

**Proposed Adoption of Amendments to 22 Tex. Admin. Code Chapter 216,  
Pertaining to *Continuing Competency*, Written Comments Received, and Board  
Responses to Comments**

**Background:** The proposed amendments to Chapter 216 were approved by the Board at its October 2013 meeting for submission to the *Texas Register* for public comment. The amendments were published in the *Texas Register* on December 6, 2013, and the comment period ended on January 6, 2014.

The Board received two written comments on the proposal. A copy of the written comments received are attached as Attachment "A". A summary of the written comments and Staff's proposed responses to the comments are attached as Attachment "B".

**Board Action:** Move to adopt the amendments to 22 Tex. Admin. Code Chapter 216, pertaining to *Continuing Competency*, as proposed. Further, authorize Staff to publish the summary and response to comments, attached hereto as Attachment "B".



Texas Board of Nursing  
333 Guadalupe, Suite 3-460  
Austin, TX 78701  
January 6, 2014

The Texas Association for Home Care and Hospice (TAHC&H) represents over 1400 licensed home and community support service agencies (HCSSAs) where hundreds of registered nurses are employed in home care services provided for Texas' Medicaid, Medicare public and private beneficiaries. We appreciate the opportunity to provide comment on the proposed rules. We especially thank our Texas Board of Nursing for the stakeholder collaboration.

#### **Proposed Rules; Texas Board of Nursing (BON) Continuing Competency**

We support the Texas Legislature champions and the BON with the new requirements in these proposed rules.

Overall home care nurses had few objections. However the objections came from home care nurses who are concerned with the prescriptive and restrictive nature of these additional requirements and who believe the existing required education is sufficient. These nurses feel that there is a real burden on taxpayers to regulate compliance, employers to provide the education, and professional nurses to maintain compliance is not justified by evidence-based research to prove sufficient benefit to the public and communities.

Most of our home care nurses' comments are directed at finding a way to keep the timelines of the new requirements more simple. A major concern is the potential for confusion with the timelines and requirements. Home care nurses recommend that the BON find a way for the new timelines to be more closely complimentary to the every two years timeline already in place. Can these requirements be made more simple? Supporting nurses with consistent simple guidelines can help everyone meet and manage compliance with the new requirements better. It could make it less likely that a nurse would accidentally be out of compliance for licensure.

The newly proposed rules are seen by many home care nurses to be fair and necessary for the safety of patients. TAHC&H has been involved working as a stakeholder with the BON and we recognize and support the BON on these proposed rules.

Respectfully submitted,

***Jettie Eddleman***

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December 18, 2013

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**RE: Proposed Amendments to 22 TAC §§ 216.1-216.3, 216.5-216.11**

The Texas Association Against Sexual Assault (TAASA) respectfully submits these comments in response to the Texas Board of Nursing's (Board) notice regarding proposed amendments to Chapter 216 of the Administrative Code.

TAASA is the statewide organization committed to ending sexual violence in Texas. A non-profit educational and advocacy organization based in Austin, TAASA member agencies comprise a statewide network of more than 80 crisis centers that serve rural and metropolitan areas. Founded in 1982, the agency has a strong record of success in community education, legal services, youth outreach, law enforcement training, legislative advocacy, and development of curricula and advocacy resources.

Approximately 1.9 million adult Texans, or 13% of all adult Texans, have been sexually assaulted at some point in their lives.<sup>i</sup> Although the prevalence of sexual assault is much higher among women than men (20% of women in Texas versus 5% of men),<sup>ii</sup> all members of society are vulnerable to the crime, irrespective of gender, age, race, ability, geography, or social standing.

Therefore, TAASA stands resolutely for the principle that such factors should not influence the quality or accessibility of competent and compassionate care. A crucial part of that care is the forensic medical examination. Because SB 1191 makes it more likely that a nurse who is not a certified sexual assault nurse examiner (SANE) will conduct a forensic medical examination, we believe it is appropriate to increase the requirement for forensic evidence collection CNE from a one-time training to a recurring training. As described below, we propose the CNE be required once every three years. In addition, to the extent that the Board's rules can maximize flexibility for nurses' compliance, TAASA strongly supports that effort.

## Background

Ensuring access to forensic medical examinations in the immediate aftermath of sexual assault is among the most important measures to reduce threats to survivors' health. In addition to the intense trauma of a sexual assault itself, survivors are at high risk for continuing medical and mental health problems in the aftermath of their assaults. Physical injuries, sexually transmitted infections, pregnancy, and various acute and chronic mental health problems are common.<sup>iii</sup> However, prompt emergency care minimizes these health risks.

Moreover, in a state as large and diverse as Texas, it is especially important to remain mindful of survivors' critical need for high-quality, sensitive, and supportive medical care, "regardless of jurisdiction and geographic location of service provision."<sup>iv</sup>

In addition to benefitting survivors' health, forensic medical exams promote an effective criminal justice response. From a law enforcement perspective, evidence collected from a forensic medical exam serves four main purposes, any one of which can be pivotal in a criminal investigation: (1) identifying the assailant, (2) confirming recent sexual contact, (3) establishing force or threat, and (4) corroborating the victim's account.<sup>v</sup> Thus, against a backdrop of staggeringly low reporting and conviction rates,<sup>vi</sup> the importance of forensic medical examinations as an investigatory tool cannot be overstated. Promoting access to competent evidence collection has serious public safety benefits and, in the long term, likely encourages more reporting of sexual assault.<sup>vii</sup>

Equally important, we must maintain a victim-centered approach to the care provided to sexual assault survivors. According to the National Protocol for Sexual Assault Medical Forensic Examinations, Second Edition, victim-centered care is "paramount to the success of the exam process."<sup>viii</sup> Thus, in addition to being procedurally and medically competent, the care provided to survivors should be compassionate and respectful. Again according to the National Protocol, "Every action taken in the exam process should be useful in facilitating patient care and healing and/or [if the assault was reported] the investigation."<sup>ix</sup>

To further these concurrent aims of the forensic medical examination—providing victim-centered care and strengthening criminal cases—the Texas Legislature in recent years has enacted several laws to ensure high-quality care for sexual assault survivors. In 2005, HB 677 first established minimum standards for emergency services provided to survivors, including forensic medical exams.<sup>x</sup> Also in 2005, as the Board noted in its summary of proposed amendments, SB 39 required that nurses working in emergency room settings receive at least two hours of continuing education related to forensic evidence collection.<sup>xi</sup> Later, in 2009, HB 2626 made emergency care more victim-centered by allowing survivors to obtain an exam even when they are not yet prepared to report to law enforcement.<sup>xii</sup>

Despite these advances, some survivors still cannot access forensic medical examinations in their communities. Although it would be ideal to have enough certified SANEs to cover every

community in the state—or to make it possible for every sexual assault survivor to travel to a community with a certified SANE—those ideal circumstances are currently beyond reach.

The Legislature addressed this problem in 2013 by enacting SB 1191.<sup>xiii</sup> To successfully implement its requirements, communities without certified SANEs must develop strategies to leverage often-limited resources to provide the victim-centered care that survivors deserve. Simply put, some sexual assault survivors who are unable to obtain ideal SANE care will receive forensic medical examinations from ER nurses or physicians who are not SANEs.

Fortunately, in its rulemaking capacity, the Board is well-positioned to mitigate any potential shortcomings in such cases related to the care provided by ER nurses. By ensuring adequate training for nurses and maintaining a realistic view of the time and resources available at emergency facilities, the Board can achieve a workable balance that respects the spirit and intent of the law.

### **Recommendations**

TAASA recommends increasing the requirement for forensic evidence collection CNE from a one-time requirement to a recurring requirement. The National Protocol for Sexual Assault Forensic Examinations recommends advanced training for all examiners.<sup>xiv</sup> SB 1191 has made it significantly more likely that a nurse who is not a certified SANE will be required to provide a forensic medical examination for a sexual assault survivor. Therefore, we believe a moderate increase from a one-time, two-hour training is appropriate.

Forensic medical examinations have never been prohibited at emergency facilities in Texas without SANEs, but prior to SB 1191's enactment most facilities without SANEs opted not to perform the exams. As a result, the likelihood that a nurse who is not a certified SANE would actually perform a forensic medical examination was minimal. In that context, the one-time requirement to receive forensic evidence collection CNE was appropriate.

Because SB 1191 has created a significantly different context, we propose the forensic evidence collection CNE requirement be increased to once every three years. This could be accomplished by the following amendments to the Board's proposed amendments:

#### *§216.3 Requirements*

##### (d) Forensic Evidence Collection

- (1) Pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of this subsection. [ **This is a one-time requirement.** ] An APRN may use continuing medical education in

forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.

(2) A nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two hours of CNE relating to forensic evidence collection that meets the requirements of this subsection **at least once every three years. A nurse must complete the first two hours of CNE required under this paragraph** within two years of the initial date of the nurse's employment in an ER setting. ~~[ This is a one-time requirement. ]~~

(A) This requirement applies to nurses who work in an ER setting that is:

- (i) the nurse's home unit;
- (ii) an ER unit to which the nurse "floats" or schedules shifts;  
or
- (iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

~~[ (B) A nurse shall be considered to have met the requirements of paragraphs (1) and (2) of this subsection if the nurse:~~

~~(i) completed CNE during the time period of February 19, 2006, through September 1, 2013; and~~

~~(ii) the CNE met the requirements of the Board's rules related to forensic evidence collection that were in effect from February 19, 2006, through September 1, 2013. ]~~

~~[ (C) ]~~ **(B)** Completion of at least two hours of CNE that meets the requirements of this subsection may simultaneously satisfy the requirements of paragraphs (1) and (2) of this subsection.

The Board should respond to the increased probability of non-SANE nurses being utilized as sexual assault examiners with a moderate increase in training. However, because emergency facilities without SANEs will continue to transfer many, if not most, survivors to be treated by SANEs, ER nurses who are not SANEs may only seldom be required to conduct forensic medical exams. The protocols around medical forensic exams are also constantly evolving. Training on current protocols will be critical for evidence collection. For ER nurses who conduct forensic medical exams infrequently, a recurring CNE will be especially important to periodically refresh previous training.

For these reasons, we believe a three-year recurrence in forensic evidence training strikes an appropriate balance between a reasonable CNE load and the increased likelihood that ER nurses will perform forensic medical examinations.

Finally, TAASA commends the Board's commitment to maximizing nurses' options for compliance, which is evident throughout the summary of proposed amendments. TAASA shares this goal and wholeheartedly supports the following features of the proposed amendments:

- Ensuring forensic evidence collection CNE is required only for individuals employed in an emergency room setting by requiring training to be completed within two years of the initial date the individual is employed in an ER.
- Permitting APRNs to use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy educational requirements under SB 1191 and SB 39.
- Permitting national certification related to forensic evidence collection that is approved by the Board also to be used to fulfill educational requirements under SB 1191 and SB 39.
- Expressly stating that the same forensic evidence collection CNE may be used to satisfy training requirements under proposed amended §216.3(d)(1) and §216.3(d)(2), as well as to fulfill a portion of a nurse's CNE requirements under §216.3.<sup>xv</sup>

## Conclusion

As emergency facilities across Texas prepare to implement policies compliant with SB 1191, more sexual assault survivors will soon have access to forensic medical examinations. Accordingly, the Board of Nursing has a crucial opportunity to promote continuing, victim-centered education for the ER nurses who will treat them. TAASA recognizes and sincerely appreciates the Board's leadership on this issue to date. We respectfully ask for your careful consideration of our recommendations.

Thank you,



Annette Burrhus-Clay  
Executive Director

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<sup>i</sup> Busch, N.B., et al. "A Health Survey of Texans: A Focus on Sexual Assault." University of Texas at Austin Institute on Domestic Violence and Sexual Assault (2003).

<sup>ii</sup> *Id.*

<sup>iii</sup> U.S. Department of Justice Office on Violence Against Women. *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents, Second Edition* at 12 (April 2013).

<sup>iv</sup> *Id.*

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<sup>v</sup> National Center for Women and Policing. “Successfully Investigating Acquaintance Sexual Assault: A National Training Manual for Law Enforcement.” U.S. Department of Justice Office on Violence Against Women (2000).

<sup>vi</sup> See Busch, et al, *supra* note 1 (18% of sexual assaults in Texas are reported to law enforcement); Rape, Abuse, and Incest National Network. “Reporting Rates.” (accessed December 13, 2013 at <http://www.rainn.org/get-information/statistics/reporting-rates>)(On average, 4% of sexual assaults in the US result in a felony conviction)(*citing* Cohen, T., et al, “Felony Defendants in Large Urban Counties.” U.S. Department of Justice Bureau of Justice Statistics (2002, 2004, 2006) and U.S. Department of Justice Bureau of Justice Statistics, *National Crime Victimization Survey* (2008-2012)).

<sup>vii</sup> Busch-Armendariz, N.B. and Vohra-Gupta, S. “Sexual Assault Needs Assessment in Texas: Documenting Existing Conditions and Striving Toward Preferred Outcomes” at 10. University of Texas at Austin Institute on Domestic Violence and Sexual Assault (June 2011)(Indicating negative experiences in the criminal justice process and perceptions of inadequacy of evidence contribute to low reporting rates).

<sup>viii</sup> Department of Justice, *supra* note 3, at 4.

<sup>ix</sup> *Id.* at 29.

<sup>x</sup> Act of May 27, 2005, 79th Legislature, R.S., ch. 934, § 1, 2005 Tex. Gen. Laws 3180-82.

<sup>xi</sup> Act of May 25, 2005, 79th Legislature, R.S., ch. 782, § 5, 2005 Tex. Gen. Laws 2995.

<sup>xii</sup> Act of May 30, 2009, 81st Legislature, R.S., ch. 1140, § 1, 2009 Tex. Gen. Laws 3565-68.

<sup>xiii</sup> Act of May 8, 2013, 83rd Legislature, R.S., ch. 162, 2013 Tex. Gen. Laws.

<sup>xiv</sup> Department of Justice, *supra* note 3, at 6.

<sup>xv</sup> 38 TexReg 8743. (Dec. 6, 2013).

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**§216.3**

*Comment:* A commenter representing the Texas Association Against Sexual Assault recommends increasing the requirement for forensic evidence collection CNE from a one-time requirement to a recurring requirement. The commenter states that, prior to the passage of SB 1191, most facilities without sexual assault nurse examiners (SANEs) opted not to perform forensic medical examinations. However, the commenter states that SB 1191 has created a significantly different context where it is more likely that a nurse who is not a certified SANE will be required to provide a forensic medical examination for a sexual assault survivor. As such, the commenter believes that a one-time requirement to receive forensic evidence collection CNE is no longer appropriate. The commenter proposes increasing forensic evidence collection CNE to once every three years. The commenter states that the Board should respond to the increased probability of non-SANE nurses being utilized as sexual assault examiners without a moderate increase in training. Because emergency facilities without SANEs will continue to transfer many, if not most, survivors to be treated by SANEs, emergency room nurses who are not SANEs may only seldom be required to conduct forensic medical exams. The commenter also states that protocols around medical forensic exams are also constantly evolving and training on current protocols will be critical for evidence collections. For emergency room nurses who conduct forensic medical exams infrequently, a recurring CNE will be especially important to periodically refresh previous training. For these reasons, the commenter believes that a three year recurrence in forensic evidence training strikes an appropriate balance between a reasonable CNE load and the increased likelihood that emergency room nurses will perform forensic medical examinations. The commenter also suggests eliminating the language in proposed §216.3(d)(2)(B) from the rule as adopted.

The commenter also commends the Board's commitment to maximizing nurses' options for CNE compliance and supports the following features of the proposed amendments: ensuring forensic evidence collection CNE is required only for individuals employed in an emergency room setting by requiring training to be completed within two years of the initial date the individual is employed in an emergency room; permitting advanced practice registered nurses (APRNs) to use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy educational requirements under SB 1191 and SB 39; permitting national certification related to forensic evidence collection that is approved by the Board to be used to fulfill educational requirements under SB 1191 and SB 39; and expressly stating that the same forensic evidence collection CNE may be used to satisfy training requirements under proposed amended §216.3(d)(1) and (d)(2), as well as to fulfill a portion of a nurse's CNE requirements under §216.3.

*Agency Response:* The Board declines to make the suggested changes. The Board is charged with protecting the health and welfare of the public. In this role, the Board must appropriately balance the interests of the public with the interests of its licensees. The

Board is cognizant of the importance of forensic medical examinations and the competence of the individuals who perform them. However, the Board also understands that not every nurse that works in an emergency room setting will be called upon to perform a forensic medical examination. The adopted amendments are intended to establish the minimum CNE requirements for nurses who work in an emergency room setting and/or perform forensic medical examinations. Under the adopted amendments, an individual must complete the required education prior to performing a forensic medical examination. If the individual is employed in an emergency room setting, the individual must complete the required education within two years of the individual's employment in the emergency room setting. The adopted amendments do not prohibit nurses who perform forensic medical examinations from obtaining additional education or completing additional CNE or from obtaining related certification. Further, the Board anticipates that many nurses who frequently perform forensic medical examinations may choose to obtain additional related education and certification, including SANE certification. Additionally, individual facilities are not affected by the Board's adopted rules; thus, a facility may require its employees to complete additional forensic evidence collection training or CNE or obtain related certification. Further, the Board has determined that it is appropriate to acknowledge individuals who have completed CNE related to forensic evidence collection under the Board's rules that were originally promulgated under the authority of SB 39. The adopted amendments implement the requirements of SB 1191 and continue to effectuate the intent of SB 39. The Board believes that the adopted CNE requirements are adequate to protect the interests of the public, while appreciating the realistic concerns of many nurses who will be required to complete forensic CNE to meet the rule's requirements, but who may never be required to perform a forensic medical examination.

*Comment:* A commenter representing the Texas Association for Home Care and Hospice (TAHC&H) states that home care nurses are concerned with the prescriptive and restrictive nature of the additional requirements and believe the existing required education is sufficient. These nurses feel that there is a real burden on taxpayers to regulate compliance, employers to provide the education, and professional nurses to maintain compliance, which is not justified by evidence based research to prove sufficient benefit to the public and communities. The commenter states that most of the home care nurses' comments are directed at finding a way to keep the timelines of the new requirements more simple. A major concern is the potential for confusion with the timelines and requirements. The commenter states that home care nurses recommend that the Board find a way for the new timelines to be more closely complimentary to the every two years timeline already in place. Supporting nurses with consistent simple guidelines can help everyone meet and manage compliance with the new requirements better. The commenter further states that it could make it less likely that a nurse would accidentally be out of compliance for licensure. The commenter also states that the newly proposed rules are seen by many home care nurses to be fair and necessary for the safety of patients. Finally, the commenter states that it has been involved working as a stakeholder with the Board and recognizes and supports the Board on these proposed rules.

**Agency Response:** The Board declines to make any changes to the rule text as adopted. The increased amount of required continuing education set forth in the adopted rule is a

direct result of legislative enactment. Senate Bill (SB) 1058, which was enacted during the 83rd Legislative Session and effective on September 1, 2013, requires nurses to complete at least 2, but no more than 4, hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. Additionally, SB 1058 requires nurses whose practice includes older adult or geriatric populations to complete at least 2, but no more than 6, hours of continuing education relating to older adult or geriatric populations or maintain certification in the area of practice relating to older adult or geriatric populations. Additionally, SB 1191, which was also enacted during the 83rd Legislative Session and effective on September 1, 2013, requires all individuals who perform a forensic examination on a sexual assault survivor to have at least basic forensic evidence collection training or the equivalent education prior to performing an examination. Further, SB 39, which was enacted in 2005, continues to be in effect, and requires nurses who are employed in emergency room settings to complete at least two hours of CNE relating to forensic evidence collection within a specified window of time.

The Board recognizes that the new continuing education requirements may result in associated costs of compliance. However, in an effort to defray a portion of such costs, the adopted rule allows the completion of the new continuing education courses to satisfy a portion of a nurse's existing biennial continuing competency requirements. Further, national certification may, in some cases, be used to satisfy the new continuing education requirements, as well as satisfy a nurse's biennial continuing competency requirements. Further, not all nurses will be subject to each of the new continuing education requirements. Under the provisions of the adopted rule, nurses who has previously completed continuing education in forensic evidence collection (that meets the requirements of the Board's prior rule) will be given credit for the completion of that education and will not be required to repeat that education. Further, the adopted rule permits a nurse to use the completion of continuing education in forensic evidence collection to simultaneously satisfy the continuing education requirements of both SB 1191 and SB 39. Additionally, although the newly enacted legislation authorizes up to 6 hours of continuing education for nursing jurisprudence and nursing ethics and continuing education relating to older adult or geriatric populations, the Board has opted to require nurses to complete only 2 hours of continuing education in these areas at this time, the minimum number of hours of continuing education required by the newly enacted legislation. The Board believes that the adopted rule appropriately implements the requirements and intent of the newly enacted legislation and balances the interests of the Board's licensees, and for that reason, the Board declines to make any changes to the rule text as adopted.