

Prescriptive Authority Frequently Asked Questions Mandated by Senate Bill 406

Summary of Request: This agenda item is for information purposes only and is intended to update Board members regarding the development of frequently asked questions (FAQs) related to prescriptive authority as required by Senate Bill (SB) 406.

Historical Perspective: SB 406 was passed during the 2013 Regular Legislative Session and became effective on November 1, 2013. Some of the most significant changes made as a result of the new law were to the requirements related to prescriptive authority for advanced practice registered nurses (APRNs). The previous site-based prescriptive authority system that allowed APRNs to only issue prescriptions in an eligible practice site was eliminated. APRNs may now issue prescriptions and order medications in facility-based practice settings under a protocol and in other practice settings under a prescriptive authority agreement. Physician delegation continues to be a requirement for APRNs to exercise prescriptive authority. New Rule 222 was adopted by the Board at the October 2013 meeting to implement the new law.

In addition to a requirement for the Board to amend its rules related to prescriptive authority, SB 406 also required development of FAQs related to prescriptive authority agreements. It was further stipulated in SB 406 that the FAQs must be developed jointly with the Texas Medical Board and Texas Physician Assistant Board. Staff met with staff members of the other boards in November and December 2013 to complete this work by January 1, 2014 and meet the requirements of SB 406.

The FAQs that were developed are provided as attachment A. The same FAQs will be posted on both the Texas Board of Nursing website as well as the website that is shared by the Texas Medical Board and Texas Physician Assistant Board. In addition to FAQs specific to prescriptive authority agreements, staff members from each board agreed it would be beneficial to include some other FAQs related to prescriptive authority, such as FAQs related to the prescribing of controlled substances. Additional questions may be added in the future should the need arise.

Pros and Cons: The Board is in compliance with the requirements of SB 406.

Staff Recommendation: No action is necessary. This item is for information purposes only.

Prescriptive Authority FAQs related to Senate Bill 406

General Questions:

1. *Does the physician's name need to be included on the prescription?*

Yes, the physician's name, address and telephone number are required to be included on the prescription drug order. If the prescription is for a controlled substance, the physician's DEA number is also required to be included on the prescription. SB 406 did not change the requirements for what needs to be included on a prescription drug order.

2. *Is there still a ratio for the number of APRNs or PAs to whom a physician may delegate prescriptive authority?*

The answer to the question depends on the practice setting. In facility-based hospital practices and in practices that serve medically underserved populations, there are no limitations. In all other practice settings, one physician may delegate to no more than seven full time equivalent APRNs and PAs (1:7 FTEs).

3. *Is there a waiver if a physician wants to delegate prescriptive authority to more than seven full time equivalent APRNs and PAs?*

No, the waiver process no longer exists. A physician may only delegate prescriptive authority to more than seven full time equivalent APRNs and PAs in facility based hospital practices and in practices that serve medically underserved populations. In all other settings and practice scenarios, the 1:7 FTE ratios applies.

4. *How many delegating physicians may one APRN or PA have?*

There is no limit to the number of physicians who may delegate prescriptive authority to an APRN or PA provided all requirements for such delegation are met.

5. *Do the requirements for types of practice sites still apply?*

No. The old site-based prescriptive authority system is no longer in effect.

6. *What is a dangerous drug? Are these legend drugs?*

Texas is one of just a few states that use the term "dangerous drugs." The Dangerous Drug Act defines a dangerous drug as a device or drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481, *Health and Safety Code (Texas Controlled Substances Act)*. The term includes a device or drug that bears, or is required to bear, the legend: "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law. Many other states use the term "legend drugs."

7. *Is prescriptive authority required to order durable medical equipment (DME)?*

Yes. SB 406 clarified that it is necessary to have prescriptive authority to order these devices. In the past, it was not clear to DME suppliers that APRNs and PAs had this authority. The changes to the law as a result of the passage of SB 406 clearly indicate that APRNs and PAs may order or prescribe this equipment provided all requirements for delegation of prescriptive authority are met.

8. *Do I have to produce my prescriptive authority agreement or facility-based protocol if a licensing board asks to see it?*

Yes. You are required to provide a copy of the prescriptive authority agreement to the board that requested it within three business days. Although SB 406 did not specifically note that facility-based protocols must also be submitted within this time frame, each licensing board has the authority to request this information. Failure to provide the requested information could result in disciplinary action against the professional license.

9. *What is the difference between medication orders and prescriptions?*

A medication order is an order for administration of a drug or device to a patient in a hospital for administration while the patient is in the hospital or for emergency use on the patient's release from the hospital, as defined by §551.003, *Occupations Code* and §481.002, *Health and Safety Code*. A prescription is an order to dispense a drug or device to a patient for self-administration as defined by §551.003, *Occupations Code*.

10. *How many miles from my delegating physician can my practice site be?*

SB 406 eliminated site based prescriptive authority. The law is silent regarding the practice location of the physician and its proximity to the practice site of the APRN or PA. That said, there has been no change in the law that requires that a physician must provide adequate supervision of delegates. In any given case, the distance between a physician's primary practice and the practice site at which the physician's delegates provide medical services may be an important factor in determining the quality of the physician's supervision.

11. *What are the Texas Medical Board's requirements for a physician who delegates to an APRN or PA?*

All prescriptive delegation requires adequate supervision under the Medical Practice Act. As such, a physician delegating to an APRN or PA must adequately supervise those individuals. An individual physician may serve in both the supervising and delegating role and does not need to be physically present at all times to be considered to have adequate supervision.

Questions related to Prescriptive Authority Agreements:

12. *Do I need to have a protocol in addition to a prescriptive authority agreement?*

APRNs and PAs are required to have delegated authority to provide medical aspects of patient care. Historically, this delegation has occurred through a protocol or other written authorization. Rather than have two documents, this delegation can now be included in a prescriptive authority agreement if both parties agree to do so.

13. *Can more frequent meetings be required?*

Yes as agreed to by the parties to the prescriptive authority agreement. The requirements for monthly and quarterly meetings are the minimum requirements specified in Texas law. You may meet more frequently than required by law. You may not meet less frequently than what is required by law. An APRN or PA should meet the requirements of the prescriptive authority agreement which may have more frequent meetings required.

14. *What constitutes a license that is in good standing for purposes of entering a prescriptive authority agreement?*

An APRN or PA may enter into a prescriptive authority agreement unless his/her license is revoked, suspended, delinquent, inactive, has been voluntarily surrendered, or is subject to a disciplinary order that specifically prohibits entering into a prescriptive authority agreement. If the Texas Board of Nursing or Texas Medical Board limits an APRN's or PA's authority to order or prescribe drugs or devices, the licensee may enter into a prescriptive authority agreement and order or prescribe drugs and devices only to the extent permitted by the board order.

A physician may not may enter into a prescriptive authority agreement if the physician's license has been revoked, suspended, is delinquent, is inactive, has been voluntarily surrendered, or is subject to a disciplinary order that restricts his or her practice.

15. *Do I have to disclose information regarding investigations and discipline? If so, to whom must this information be disclosed?*

Yes. Prior to signing a prescriptive authority agreement, you must disclose to the other party/parties to the prescriptive authority agreement if you have been disciplined in the past. This includes disciplinary action taken by licensing boards in other states. Once you are a party to a prescriptive authority agreement, you are required to immediately notify the other party/parties to the agreement if you receive notice that you are the subject of an investigation

16. *What needs to be included in a prescriptive authority agreement?*

Prescriptive authority agreements must include the following elements:

- Name, address, and all professional license numbers of all parties to the agreement;
- State the nature of the practice, practice location or practice settings;
- Identify the types of categories or drugs or devices that may be prescribed **OR** the types or categories of drugs or devices that may not be prescribed;
- Provide a general plan for addressing consultations and referrals;
- Provide a plan for addressing patient emergencies;
- State the general process for communication and sharing information related to the care and treatment of patients; and
- Describe a quality assurance and improvement plan and how it will be implemented. The plan must include plans for chart reviews and periodic face to face meetings.

17. *How many charts must be reviewed?*

The law does not provide a specific number or percentage of charts that must be reviewed. Rather, the law provides that the number of charts to be reviewed is determined by the parties to the prescriptive authority agreement. The number may vary from one practice setting to another. Factors such as the length of time the APRN or PA has been in practice, the length of time the physician and APRN or PA have practiced together, whether the parties to the prescriptive authority agreement practice together in the same practice setting, and the complexity of patient care needs should be given consideration when making this determination. That said, there has been no change in the law that requires that a physician must provide adequate supervision of delegates. In any given case, the number or percentage of charts reviewed may be an important factor in determining the quality of the physician's supervision.

18. *How often are face to face meetings required?*

The meetings must occur at least monthly until the third anniversary of the date the agreement is executed. However, if the APRN or PA was in a prescriptive authority agreement with required physician supervision for at least five of the last seven years, face to face meetings must occur at least monthly until the first anniversary of the date the agreement is signed. Once the required period of time for monthly face to face meetings has been completed, the parties to the prescriptive agreement must have face to face meetings at least quarterly with monthly meetings held between the quarterly meetings via remote electronic communication systems such as videoconferencing technology or the internet. If for any

reason the APRN's or PA's delegating physician changes, face to face meetings will be required at least monthly as indicated.

19. *Is credit given for time practiced in a supervised prescriptive authority arrangement prior to November 1, 2013?*

The calculation under Chapter 157, *Texas Occupations Code*, of the amount of time an APRN or PA has practiced under the delegated prescriptive authority of a physician under a prescriptive authority agreement shall include the amount of time the APRN or PA practiced under the delegated prescriptive authority of that same physician prior to November 1, 2013. You must be practicing with the same physician you practiced with prior to November 1, 2013 in order to get credit under this provision.

20. *Can we skip doing face to face meetings if the physician and APRN or PA practices together at the same location?*

No. You must have the face to face meetings as part of your quality assurance and improvement plan.

21. *What if an alternate physician is involved in delegation of prescriptive authority on a temporary basis?*

The prescriptive authority agreement designates who may serve as an alternate physician if alternate physician supervision will be utilized. If an alternate physician(s) will participate in the quality assurance and improvement meetings with the APRN or PA, this information must be included in the prescriptive authority agreement.

Questions related to Facility Based Practices:

22. *If I work in a clinic owned by the hospital, is this considered a facility-based practice?*

No. Free standing clinics, centers or other medical practices that are owned or operated by or associated with a hospital or long term care facility that are not physically located within the hospital or long term care facility are not considered facility based practices. Prescriptive authority agreements are required in these settings.

23. *Is a prescriptive authority agreement required in a hospital or long term care facility-based practice?*

Although it is possible to use a prescriptive authority agreement in a hospital or long term care facility based practice, it is not required. You may continue to practice under protocols in these settings. APRNs and PAs must exercise prescriptive authority under one of these delegation mechanisms.

24. *At how many facilities can one physician delegate prescriptive authority through protocols?*

A physician may delegate prescriptive authority via facility based protocol at no more than one licensed hospital or no more than two long term care facilities.

25. *Who may delegate prescriptive authority in a hospital facility-based practice?*

In a hospital facility based practice, the delegating physician may be the medical director, the chief of medical staff, the chair of the credentialing committee, a department chair, or a physician who consents to the request of the medical director or chief of the medical staff to delegate.

26. *Who may delegate prescriptive authority in a long term care facility based practice?*

In a long term care facility based practice, delegation is by the medical director.

Question related to Nurse Anesthetists:

27. *Is a nurse anesthetist required to have prescriptive authority and register that delegation with the Texas Medical Board?*

Section 157.058 of the *Texas Occupations Code* was not changed by the passage of SB 406. CRNAs are required to have physician delegation to order drugs and devices for the purpose of providing anesthesia or anesthesia-related services. The CRNA may provide these services in accordance with facility policy or medical staff bylaws pursuant to a physician's order for anesthesia or anesthesia-related services. CRNAs are not required to have prescriptive authority from the Texas Board of Nursing nor are they required to be registered with the Texas Medical Board. The delegation is limited to the hospital or ambulatory surgery center in which the CRNA is credentialed to practice.

In outpatient anesthesia settings, the drugs administered and devices applied by a CRNA who provides anesthesia or anesthesia-related services are supplied by the practice setting. Therefore, they are ordered for use in that setting by the surgeon. Just as in the hospital or ambulatory surgery center, the CRNA selects and administers drugs and applies devices pursuant to an order to administer anesthesia or an anesthesia-related service in this setting. Because the surgeon has supplied the drugs and devices for the purpose of providing anesthesia or anesthesia-related services, the CRNA is not required to have prescriptive authority for this purpose. All parties are required to follow the laws and regulations for ordering, storing, wasting and tracking the use of medications and devices in these settings.

If CRNAs are practicing in settings in which they are writing prescriptions, such as a CRNA who may be working with a pain management specialist, the CRNA must have prescriptive authority and all requirements for delegation of prescriptive authority must be met. This includes requirements for a prescriptive authority agreement or facility-based protocol as appropriate and registration of physician delegation on the Texas Medical Board's website. If controlled substances will be prescribed, the CRNA must also have the required controlled substance registrations (DEA and DPS).

Links to Outpatient Anesthesia Rules:

Texas Medical Board Rule 192.2.:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=9&ch=192&rl=2](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=9&ch=192&rl=2)

Texas Board of Nursing Rule 221.16.:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=11&ch=221&rl=16](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=11&ch=221&rl=16)

Questions related to Controlled Substances:

28. *Who can prescribe Schedule II drugs under physician delegation?*

APRNs or PAs may prescribe schedule II drugs in the following situations:

(1) in a hospital facility-based practice, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital's bylaws to ensure patient safety and as part of care provided to a patient who:

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or

(B) is receiving services in the emergency department of the hospital; or

(2) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

29. *Can schedule II authority be delegated in a free standing emergency department that is affiliated with a hospital?*

No. A free standing emergency department is not located within the hospital and does not qualify as an eligible site for delegation of schedule II authority. The physician may only delegate authority to prescribe controlled substances in schedules III through V in this setting. Authority to prescribe dangerous drugs, nonprescription drugs and devices may be delegated in any setting.

30. *How often is physician consultation required when prescribing controlled substances?*

APRNs and PAs must consult with the delegating physician for refills of a prescription for controlled substances after the initial 90 day supply. Consultation is also required when prescribing controlled substances for children under the age of two years. In both cases, the consultation must be documented in the patient's medical record.

31. *Can APRNs and PAs in hospital-based clinics continue to prescribe drugs in schedules III through V?*

Yes. Nothing changed for delegation of prescriptive authority for controlled substances in schedules III through V.