commenter states that, before area of practice can be satisfactorily defined, nursing needs to try to reach consensus on some questions, such as:

- Should a nurse be permitted to use continuing education (e.g., jurisprudence) applicable to all areas of practice to satisfy the continuing education component of the new model? If so, to satisfy the entire continuing education requirement or only some of it? If only some, how much?

- If a nurse primarily practices in one area of practice but infrequently practices in several others, can the nurse take continuing education in any of these areas? Should the nurse have to take at least some continuing education in the nurse’s primary area of practice?

- What if the nurse does not engage in any nursing during the license renewal period, e.g., takes three years off to raise a family?

- Does it make any difference in the type of continuing education a nurse should take if he or she is involved in direct patient care?

The commenter states that her organization does not believe the continuing education component of the new model can be satisfactorily addressed until more thought is devoted to these questions and some consensus is achieved. The commenter notes that TNA's Competency Task Force did not work through all of the implications of these questions.

The commenter also suggests coming up with a broad base. The commenter suggests utilizing the four modalities outlined in TNA's original paper on the subject. As an example, the commenter states that a nurse in clinical practice could select from the first and second domain, while other areas could utilize domains three and four.

The commenter's organization recommends that the continuing education component in the proposed rules be modified to delete the requirement that the continuing education be in the nurse's area of practice. However, the commenter's organization also recommends that the Board announce that its intent is to add such a requirement in the near future and immediately appoint a work group to begin working out the details of how some of the previously identified questions should be answered and how area of practice should be defined.

The commenter's organization believes that any questions that may arise about area of practice as applied to national certification problems do not present the same level of difficulty and supports retaining the requirement that national certification be in the nurse's area of practice.

Finally, the commenter states that if the Board decides to proceed with immediately requiring that continuing education be in the nurse' area of practice, her organization believes that the rules need to incorporate some type of transition to the new requirement. One possibility would be to provide that nurses gets credit for any continuing education taken prior to the rules' effective date or some other time certain.

**Agency Response:** The Board is committed to protecting and promoting 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 believes that enacting rules that promote competency in a nurse's area of practice is one way to support this mission. While the Board continues to support the demonstration of continuing competency in a nurse's specific area of practice, the Board agrees that there may be unanticipated or unintended consequences of the rule as proposed, specifically regarding those nurses working in non-traditional nursing occupations or those nurses who are not actively practicing nursing. The Board recognizes the complexities that have been raised by various commenters and that are associated with requiring a nurse to obtain continuing education in his or her area of practice. While the Board agrees that the rules as proposed do not adequately address the particular complexities associated with an "area of practice" competency requirement, the Board feels that an "area of practice" component should be incorporated into the continuing competency requirements at some point in the future. The Board considers the completion of appropriate continuing education to be an essential method in demonstrating a nurse's ability to safely practice nursing. However, in response to comments received, the Board has modified the rules as proposed to eliminate the requirement that a nurse must obtain continuing education in his or her area of practice. Further, because the Board continues

to believe that there is value in requiring nurses to obtain continuing education in their specific area of practice, the Board has assigned a working group to study the issue in depth, paying particular attention to those nurses who work in non-traditional nursing occupations and those nurses who do not actively practice nursing. The Board has further charged the work group with making recommendations to the Board regarding the enactment of a rule that would incorporate an “area of practice” component for all individuals seeking to renew a nursing license. The Board will consider any recommendations made by the working group in a separate rule proposal.

The Board agrees that any questions that may arise regarding a nurse’s “area of practice” in regards to national certification will not present the same types of difficulties or complexities and, therefore, adopts the requirement that national certification be in a nurse’s area of practice, as proposed.

**Exhibit “C”**

**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 nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist approved by the board to practice as an advanced practice registered nurse based on completion of an advanced educational program acceptable to the board.

(3) Approved--Recognized as having met established standards and pre-determined 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.

(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.

(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 Education (CE)--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 CE.

(15) Prescriptive Authority--Authorization granted to an advanced practice registered nurse who meets the requirements to carry out or sign a prescription drug order.

(16) Program number--A unique number assigned to a program upon approval which shall identify it regardless of the number of times it is presented.

(17) Provider--An individual, partnership, organization, agency or institution approved by an organization recognized by the board which offers continuing education programs.

(18) Provider number--A unique number assigned to the provider upon approval by the credentialing agency or organization.

**§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 §301.303, 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.

### **§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 education within the two years immediately preceding renewal of registration. 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 Advanced Practice Registered Nurse. The licensee authorized by the board as an advanced practice registered nurse (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 advanced practice registered nurse'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.

(4) Category I Continuing Medical Education (CME) contact hours will meet requirements as described in this chapter.

(d) Forensic Evidence Collection.

(1) Each nurse licensed in Texas and employed in an emergency room (ER) setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by the Occupations Code §301.306 and this subsection:

(A) by September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006; or

(B) within two years of the initial date of employment in an ER setting.

This requirement may be met through completion of approved continuing education

activities, as set forth in §216.4 of this chapter (relating to Criteria for Acceptable Continuing Education Activity).

(2) This requirement shall apply to nurses who work in an ER setting that is:

(A) the nurse's home unit;

(B) an ER unit to which the nurse "floats" or schedules shifts; or

(C) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(3) A licensed nurse in Texas who would otherwise be exempt from CE 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. This is a one-time requirement for each nurse employed in an ER setting. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CE attendance. Validation of course completion in Forensic Evidence Collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) The minimum 2 hours of continuing education requirement 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 required hours under this subsection are included in the continuing education requirements for nurses.

(e) A nurse who is 65 years old or older and who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization in compliance with the Occupations Code §112.051 and §217.9(d) of this title (relating to Inactive Status):

(1) Must have completed at least 10 hours of continuing education as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as an advanced practice registered nurse 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 advanced practice registered nurses.

**§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.

**§216.5. Additional Criteria for Specific Continuing Education Programs.** 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 relevant to 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.

**§216.6. Activities Which 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; basic CPR; and equipment demonstration are not acceptable for CE credit.

(3) Nursing refresher courses. Programs designed to update 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 CE 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 CE 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:

(A) academic courses that are audited, or that are healthcare-related courses but not part of a nursing degree program, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses are not acceptable;

(B) authorship; and

(C) program development and presentation.

#### **§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 CE activities. These records shall document attendance as evidenced by original certificates of attendance, contact hour certificates, academic transcripts, or grade slips 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 two consecutive renewal periods or four years.

#### **§216.8. Relicensure Process.**

(a) Renewal of license.

(1) Upon renewal of the license, the licensee shall sign a statement attesting that the CE 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. CE 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 CE 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 CE 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 continuing education 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

requirement and other board requirements have been met prior to reinstatement of the license by the board.

**§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.

**§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.

**§216.11. Consequences of Non-Compliance.** Failure to comply with the board's continuing competency requirements will result in the denial of renewal.