

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2019 rule review plan adopted by the Board at its July 2018 meeting.

Chapter 225. RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions, §§225.1 - 225.15.

In conducting its review, the Board will assess whether the reasons for originally adopting this chapter continues to exist. Each section of this chapter will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by email to dusty.johnston@bon.texas.gov, or by fax to Dusty Johnston at (512) 305-8101. Any proposed changes to this chapter as a result of this review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

TRD-202104555

John Vanderford
Assistant General Counsel
Texas Board of Nursing
Filed: November 15, 2021



Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) files this notice of intention to review Texas Administrative Code, Title 22, Part 23, Chapter 531, Canons of Professional Ethics and Conduct, Chapter 533, Practice and Procedure, Chapter 534, General Administration, and Chapter 541, Rules Relating to the Provisions of Texas Occupations Code, Chapter 53. This review is undertaken pursuant to Government Code, §2001.039. TREC will accept comments for 30 days following the

publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rule review is expected at the TREC meeting in May 2022.

Any questions or comments pertaining to this notice of intention to review should be directed to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mailed to general.counsel@trec.texas.gov within 30 days of publication.

During the review process, TREC may determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

Issued in Austin, Texas on November 8, 2021.

TRD-202104527

Vanessa Burgess
General Counsel
Texas Real Estate Commission
Filed: November 12, 2021



Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In April 2018, and in accordance with the Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, §228.1 contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2015 rule review plan adopted by the Board at its July 2015 meeting. The proposed rule review was published in the *Texas Register* on April 6, 2018, (43 TexReg 2167) for public comment. Written comments were received from the APRN Alliance (Alliance). The Board considered the written comments at its July 2018 meeting and charged the Board's Advanced Practice Nursing Advisory Committee (APNAC) with reviewing the written comments and making recommendations to the Board regarding amendments to §228.1. The APNAC met on December 10, 2018, to consider the Board's charge. At its October 2021 Board meeting,

the Board considered the Alliance's written comments; the APNAC's recommendations regarding amendments to §228.1; and Board Staff's recommendations regarding amendments to the rule. The Board then decided to make some, but not all, of the Alliance's suggested changes to the rule.

Summary of Comments Received

The Alliance requested clarification regarding whether the rule applied to the management of chronic pain, acute pain, or both. The Alliance also requested that subsection (i)(1) and (2) be amended so as not to apply to advanced practice registered nurses (APRNs) for consistency with the Occupations Code Chapter 168. Finally, the Alliance recommended reversing the order of subsections (i)(4) and (5) for additional clarity in the rule.

Board Response

With regard to the Alliance's first comment, §228.1 applies to the provision of pain management services, which includes the treatment of both chronic and acute pain. This was an intentional choice by the Board when §228.1 was first adopted in 2014 (39 TexReg 989). The adopted standards were intended to protect patients and the public from inappropriate, non-therapeutic, non-evidenced based, and dangerous treatment practices in the context of pain management, which includes both chronic and acute pain. Further, the APNAC recognized, and the Board agrees, that the text of the rule includes the phrase "as appropriate" in subsections (c) - (f), which allows for appropriate flexibility in the applicability of the rule's requirements to the individualized treatment of pain and practice settings. Additionally, a practitioner's reported conduct will be examined in light of the current prevailing standard of care, which the APNAC determined, and the Board agrees is appropriately reflected by the text of the current rule. As such, the APNAC did not recommend making any changes to the rule with regard to clarifying the applicability of the rule to chronic or acute pain. The Board agrees with the recommendations of the APNAC and declines to make amendments to the rule in this regard in response to written comments.

Subsection (i) of the rule applies to pain management clinics, as that term is defined in the Occupations Code §168.001. The Occupations Code §168.201(c) requires the owner or operator of a pain management clinic to be on-site at the clinic at least 33% of the clinic's total number of operating hours and to review at least 33% of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic. The original enactment of §228.1 made these requirements applicable to APRNs. The owner or operator of a pain management clinic, as defined by statute, does not include an APRN.

Section 228.1 was originally enacted during the height of the operation of pill mills, and the Board received complaints involving clinics where APRNs were working without any physician involvement, in some cases with no delegation agreement or physician collaboration.

Requiring on-site presence and additional chart review was intended, at that time, to ensure appropriate delegation and collaboration in the interest of patient safety. Since the enactment of the rule, however, the Board has seen a reduction in pill mill activity due to increased enforcement efforts, regulation of schedule II medications, and increased awareness at both the state and federal level.

Further, APRNs who prescribe are currently required by the Occupations Code Chapter 157 to meet prescriptive authority agreement and chart review requirements. Based on these factors, the APNAC felt the requirements for additional chart review were unnecessarily duplicative and requiring an APRN to be on-site with a physician at a pain management clinic would be overly restrictive and unlikely to promote a safer patient environment. As such, the APNAC recommended striking subsections (i)(1) and (2) from the rule. The Board agrees with the recommendations of the APNAC in this regard and will propose amendments to the rule in a separate rule proposal subject to public comment.

Finally, the APNAC recommended reversing the order of subsections (i)(4) and (5) for additional clarity as suggested by the Alliance and adding the phrase "otherwise would" to subsection (i)(4) to further clarify the applicable statutory exemption. However, since the APNAC's meeting in 2018, the Occupations Code Chapter 168 was amended and the prior exemption from which subsection (i)(4) was derived no longer exists in statute. Therefore, the Board has determined that subsection (i)(4) should be removed from the rule in its entirety and that editorial changes need to be made to subsection (i)(5) as well. The Board will propose these amendments in a separate rule proposal subject to public comment.

The Board has completed its review of §228.1 and has determined that the reasons for originally adopting the rule continue to exist. The rule was also reviewed to determine whether it was obsolete, whether it reflected current legal and policy considerations and current procedures and practices of the Board, and whether it was in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). While the Board has determined that certain amendments may be necessary, the Board finds that the rule is not obsolete, reflects current legal and policy considerations and current procedures and practices of the Board, and that the rule is in compliance with the Texas Administrative Procedure Act. The Board, therefore, re-adopts §228.1. All proposed amendments to the rule will be published in a separate rule proposal.

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Jena Abel
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Texas Board of Nursing
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