

**Consideration of Written Comment received in Response to Board's Proposed Rule Review of 22 Tex. Admin. Code §228.1, relating to Standards of Practice**

**Summary of Request:** Charge the the Board's Advanced Practice Nursing Advisory Committee (Committee) with examining comments to 22 Tex. Admin. Code § 228.1 and making a recommendation to the Board as to whether the language of the rule should be amended as requested.

**Background:**

22 Tex. Admin. Code Chapter 228 was adopted by the Board to be effective February 23, 2014. The Government Code § 2001.039 (Administrative Procedure Act) requires a state agency to review each of its rules every four years following the rule's initial effective date to determine if the reasons for originally adopting the rule continue to exist. The agency must then consider whether to re-adopt, re-adopt with amendments, or repeal each rule. This review includes a publication in the Texas Register for public comment.

Staff received comment on the rule from the APRN Alliance, which is a partnership of Advanced Practice Registered Nurse organizations, including the Consortium of Texas Certified Nurse-Midwives, Texas Association of Nurse Anesthetists, Texas Clinical Nurse Specialists, Texas Nurse Practitioners, and Texas Nurses Association. The comments are attached as Attachment "A".

The APRN Alliance submitted a written comment on the published rule review. The APRN Alliance comments that the language of the rule suggests that the rule could apply to acute pain and proposes that the Board consider adding language clarifying that the rule is intended to apply to the management of chronic pain. The APRN Alliance also comments that the rule be amended so that it does not apply to APRNs who are employees of a clinic. Finally, the APRN Alliance comments that the order of 22 Tex. Admin. Code § 228(i)(4) &(5) be reversed.

Staff is requesting that the Board charge the Committee with examining these comments and making a recommendation to the Board as to whether the language of the rule should be amended as recommended.

**Staff Recommendation:** Move to charge the Board's Advanced Practice Nursing Advisory Committee with examining the comments received from the APRN Alliance regarding 22 Texas Administrative Code § 228.1 and making a recommendation to the Board as to whether the language of the rule should be amended as recommended.



May 2, 2018

To:

Dusty Johnston, General Counsel  
Texas Board of Nursing  
333 Guadalupe, Suite 3-460  
Austin, Texas 78701

Re: Review of Chapter 228. Pain Management, §228.1

The APRN Alliance is a partnership of Advanced Practice Registered Nurse (APRN) organizations, including the Consortium of Texas Certified Nurse-Midwives (CTCNM), Texas Association of Nurse Anesthetists (TxANA), Texas Clinical Nurse Specialists (TxCNS), Texas Nurse Practitioners (TNP), and Texas Nurses Association (TNA). Together, we represent the unified voice of nearly 20,000 APRNs in Texas.

As an informal collaborative, our focus is on promoting access to quality care by improving practice for all APRNs in Texas. That is why the APRN Alliance respectfully submits the following comments to Title 22 Texas Administrative Code §228.1, Pain Management (Rule Review published in the April 6, 2018 Texas Register).

While we feel strongly that this rule is necessary, we have some concerns about the language used. According to subsection (b), the rule sets forth standards for an Advanced Practice Registered Nurse (APRN) “who provides pain management services.” This is extremely broad, as almost every APRN manages pain in their daily practice.

§228.1 tracks the language of the Texas Medical Board’s (TMB’s) §170.3 closely, with one major difference—nothing in §228.1 limits its applicability. Almost every subsection in §170.3 is limited by the word “chronic” before “pain.” “In the case of chronic pain, the medical record must document...” in subsection (1), “(2) Treatment plan for chronic pain,” “the use of controlled substances for the treatment of chronic pain” in (3), and so on.

While the lack of a limiting term may have been unintentional, we are concerned about the confusion it could cause for practitioners and their employers. We hope that the Board will take this opportunity to clarify this rule.

The other major concern is subsection (i). It states that an APRN who practices in a pain management clinic must verify the clinic’s license, be available on site with the physician at least 33 percent of operating hours, and review 33 percent of patient charts, in accordance with §168.201, Occupations Code. However this is not what the Occupations Code says.

§168.201(c) says “*the owner or operator* of a pain management clinic shall: (1) be on-site at the clinic at least 33 percent of the clinic’s total number of operating hours; and (2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor...” According to §168.001, “Operator” means “an owner, medical director, or physician affiliated or associated with the pain management clinic in any capacity.”

Further, §168.201(a), which does not relate to the on-site and chart review requirements, states “the owner or operator of a pain management clinic, *an employee of the clinic*, or a person with whom a clinic contracts...” In other words, subsection (a) shows that the legislature intended to delineate between owners and operators, employees, and contractors. Subsection (c) only applies to owners and operators.

We ask that subsection (i) of §228.1 be amended so that it does not apply to APRNs who are employees. To ask every APRN employee to review 33 percent of all charts is unnecessary and not required by law.


Finally, if the Board is willing to make changes to the rule, it would be a good opportunity to alleviate some confusion with regards to §228.1(i), subsections (4) and (5), possibly by reversing their order.

We thank you for this opportunity to provide our expert perspective on the proposed changes to Title 22 Texas Administrative Code §228.1, Pain Management.

Sincerely,



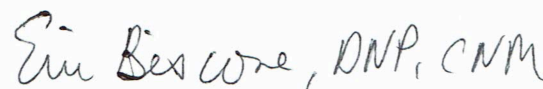
Jeff Watson, DNP, RN-BC, NEA-BC, NE-BC, CRRN  
President, Texas Nurses Association



Tim Jones, DNP, CRNA  
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