Agenda Item: 6.8
Board Meeting on October 21, 2021
Prepared by: Jena Abel

Consideration of Adoption of Proposed Amendments to 22 Tex. Admin. Code §217.24(e), relating to *Telemedicine Medical Service Prescriptions*

Background: Amendments to §217.24(e) were adopted on an emergency basis by the Board at its July 30, 2021, emergency meeting to be effective for 120 days, with an option to renew for an additional 60 days. Simultaneous with that adoption, the Board also approved proposed amendments to §217.24 on a permanent basis. The proposal was published in the *Texas Register* on August 13, 2021, and the comment period ended on September 13, 2021. The Board received two comments on the proposal. The Board did not receive any requests for a public hearing. A copy of the written comments received are attached hereto as Attachment "A".

A summary of the comments received and Staff's proposed responses are attached as Attachment "B".

Board Action: Move to adopt the amendments to 22 Texas Administrative Code §217.24(e), relating to *Telemedicine Medical Service Prescriptions,* with changes, as set forth in Attachment "C". Further, authorize Staff to publish the summary of comments and response to comments attached hereto as Attachment "B".

September 13, 2021

Kristin Benton, Director of Nursing
James W. Johnston, General Counsel
Texas Board of Nursing
333 Guadalupe, Suite 3-460
Austin, Texas 78701

Via email to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov

Re: Comments on Proposed Rule 22 Tex. Admin. Code § 217.24 (46 Tex. Reg. 33, Pages 4907-5108, August 13, 2021)

Dear Ms. Benton and Mr. Johnston:

On behalf of Texas Medical Association (TMA) and Texas Pain Society, and our over 55,000 physician and medical student members, we submit the following comments on the Texas Board of Nursing's (BON's) proposed amendments to 22 Tex. Admin. Code § 217.24, as published in the August 13, 2021 Texas Register. We generally support BON's proposed amendments to issuing prescriptions to treat chronic pain via telemedicine so long as such services are provided with proper physician delegation and supervision. We believe these changes will remove some of the unnecessary barriers to facilitate better treatment options for patients while preserving safeguards to deter patient prescription abuse. However, we are concerned that the rules as proposed present several possible issues, including scope of licensure conflicts, potential confusion on when telemedicine services to treat chronic pain can be rendered, as well as some narrow language limitations that would prohibit telemedicine from being used most effectively to treat a patient with chronic pain. Accordingly, we offer the following comments—we thank you in advance for your consideration and attention to these items.

Comment

1. We have five main concerns with the proposed language in Subsection (e):

a. The proposed language in Subsection (e) could be impermissibly interpreted to allow independent prescribing practices, as well as other improper prescribing practices, for advanced practice registered nurses (APRNs) inconsistent with Chapter 157, Occupations Code. Clause (iii) states: "has been seen by a prescribing APRN or physician or health professional as defined in Tex. Occ. Code §111.001(1) …" It is unclear why "prescribing

APRN" is standalone language in this provision when an APRN is already included in the definition of "health professional" under the applicable Occupations Code provision cited to in the same clause (it includes a qualified individual acting under the physician's delegated authority and supervision). *See* Section 1455.001(1). The APRN's authority to prescribe comes from the prescribing physician's delegation authority. *See generally*, Tex. Occ. Code Chapter 157. To prevent unintended confusion and impermissible applications of this proposed rule, we ask BON to strike "APRN" in this clause.

Further, as proposed, there may be confusion about whether the rules account for the limitations on delegated prescribing authority for controlled substances in Chapter 157. For example, Texas Occupations Code § 157.0511 provides limitations on when an APRN can be delegated prescribing authority for scheduled drugs, and delegated prescription authority for Schedule II drugs are further limited to specific practice settings. Subsection (e) contains broad permissive language for the use of telemedicine medical services without including the statutory guardrails that still apply. Thus, to prevent misapplication of the law, we strongly urge BON to be clear that nothing in the proposed rule supersedes the requirements of Chapter 157. The existing parameters in Subsections (a)-(d) are not direct enough to resolve our concern.

b. We also ask BON to clarify its intent in Clause (iii) where it uses the language "prescribing APRN or physician or health professional defined under Chapter 111.001(1) of the Texas Occupations Code". In addition to the scope concerns mentioned above, it is not clear how the "health professional defined under Chapter 111.001(1) of the Texas Occupations Code" language will be applied. Section 111.001(1) assigns "health professional" and "physician" the same meanings as those terms are defined in Section 1455.001, Insurance Code. In Section 1455.001(1), a "health professional" also includes a physician and a qualified individual acting under the physician's delegated authority and supervision. As drafted, it is unclear whether the proposed amended rule could be interpreted to mean the APRN acting with delegated authority from the prescribing physician could issue a prescription to treat chronic pain via telemedicine for a patient who has been seen (in-person or via telemedicine) by a different physician (not the one delegating prescribing authority) or a different physician's delegatee in the last 90 days.

Of course, there are legitimate reasons to permit this when a valid established patient relationship exists, such as emergencies where a previous treating physician may no longer be available, and if this is the agency's intent, we support this interpretation and do not recommend any changes except to add "**other** health professional" for proper clarity (and change "Chap" to "Section" for proper drafting, and strike "APRN").

However, if the intent is for the exception to apply narrowly to only a qualifying visit with the prescribing physician or the prescribing physician's delegate, we ask that this be clearly expressed in the rule to prevent confusion. We offer language to this point below in Section 2 below.

c. The language proposed in Clause (ii) about an "identical" prescription issued at "the previous visit" is too narrow and may unintentionally interfere with the purpose of the rule if applied as drafted. The current language in Clause (ii), "is receiving a prescription that is **identica**l to a prescription issued at **the** previous visit" is too narrow. First, the language

"identical" does not take into account flexibility in treatment needed to effectively manage chronic pain. For example, one of the goals in pain management treatment is to reduce a patient's treatment dosage when possible. A textual application of the word "identical" could limit telemedicine services from being provided in this situation, despite a similar prescription being issued previously.

Second, after receiving a prescription for treating chronic pain at an in-person or telemedicine visit, a patient could have a follow-up appointment within the 90-day window for various reasons and not receive *another* identical prescription for treating chronic pain during the last previous visit. Practically, it is unlikely BON intended the patient to be disqualified from using telemedicine in this situation, and we offer language below in Section 2 to prevent this possible misinterpretation.

d. It is important not to identify the patient as a "chronic pain" patient. Identifying the patient in this manner in Clause (i) unfairly stigmatizes patients who seek treatment for chronic pain. Instead, it should be clear that the individual is a patient, and the patient receives treatment for chronic pain. We offer amended language below in Section 2.

e. Finally, we urge BON to strike the additional factors in Subparagraphs (B) and (C) to avoid interfering with the physician's delegation authority under Chapter 157, Occupations Code. We are concerned the additional proposed factors in BON's rule in Subsection (e)(1)(B)-(C) will interfere with the prescribing physician's delegated authority by limiting when the APRN can accept delegated authority from the physician to assist in providing telemedicine medical services to treat a patient with chronic pain. We urge BON to align its rules with TMB's rules for a unified approach in providing treatment for chronic pain through telemedicine medical services with proper delegation and supervision. A unified approach will help prevent confusion and disruption in the patient's treatment.

2. To address the above comments and to include other suggested minor drafting edits, we offer the following language:

> (e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.
>
> (1) <u>For purposes of this rule, chronic pain has the same definition as used in 22 Texas Administrative Code §170.2(4) (relating to Definitions).</u> [~~Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.~~]

(A) Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established **[~~chronic pain~~]** patient of the APRN **issuing the prescription to treat chronic pain in accordance with this subsection**;

(ii) is receiving a prescription **to treat chronic pain** that is **similar [~~identical~~]** to a prescription issued at **a [~~the~~]** previous visit; and

Option 1

(iii) has been seen **in the last 90 days** by the prescribing **[~~APRN~~]** physician**,** or **other** health professional **as** defined under **Section [~~Chap~~]** 111.001(1)**, [~~of Texas~~]** Occupations Code, **[~~in the last 90 days~~]** either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

Option 2

(iii) has been seen **in the last 90 days** by the prescribing **[~~APRN~~]** physician**,** or **other** health professional **authorized to assist the prescribing physician in providing telemedicine medical services that are delegated and supervised by the physician [~~defined under Chap 111.001(1) of Texas Occupations Code, in the last 90 days~~],** either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

[~~(B) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by paragraph (1)(A) of this subsection, shall give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.~~

~~(C) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by paragraph (1)(A) of this subsection, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.~~]

(2) For purposes of this rule, acute pain has the same definition as used in 22 Texas Administrative Code §170.2(2). Telemedicine medical services may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law. [~~Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise~~

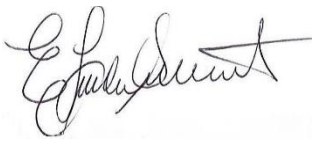
~~prohibited under federal and state law. For purposes of this section, "acute pain" means the normal, predicted, physiological response to a stimulus, such as trauma, disease, and operative procedures. Acute pain is time limited.~~]

(f) Nothing in this section shall be interpreted to supersede or alter, or be applied in a manner to conflict with, Chapter 157, Occupations Code. An APRN must comply with the requirements and limitations provided in Chapter 157, Occupations Code relating to delegated authority to prescribe or order drugs or devices, including controlled substances.

Conclusion

Thank you for your consideration of the above comments. If you have any questions, please contact any of the following TMA staff by email: Rocky Wilcox, vice president and general counsel, at rocky.wilcox@texmed.org; Kelly Walla, associate vice president and deputy general counsel, at kelly.walla@texmed.org; Laura Thetford, associate general counsel, at laura.thetford@texmed.org; or Dan Finch, vice president of advocacy, at dan.finch@texmed.org; by phone at 512-370-1300; or at our mailing address: 401 West 15th Street, Austin, Texas 78701.

Sincerely,



E. Linda Villarreal, MD
President

Maxim S. Eckmann, MD
President, Texas Pain Society

September 9, 2021

Re: Comments on Proposed Rule 22 TAC §217.24

Dear Texas Board of Nursing,

Texas Nurse Practitioners (TNP) represents the voices of over 27,000 Nurse Practitioners, and Texas Association of Nurse Anesthetists (TxANA) represents nearly 5,000 Certified Registered Nurse Anesthetists across the state of Texas. Together, our organizations represent all the pain-management providers regulated by the Board of Nursing (BON). We are writing today to request minor modifications to the proposed changes to the *Telemedicine Medical Service Prescriptions* rule.

First and foremost, we sincerely appreciate the Board moving this into their permanent rules, as opposed to continuing to renew the emergency rule. This will alleviate uncertainty for providers moving forward. However, we do have some concerns about the language being proposed. While we understand that this language has been used in the emergency rules, given that the Board is proposing that these be made at least semi-permanent, we believe it would be helpful to review the language to determine how these would be applied should they ever be used in a disciplinary action.

The first concern is the language requiring APRNs to "consider" certain factors, including "at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks." While this is sound guidance, it is unusual language to include in a rule. We are not aware of any other rule that attempts to regulate the thought processes of a licensee, and we are concerned about how this might be enforced. Obviously, it would be impossible to know for certain whether a provider had considered these factors, so if there is no intent to enforce these provisions, we would recommend moving them somewhere more visible to providers, such as an FAQ or other informal guidance.

Our second concern is related to the documentation requirements. The proposal would require nurses to "document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit." Notice, similar language is not included in the Texas Medical Board (TMB) proposal on the same subject. This is likely because the reason for using telemedicine during the pandemic is always the same: to avoid in-person contact. Writing that out in each patient's medical record is completely unnecessary, and the board should not be taking action against a licensee for omitting what would be obvious to anyone reading those records.

Again, we appreciate the intent behind this rule proposal, but we feel strongly that the language should be modified if we are moving it from an emergency rule to a formal adoption. Please do not hesitate to contact us if you have any questions or concerns.

Sincerely,

Christy Blanco

Christy Blanco, APRN, DNP, WHNP-BC
President, Texas Nurse Practitioners

Abigail L. Caswell

Abigail L. Caswell, DNP, CRNA
President, Texas Association of Nurse Anesthetists

Attachment “B”

Summary of Comments Received

Comment: A joint comment was submitted by the Texas Medical Association and the Texas Pain Society. The commenters state the proposed language in subsection (e) could be impermissibly interpreted to allow independent prescribing practices, as well as other improper prescribing practices, for advanced practice registered nurses (APRNs) inconsistent with Chapter 157, Occupations Code.

The commenters state it is unclear why “prescribing APRN” in clause (iii) is standalone language when an APRN is already included in the definition of “health professional” under the applicable Occupations Code provision cited to in the same clause. The commenters state that the APRN’s authority to prescribe comes from the prescribing physician’s delegation authority. To prevent unintended confusion and impermissible applications of this proposed rule, the commenters recommend striking “APRN” in this clause.

The commenters further state that there may be confusion about whether the rules account for the limitations on delegated prescribing authority for controlled substances in Chapter 157. For example, Texas Occupations Code §157.0511 provides limitations on when an APRN can be delegated prescribing authority for scheduled drugs, and delegated prescription authority for Schedule II drugs are further limited to specific

practice settings. Subsection (e) contains broad permissive language for the use of telemedicine medical services without including the statutory guardrails that still apply. Thus, to prevent misapplication of the law, the commenters urge the Board to be clear that nothing in the proposed rule supersedes the requirements of Chapter 157.

The commenters also ask the Board to clarify its intent in clause (iii) where it uses the language “prescribing APRN or physician or health professional defined under Chapter 111.001(1) of the Texas Occupations Code”. The commenters state it is not clear how the “health professional defined under Chapter 111.001(1) of the Texas Occupations Code” language will be applied. Section 111.001(1) assigns “health professional” and “physician” the same meanings as those terms are defined in Section 1455.001, Insurance Code. In Section 1455.001(1), a “health professional” also includes a physician and a qualified individual acting under the physician’s delegated authority and supervision. As drafted, the commenters state it is unclear whether the proposed amended rule could be interpreted to mean the APRN acting with delegated authority from the prescribing physician could issue a prescription to treat chronic pain via telemedicine for a patient who has been seen (in-person or via telemedicine) by a different physician (not the one delegating prescribing authority) or a different physician’s delegatee in the last 90 days. The commenters state that there are legitimate reasons to permit this when a valid established patient relationship exists, such as emergencies where a previous treating physician may no longer be available. If that is the Board’s intent, the commenters support this interpretation and do not recommend any changes except to add “other health professional” for proper clarity and change “chapter” to

“section” for proper drafting and strike “APRN”. However, if the intent is for the exception to apply narrowly to only a qualifying visit with the prescribing physician or the prescribing physician’s delegate, the commenters ask that this be clearly expressed in the rule to prevent confusion.

The commenters further state that the language proposed in clause (ii) about an “identical” prescription issued at “the previous visit” is too narrow and may unintentionally interfere with the purpose of the rule if applied as drafted. The commenters state that “identical” does not take into account flexibility in treatment needed to effectively manage chronic pain. For example, one of the goals in pain management treatment is to reduce a patient’s treatment dosage when possible. A textual application of the word “identical” could limit telemedicine services from being provided in this situation, despite a similar prescription being issued previously. Second, the commenters state that, after receiving a prescription for treating chronic pain at an in-person or telemedicine visit, a patient could have a follow-up appointment within the 90-day window for various reasons and not receive another identical prescription for treating chronic pain during the last previous visit.

The commenters also state that it is important not to identify the patient as a “chronic pain” patient. The commenters state that identifying the patient in this manner unfairly stigmatizes patients who seek treatment for chronic pain. Instead, the commenters state that it should be clear that the individual is a patient, and the patient receives treatment for chronic pain.

The commenters further urge the Board to strike the additional factors in subparagraphs (B) and (C) to avoid interfering with the physician's delegation authority under Chapter 157, Occupations Code. The commenters state that the additional proposed factors in subsection (e)(1)(B)-(C) will interfere with the prescribing physician's delegated authority by limiting when the APRN can accept delegated authority from the physician to assist in providing telemedicine medical services to treat a patient with chronic pain. The commenters urge the Board to align its rules with the Texas Medical Board's rules for a unified approach in providing treatment for chronic pain through telemedicine medical services with proper delegation and supervision. A unified approach will help prevent confusion and disruption in the patient's treatment.

The commenters provide suggested language to address all of their stated concerns.

Agency Response: The Board agrees with some of the commenters' suggested changes, but not all. First, the proposed rule contains no language that alters the existing applicable statutory requirements related to delegated authority, nor does the rule purport to grant APRNs independent prescribing authority in contradiction to the existing statutory framework. In this regard, the Board declines to add the commenters' suggested language to the rule as adopted.

Second, the Board agrees that an APRN's authority to issue prescriptions is derived from the delegated authority of a specified physician, as evidenced through a properly executed prescriptive authority agreement. So, although under the proposed rule, a

patient must only have been seen within the last 90 days by the prescribing APRN, physician, or other health professional, as that term is defined in Texas Occupations Code §111.001(1), the APRN may only issue the prescription if it is also properly authorized by the APRN's prescriptive authority agreement. The Board agrees that adding "other" to the phrase "health professional" will clarify the rule as adopted and agrees to make this change to the adopted rule text.

The Board agrees with the commenters that one of the goals in pain management is to reduce a patient's treatment dosage when possible. The Board also acknowledges that it may become necessary for a provider to issue a prescription to a patient that is not identical to the patient's last prescription. However, the Board declines to make changes to the rule as adopted to address those specific situations. The proposed rule is intended to provide continuity of care for patients with chronic pain during the ongoing pandemic, when traveling to a provider's office to obtain a refill of pain medication may be overly burdensome, difficult, or dangerous. To that end, the proposed rule allows for the issuance of identical prescriptions. The proposed rule is not intended to address a patient's change in condition where a prior issued prescription requires modification. If a patient is requesting a reduction in a prescribed medication, for example, the APRN should evaluate the reason for the requested change, such as improved functionality, to determine if a change in the patient's plan of care is necessary. The rule is not intended to replace regular patient assessment. As such, the Board declines to make a change in this regard to the text of the rule as adopted.

In response to the comment that it is important not to identify a patient as a “chronic pain” patient, the Board has made changes to the text of the rule as adopted.

The Board declines to make any changes to subparagraphs (B) and (C) in the rule text as adopted. While an APRN practices under the delegated authority of a physician, each APRN must ensure that his/her practice complies with the minimum standards of nursing practice, including those set forth in 22 Texas Administrative Code §228.1, related to the treatment of pain. To this end, an APRN should consider the reasons why a patient being treated for chronic pain may not be appropriate for telemedicine medical services in a specific instance. The treatment of chronic pain is a highly individualized process. While telemedicine medical services are generally more convenient for many patients and providers, some patients may have individual risk factors and co-morbidities that are more appropriate for in-person assessments. While the rule provides the option for telemedicine prescribing, an APRN must ensure that such prescribing is appropriate for each individual patient, each time the patient is seen.

Finally, in response to the commenters’ goal of having a unified approach in providing treatment for chronic pain through telemedicine medical services with proper delegation and supervision, the Board agrees and notes that the same proposed rule text has been in effect through the adoption of emergency rules since May 14, 2021, has been periodically reviewed and approved by the Governor’s Office, and is consistent with the rules adopted by the Texas Medical Board.

Comment: A joint comment was submitted by the Texas Nurse Practitioners and the Texas Association of Nurse Anesthetists. The commenters state that they appreciate the Board moving this into their permanent rules, as opposed to continuing to renew the emergency rule, as this will alleviate uncertainty for providers moving forward.

The commenters voice concern regarding the language requiring APRNs to "consider" certain factors, including "at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks." The commenter states that, while this is sound guidance, it is unusual language to include in a rule, and the commenter is concerned about how this might be enforced. The commenter states that it would be impossible to know for certain whether a provider had considered these factors and recommends moving them somewhere more visible to providers, such as an FAQ or other informal guidance.

The commenters further state that the requirement to "document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit" is not included in the Texas Medical Board proposal on the same subject. The commenters state that this is likely because the reason for using telemedicine during the pandemic is always the same: to avoid in-person contact. The commenters state that writing that out in each patient's medical record is completely unnecessary, and the Board should not be taking action against a licensee for omitting what would be obvious to anyone reading those records.

Agency Response: The Board declines to make changes to the rule text as adopted in response to these comments. As stated previously in this adoption order in response to other comments, while an APRN practices under the delegated authority of a physician, each APRN must ensure that his/her practice complies with the minimum standards of nursing practice, including those set forth in 22 Texas Administrative Code §228.1, related to the treatment of pain. To this end, an APRN should consider the reasons why a patient being treated for chronic pain may not be appropriate for telemedicine medical services in a specific instance. The treatment of chronic pain is a highly individualized process. While telemedicine medical services are generally more convenient for many patients and providers, some patients may have individual risk factors and co-morbidities that are more appropriate for in-person assessments. While the rule provides the option for telemedicine prescribing, an APRN must ensure that such prescribing is appropriate for each individual patient, each time the patient is seen. Further, requiring the APRN to assess whether a telemedicine visit is appropriate for each patient ensures compliance with the standards required by 22 Texas Administrative Code §228.1(g).

Attachment “C” (recommended changes highlighted below)

§217.24. Telemedicine Medical Service Prescriptions.

(a) - (d) (No change.)

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) For purposes of this rule, chronic pain has the same definition as used in 22 Texas Administrative Code §170.2(4) (relating to Definitions). [~~Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless oth-erwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.~~]

(A) Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established [~~chronic pain~~] patient of the APRN being treated for chronic pain;

(ii) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(iii) has been seen by the prescribing APRN, [~~or~~] physician, or other health professional, as defined in Tex. Occ. Code §111.001(1), in the last 90 days, either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

(B) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by paragraph (1)(A) of this subsection, shall give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(C) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permit-ted by paragraph (1)(A) of this subsection, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(2) For purposes of this rule, acute pain has the same definition as used in 22 Texas Administrative Code §170.2(2). Telemedicine medical services may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law. [~~Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and~~

~~state law. For purposes of this section, "acute pain" means the normal, predicted, physiological response to a stimulus, such as trauma, disease, and operative procedures. Acute pain is time limited.~~]