

Proposed Adoption of New 22 Tex. Admin. Code §217.21, Pertaining to Remedial Education Course Providers and Remedial Education Courses and Amendments to 22 Tex. Admin. Code §223.1, Pertaining to Fees, Written Comments Received, if any, Oral Comments Received at Public Hearing, if any, and Board Responses to Comments

**Summary of Request:** Consider adoption of proposed new 22 Tex. Admin. Code §217.21, pertaining to *Remedial Education Course Providers and Remedial Education Courses* and proposed amendments to 22 Tex. Admin. Code §223.1, pertaining to *Fees*.

**Background:** At the Board's April, 2011, meeting, the Board voted to approve the proposal of new §217.21 and proposed amendments to §223.1 in order to implement an approval process for remedial education course providers and remedial education courses. The proposals were published in the *Texas Register* on May 27, 2011, and the comment period ended on June 27, 2011. The Board received two written comments on proposed new §217.21, both from organizations, and a request for a rule hearing. A rule hearing was held on June 29, 2011.

A summary of the written comments received and the oral testimony presented at the public rule hearing is attached as Attachment "A", along with Staff's proposed response. Staff's suggested changes to the rule text as a result of comments are attached hereto as Attachment "B". No comments were received regarding the proposed amendments to §223.1 and Staff is not recommending any changes to the text of that section as proposed.

**Staff's Recommendation:** Move to adopt the amendments to 22 Tex. Admin. Code §223.1, pertaining to *Fees*, as proposed and published in the *Texas Register* on May 27, 2011, without changes. Further, move to adopt new §217.21, pertaining to *Remedial Education Course Providers and Remedial Education Courses*, with changes. Move to adopt and publish the summary of comments and response to comments as attached hereto as Attachment "A" and the revised rule text attached hereto as Attachment "B".

## **Attachment “A”**

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

**Comment:** A commenter representing the Texas chapter of the American Association of Nurse Attorneys (TAANA-Texas) states that the proposed rule limits potential instructors too broadly and removes potentially qualified instructors from providing remedial education courses. The commenter states that there are potential course providers that possess advanced degrees, as well as extensive experience, that would be prohibited from providing valuable information and instruction in a remedial education course. Some examples provided by the commenter include a nurse attorney who teaches jurisprudence, ethics, boundary violations, or documentation; a pharmacist who teaches pharmacology; a medical doctor who teaches assessment; or a psychiatrist who teaches boundary violations or ethics. The commenter states that each of these doctorally prepared professionals would possess specific knowledge which would benefit a nurse attending a remedial education course, and in some cases, the knowledge may not be possessed by a master’s prepared nurse without those credentials or experience. The commenter further states that changing the language of the proposed rule will continue to address the Board’s concern that qualified and competent instructors provide the courses, while not limiting the pool of instructors. The commenter asks the Board to change the language of the proposed rule text to allow an instructor to: (i) hold a current license or privilege to practice as a registered nurse (RN) or a current license or privilege to practice in an area of study relevant to the remedial education course content; (ii) hold a master’s degree in nursing or a doctoral degree in an area of study relevant to the course content from an approved or accredited institution; (iii) require an instructor to show evidence of teaching abilities and maintaining current

knowledge, clinical expertise, and safety in the subject matter the instructor will teach; (iv) require an instructor to have a minimum of five years professional experience in nursing or in the area of study relevant to the remedial education course content; and (v) prohibit an instructor from being the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or from having a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.

A commenter representing the Texas Nurses Association (TNA) states that the comments and wording provided to the Board by TAANA-Texas appear reasonable and that TNA would support the change provided by TAANA-Texas, provided that the Board does not believe the proposed change would weaken the quality of remedial education courses approved by the Board.

**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 strengthen the quality of remedial education courses approved by the Board is one way to support this mission. The Board agrees with the commenters that the proposed wording of the rule could unnecessarily limit some potentially qualified individuals from providing remedial education courses. However, the Board disagrees that a doctoral degree, even in an appropriately related area of study, is an adequate substitute for a professional nursing license or relevant nursing experience. As such, the Board has modified a portion of the rule text as adopted to address these issues.

First, the Board declines to eliminate or modify the requirement that an instructor hold

a current professional nursing license or privilege to practice. This requirement is necessary to preserve the integrity of remedial education courses approved by the Board. Unlike continuing competency courses or pre-requisite, non-nursing courses, remedial education courses are specifically tailored to address an individual's demonstrated nursing deficits. As such, these courses often include complex content requirements and clinical components. Although some types of professional experience and expertise in a related area of practice may be helpful to a general understanding of such requirements, an instructor must be able to apply specific nursing concepts and principles to an individual's nursing practice in order to effectively remediate an individual's particular deficit. Such knowledge may only be obtained through nursing education and experience. In order to reiterate and clarify the importance of such nursing experience, the Board has also modified the rule text as adopted to require an instructor to have at least three years of current professional nursing experience. This change lessens the number of years of professional nursing experience an instructor must have, but requires that the experience be recent in time in order to ensure that the most current information is made available to the student. Further, the Board is not limiting a nurse's nursing experience to a clinical role. The Board recognizes that many nurses practice in non-traditional nursing roles, such as nursing administration, regulation, or education and believes that a variety of nursing experience can enhance the value of a remedial education course. As such, the Board has defined "professional nursing experience" in the rule text as adopted to include any activity, assignment, or task in which a nurse utilizes his/her nursing knowledge, judgment, or skills. Finally, the Board has modified the rule text as adopted in order to allow an instructor to hold either a master's degree in nursing or a doctoral degree that, in the Board's opinion, relates to an area of study that is relevant to the course content the instructor will be teaching. This

change addresses a portion of the commenters' concerns in that it provides individuals with advanced academic degrees in fields of study other than nursing the opportunity to qualify as remedial education course providers. For example, under the rule text as adopted, a nurse attorney holding a doctorate degree in jurisprudence could teach a remedial education course in nursing jurisprudence and ethics. Not only does a nurse attorney possess knowledge of relevant nursing concepts and principles, but the nurse attorney also understands underlying legal concepts and considerations as they relate to the practice of nursing. In such cases, the remedial education course would be enhanced by the supplemental knowledge and experience of the nurse attorney. Similarly, individuals holding doctorate degrees in other related fields of practice may also be considered for approval by the Board under the adopted rule, so long as they are able to successfully demonstrate that the particular doctorate degree appropriately relates to the course content they wish to teach.

The Board believes the modifications to the rule text as adopted serve to improve the quality of remedial education courses approved by the Board. Better quality remedial education courses should result in more successful remediation, ultimately resulting in safer nursing care for the citizens of Texas.

Attachment "B"

(2) Course Instructors. Provider applicants must certify that all course instructors meet the following requirements:

(A) An instructor must hold a current license or privilege to practice as a registered nurse (RN) in the state in which the remedial education course will be provided;

(B) An instructor must hold a master's degree in nursing from an approved or accredited institution or a doctoral degree, that in the Board's opinion, relates to an area of study relevant to the course content;

(C) An instructor must show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach;

(D) An instructor must have a minimum of three years recent professional nursing experience. Professional nursing experience includes any activity, assignment, or task in which a nurse utilizes his/her nursing knowledge, judgment, or skills; and

(E) An instructor may not be the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or have a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.

# THE AMERICAN ASSOCIATION OF NURSE ATTORNEYS

## TEXAS CHAPTER

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June 14, 2011

Mr. James W. Johnston  
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Re: Comments on Proposed Rules Chapter 217.21 Published in the  
Texas Register on May 27, 2011

Dear Board Members:

The Texas chapter of the American Association of Nurse Attorneys (TAANA-Texas) respectfully submits the following comments to the above-referenced proposed rules. TAANA-Texas supports remediation as a means to protect the public and the need to set guidelines to ensure provided courses will accomplish the goal of educating the disciplined nurse to improve the quality of nursing care and avoid future disciplinary action.

We believe the proposed rules limit potential instructors too broadly and removes potentially qualified instructors from providing remedial education courses. There are potential course providers that possess advanced degrees, as well as extensive

experience, that would be prohibited from providing valuable information and instruction in a remedial education course. Some examples include a nurse attorney who teaches Jurisprudence, Ethics, Boundary Violations or Documentation; or a pharmacist who teaches pharmacology, or a medical doctor who teaches assessment or a psychiatrist who teaches boundary violations or ethics. Each of these doctoral prepared professionals would possess specific knowledge which would benefit a nurse attending a remedial education course, and in some cases, the knowledge may not be possessed by a masters prepared nurse without those credentials or experience.

An excellent example is a nurse attorney who teaches a Jurisprudence course: the nurse attorney not only has the knowledge of an RN regarding nursing standards, but also the legal knowledge of how a violation can occur, the typical outcome for such a violation, and risk management techniques to avoid such violations. TAANA-Texas believes changing the language of the rules will continue to address the Board's concern that qualified and competent instructors provide the courses while not limiting the pool of instructors.

Please change Rule 217.21(d)(2) to:

Course Instructors. Provider applicants must certify that all course instructors meet the following requirements:

- (A) An instructor must hold a current license or privilege to practice as a registered nurse (RN) OR hold a current license or privilege to practice in an area of study relevant to the remedial education course content;
- (B) An instructor must hold either a master's degree in nursing OR a doctoral degree in an area of study relevant to the course content from an approved or accredited institution;
- (C) An instructor must show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject matter the instructor will teach;
- (D) An instructor must have a minimum of five years professional experience in nursing OR in the area of study relevant to the remedial education course content; and

(E) An instructor may not be the subject of a current eligibility or disciplinary order from a professional licensing board and/or disciplinary authority or have a history of more than one eligibility or disciplinary order from a professional licensing board and/or disciplinary authority.

TAANA-Texas requests that this matter be set for a public hearing. Please send notice of the hearing to my attention at TAANA-Texas, P.O. Box 192006, Dallas, Texas 75219, and 2655 Villa Creek, Suite 204, Dallas, Texas 75234. Thank you.

Respectfully submitted,



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

cc: Janice Hooper, PhD, RN, Lead Education Consultant  
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June 29, 2011

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Re: Comments on proposed Rule §217.21 as published at 36 Tex Reg 3244, (5/27/2011)

Dear Mr. Johnston and Ms Abel:

The American Association of Nurse Attorneys – Texas Chapter (AANA-Texas) has shared its comments and suggested revised wording for proposed Rule 217.21 (relating to remedial education courses) with the Texas Nurses Association (TNA). The comments and proposed wording AANA-Texas submitted appear reasonable and TNA would support the change provided the Board does not believe the proposed change would weaken the quality of remedial education courses approved by the Board.

Respectively submitted,

A handwritten signature in black ink that reads "James H. Willmann". The signature is written in a cursive style with a long horizontal line extending from the end.

James H. Willmann, J.D.  
General Counsel and Director Governmental Affairs