


## Nursing Jurisprudence for Advance Practice Registered Nurses in Texas

Glenda Joiner-Rogers PhD, RN, AGCNS-BC  
Assistant Professor in Clinical Nursing  
The University of Texas at Austin School of Nursing



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- Describe rules & regulations which influence APRN practice in Texas.
  - Differentiate elements of malpractice & negligence.
  - Outline strategies to avoid malpractice & negligence.
  - Discuss TxBON investigation process & your legal rights if you/your license is under review.
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- ### What is Nursing Jurisprudence?
- Area of law that comprises all legal rules & principles affecting practice of nursing.
  - Includes study & interpretation of rules & principles & their application in regulating the practice of nursing.
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- ### Know applicable Standards of Care:
- Describe **minimum** requirements for acceptable level of care
    - Must exercise ordinary & reasonable care so that no unnecessary harm comes to a patient
  - Different from objectives, philosophies & guidelines
  - Internal standards & external standards
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### Which Rules apply to APRNs In Texas?

Texas Occupations Code (TOC)


- 301 – Nursing Practice Act (NPA)
- 303 – Nursing Peer Review
- 304 – Nurse Licensure Compact is now - Enhanced Nurse Licensure Compact

The Road from the NLC to the eNLC



24 of the original 25 NLC states have transitioned to the eNLC.

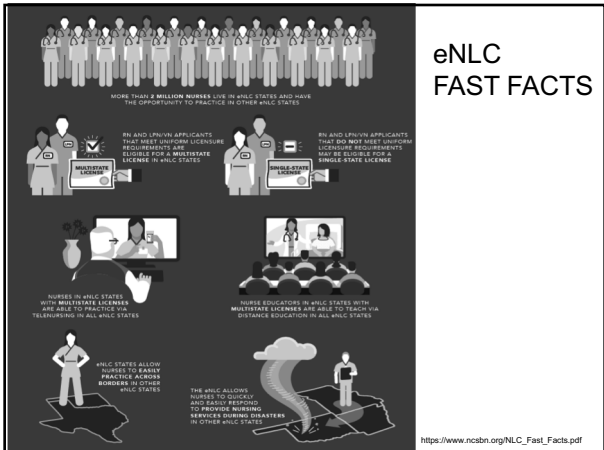
eNLC States



The eNLC implemented January 19, 2018

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### eNLC FAST FACTS



- MORE THAN 8 MILLION NURSES LIVE IN eNLC STATES AND HAVE THE OPPORTUNITY TO PRACTICE IN OTHER eNLC STATES
- RN AND LPN/VN APPLICANTS THAT MEET QUALIFYING LICENSURE REQUIREMENTS ARE ELIGIBLE FOR A MULTISTATE LICENSE IN eNLC STATES
- RN AND LPN/VN APPLICANTS THAT DO NOT MEET QUALIFYING LICENSURE REQUIREMENTS MAY BE ELIGIBLE FOR AN SINGLE STATE LICENSE
- NURSES IN eNLC STATES WITH MULTISTATE LICENSES ARE ABLE TO PRACTICE VIA TELEPHONING IN ALL eNLC STATES
- NURSE EDUCATORS IN eNLC STATES WITH MULTISTATE LICENSES ARE ABLE TO TEACH VIA DISTANCE EDUCATION IN ALL eNLC STATES
- eNLC STATES ALLOW NURSES TO EARLY PRACTICE ACROSS BORDERS IN OTHER eNLC STATES
- THE eNLC ALLOWS NURSES TO RESPOND TO PROVIDE NURSING SERVICES DURING DISASTERS IN OTHER eNLC STATES

[https://www.ncsbn.org/NLC\\_Fast\\_Facts.pdf](https://www.ncsbn.org/NLC_Fast_Facts.pdf)

### APRN Compact in Texas??

■ State with pending APRN Compact legislation   ■ State with enacted APRN Compact legislation

The APRN Compact will come into effect once 10 states have enacted the legislation.

<https://aprncompact.com/index.htm#map>

### Which Rules apply to APRNs In Texas? (continued)

Title 22 Texas Administrative Code (TAC), Part 11. Texas BON Rules & Regulations (specific to practice)

- Chapter 217, Rule 217.11 Standards of Nursing Practice
- Chapter 221 - Advanced Practice Registered Nurses
- Chapter 222 - Advanced Practice Registered Nurses with Prescriptive Authority

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### Rules Changes Published in BON Newsletter

[http://www.bne.state.tx.us/pdfs/newsletter\\_pdfs/2018/July2018.pdf](http://www.bne.state.tx.us/pdfs/newsletter_pdfs/2018/July2018.pdf)

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### Facility Based Protocol

- Licensed hospital or long-term care facility
- Ordering of prescribing within the facility
- Does not extend to clinics or free standing emergency facilities that are not physically located within the hospital facility

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### Prescriptive Authority Agreement (PAA)

- Can be used in any setting
  - May include aspects in the protocol so have 1 comprehensive document
  - **To prescribe drug or device in TX, must have PAA & MD registration w TMB delegating prescriptive authority to you as APRN.**
  - PAA & protocol: reviewed annually, signed & dated.
  - MD & APRN must retain PAA for 2 years from date agreement ends
- More specific requirement must be included:
  - Face to face meetings
  - Chart reviews
  - Consultations & referrals
  - Emergency situations

### Prescriptive Authority Agreement must include:

- (1) Name, address, & all professional license numbers of all parties to the agreement;
- (2) State nature of practice, practice locations, or practice settings;
- (3) Identify types or categories of drugs or devices that may be prescribed;
- (4) Provide a general plan for addressing consultations & referrals;
- (5) Provide a plan for addressing patient emergencies;
- (6) State the general process for communication & sharing of information related to care & treatment of pts.;
- (7) Describe a prescriptive authority quality assurance & improvement plan & how it will be implemented. The plan must include plans for chart reviews & periodic face to face meetings.

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## Periodic Face to Face Meetings

### Monthly

- If **new to practice**, until 3<sup>rd</sup> anniversary of date agreement is executed, or
- If for any reason **APRN's delegating MD changes and If in PAA with required MD supervision for at least 5 of last 7 years**, until 1<sup>st</sup> anniversary of date agreement is executed

### THEN

### Quarterly

After monthly face to face meetings have been completed with monthly meetings held between quarterly meetings via remote electronic communication (eg FaceTime, internet)

(22 TAC §193.8(11) and 22 TAC §222)

## Prescribing Dangerous Drugs

Dangerous drugs also known as "legend drugs"

- "Caution: federal law prohibits dispensing without prescription"
- "Rx only"
- Medications and certain devices that require a prescription drug order or medication order.
- **Does not** require DEA number

TxBON Faculty APRN Webinar

## Prescribing Controlled Substances

Required for Schedules II-V

- Physician delegation
- APRN must have their own DEA registration

Schedule III-V may be prescribed in any setting

Schedule II may only be prescribed in 3 specific settings

TxBON Rule 222.8

## Practice Settings re APRNs Prescription of CS-II

- For certified terminally ill patients with qualified hospice provider
- In Hospital Facility based practice:
  - Emergency Departments
  - For hospitalized patients with intended stay at least 24 hours

## APRN Prescription of Controlled Substances

- Must register with DEA
- Must register with Texas State Board of Pharmacy - Texas Prescription Monitoring Program
  - Drug Monitoring Program if you prescribe any controlled substance, not just narcotics.
  - To request new account in PMP AWAReE, login to <https://texas.pmpaware.net/login>
- May issue prescriptions for a total of 90-days' supply of a controlled substance including refills
  - Refills after 90-days required consultation w MD & documentation of consultation noted in medical record

## CE requirements for APRN re-licensure

- Nursing jurisprudence & ethics (2 hrs q 3<sup>rd</sup> licensure renewal)
- Older/geriatric populations for nurses working in practice related setting (2 hrs/licensure renewal)
- Forensic evidence collection (1 time requirement of 2 hrs within 2 yrs of initial date of employment in ED & prior to performing a forensic exam)
- Controlled substances for APRNs with prescriptive authority who prescribe controlled substances (3hrs each licensure renewal)

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## Why you need to know these Rules

When standards of practice, rules & regulations are violated:

- complaint investigations may be conducted by TxBON and/or
- Civil and/or criminal charges may be brought regarding conduct or decision making of APRN

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## Distinction in Negligence and Malpractice

Negligence: equates with carelessness

Malpractice: aka professional negligence

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## Elements of Malpractice or Negligence

Every element must be present

1. Duty owed the patient
2. Breach of the duty owed the patient
3. Causation
4. Injury

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## Damages

General damages

Special damages

Emotional damages

Punitive or exemplary damages

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## How to avoid malpractice claims...

1. Treat patients & families with respect & honesty. Communicate in a truthful, open professional manner
2. Know relevant law & legal doctrines & combine these concepts with biological, psychological, & social sciences that form the basis for rational nursing decisions.
3. Stay w/i your individual competence & scope of practice
4. Join and support professional organizations

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## How to avoid malpractice claims (cont)

5. Recognize concept of suit-prone patient
6. Recognize that nurses' personality traits & behaviors may also trigger lawsuits (suit-prone nurse)
7. Have professional liability insurance
8. Be patient advocates & assist patients to accept some responsibility for their own health care & associated risks

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### Guidelines for APRNs

1. Standard of care is based on skills & care normally expected of those with like education & expertise.
2. Function & accept patient & associated responsibilities within your field of expertise & your allowable scope of practice.
  - Review TX NPA, medical practice act, pharmacy act, public health laws for scope of practice issues.
  - Review/understand rules & regulations promulgated by TxBON for allowable scope of practice

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### Guidelines for APRNs (cont)

3. Obtain valid informed consent from proper person(s) before proceeding to care for/treat a patient
4. Make certain patient knows you are not MD
5. Consult & seek assistance from other specialist & MDs when patient care circumstances exceed your scope of knowledge & expertise
6. Do not practice independently unless your state recognizes independent practice for APRNs.

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### Guidelines for APRNs (cont).

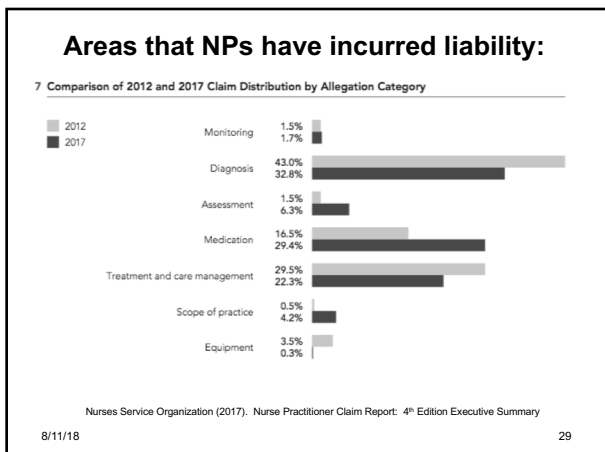
7. Understand allowable scope of practice under delegatory language of TX medical practice act.
8. Maintain current skills and broaden knowledge and skills through CE and advanced nursing degrees.
9. Maintain certification through appropriate associations as proof of you qualifications, knowledge base, and skills in a specific functional or clinical area of nursing
10. Document completely, accurately, and legibly any nursing care given.

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### Complaints to BON fall into several categories

- Exceeding or some breach in scope of practice
- Drug diversion or problematic alcohol or drug use
- Ethical and moral issues or boundary violations
- Criminal activity or convictions including misdemeanors and felonies

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### What to do if adverse/event occurs

Document!

Definitely contact your delegating MD/practice

Write a separate letter to yourself re the event & seal it, mail to yourself to document date written, file away – it may never become a legal issue – but if it does, this info will refresh your memory years later when legal proceedings usually occur

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## If you receive a letter from TxBON investigating an event

- Don't panic!
- Review allegations in letter
- Contact TxBON immediately to tell them you are hiring attorney & further correspondence related to allegation will come from attorney
- Must inform your practice of investigation immediately
- If you don't know who to call –
  - Contact TNP, TNA for referral

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## Get an attorney!

Especially if you have malpractice/negligence insurance

Do not try to explain what happened or submit anything to BON without attorney advice

- Never admit guilt
  - "I should have done a better job of..."

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## If you are involved in BON investigation

Review all records, opinions, depositions

Make certain you know & understand the TxBON requirements for APRN and applicable rules & regulations

Understand the 4 elements of negligence

Understand process of Board Review & your legal rights

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## Complaint Investigation and Resolution

Common mistakes to avoid:

- Forgetting to review documentation
- Lying
- Answering a question that is not understood
- Talking too much
- Saying "never", "always" or guessing at an answer

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## Process of BON Investigation

BON only reviews clinical & pertinent safety issues

Don't review personal or personnel issues, etc

Can take several months to > year for a decision to be made on complaint.

Case can be dismissed for lack of merit or insufficient evidence or can be referred to state attorney general for prosecution.

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Final outcome of BON investigation can include:

- Dismissal
- Administrative Penalty
- Letter of concern
- Civil penalty
- Decree of censure
- Probation
- Suspension
- Revocation stayed, suspension, probation
- Revoked/surrendered license

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