



CNAP 09 Legislative Update #10
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Moving Forward from April 14th Hearings

The three APN prescriptive authority bills were considered in a House Public Health Committee meeting last Tuesday, April 14th. From 7 p.m. to 10 p.m. committee members heard testimony and discussed HB 696 by Rep. Rob Orr (R-Burleson, HD #58), HB 1107 by Rep. Wayne Christian (R-Center, #HD #9). Later that night, the committee heard SB 532 sponsored by Rep. Garnet Coleman (D-Houston, HD #147). For a full description of all the bills, refer to [CNAP's Webpage on the 81st Legislative Session](#).

The following briefly describes each hearing, the testimony, the lessons learned, what is likely to happen next, and what you can do to get some needed amendments.

HB 1107

First, brace yourself for the bad news. It is clear that our Nursing Board-Granted Prescriptive Authority bill, HB 1107, is dead. Rep. Christian was very passionate and did a wonderful job laying out and closing on the bill. He was knowledgeable, articulate and committed to removing restrictions that limit APNs' ability to practice within the scope of their education. Listening to his opening and closing arguments, as well as the way he deftly responded to the committee member's questions, was inspiring. It makes me realize what is possible when APNs work hard to educate their legislators. Kudos to each of you in HD 9 who have contributed to this effort.

Unfortunately Chair Kolkhorst is convinced that diagnosis & prescribing is the exclusive practice of medicine, and expressed no willingness to change that. Despite repeated, ongoing attempts by both lobbyists and constituents to educate the committee members, the level of resistance we have to overcome was highlighted when Chair Kolkhorst stated HB 1107 would basically make APNs "docs". HB 1107 was left pending in committee and it will clearly be left pending for the remainder of the session.

HB 696

HB 696 got a friendlier hearing. This is the bill that keeps prescriptive authority physician delegated, but would end site-based restrictions on physicians who delegate prescriptive authority. Rep. Orr laid out a Committee Substitute. CSHB 696 makes some concessions from the introduced version. Primarily it reduces the ratio from 1 physician delegating to 8 APNs or PAs, to 1 physician delegating to 5 APNs or PAs. This number seemed to make sense to the committee since physicians are currently permitted to delegate practice to 5 Physician Assistants. Instead of just exempting physicians in facility-based hospital practices from this limitation, the CSHB 696 also exempts physicians delegating to APNs or PAs in sites serving medically underserved populations. The committee substitute uses the terms, "delegation" and "supervision" to address the medical associations' assertions that HB 696 removed delegation and supervision, both of which were totally false.

Rep. Orr was very effective in advocating for CSHB 696 and made an excellent case for getting rid of

site-based restrictions. There was some clear support on the committee for this bill. Two members, Rep Gonzales (D-McAllen, HD #41) and Rep. Davis (R-Houston, HD #129) are joint authors, and Rep. McReynolds (D-Lufkin, HD #12) expressed strong support. Chair Kolkhorst acknowledged several times during the hearing that HB 696 was a compromise.

Unfortunately, Chair Kolkhorst was very resistant to one particular aspect of CSHB 696: delegated authority for APNs to prescribe Schedule II drugs. This probably constituted the biggest disappointment of the evening. We designed testimony to help the members understand the importance of allowing APNs to order and prescribe Schedule II drugs, either under their own authority or as a delegated medical act. Testimony specifically addressed the patients' pain management needs and why Schedule II drugs can be a safer and more effective choice. We specifically mentioned that APNs in Neonatal ICUs, hospice and pain management clinics need these drugs for timely and effective treatment and that NPs in 41 states are already permitted to prescribe Schedule II drugs. The arguments seemed to get lost in all the preconceived biases about these drugs.

We face another major challenge on HB 696 and that is the [fiscal note](#) that the Department of Public Safety attached to the bill. (A fiscal note indicates what the Legislative Budget Board what the cost to the state will be if a bill passes. Fiscal notes are often based on input from affected agencies.) DPS staff assumes every APN and PA in Texas will apply for DPS # because they estimate that it will cost DPS \$3,052,560 through 2011 to provide staff and pads to implement the Schedule II portion of the bill. The fiscal note contains continuing estimates of over \$1.7 million in succeeding years through 2014. While we think the fiscal note is highly inflated, a mechanism of funding can be found to address the issue. However, we are still concerned that the fiscal note, added to the Chair's obvious resistance to including Schedule II drugs in the bill, will force APNs who need to prescribe Schedule II drugs for their patients to keep working around a law that prevents Texans from getting the care they need.

HB 696 was left pending. While the fate of this bill is not as sure as HB 1107, it appears that HB 696 will be the starting point for negotiations on HB 2907/SB 532.

HB 2907 / SB 532

Rep. Coleman laid out a committee substitute for the House version of SB 532. Unfortunately the Texas Academy of Physician Assistants (TAPA) objected to the provision allowing physicians to delegate prescriptive authority in charity care clinics without additional supervisory requirements. The stated reason for this objection by the president of TAPA is that it "smacked of independent practice." The fact that this provision would have helped some people who desperately need health care doesn't seem to matter. Removing this provision constituted the second biggest disappointment of the evening.

Rep. Coleman expressed willingness to accept amendments to improve the bill. Rep. Orr also agreed to work with Rep. Coleman. During Dr. Gary Floyd's testimony for SB 532, Chair Kolkhorst clearly directed the medical associations to make some concessions. Therefore, we know prescriptive authority will improve a little this session, but not nearly as much as we had hoped.

Testimony on HB 1107 and HB 696

I have never been more proud to represent APNs than I was last week. On Monday evening at 4 p.m. I was still getting confirmation that APNs would drop everything and come to Austin to testify. In the face of full flights, Holly Jeffreys, FNP, flew standby from Amarillo. Like Holly, Lynn Clark, PNP, at Dallas Children's Hospital had no idea she would be testifying in Austin the next day when she went to work that morning. All the APNs who testified did a fabulous job and deserve special recognition.

I testified first on HB 696, followed by four APNs. Each person's testimony was designed to emphasize a particular aspect of the bill and to reinforce that many APNs and the physicians who delegate prescriptive authority are struggling to overcome significant and unnecessary barriers under the current law.

Jean Gisler, FNP, from Victoria, testified about the various practices where she has worked and the fact that each one required a different type of supervision. Jean now owns her own practice and her

delegating physician would like to expand the hours for his urgent care clinic, but is limited in the number of NPs to whom he can delegate prescriptive authority.

Lynn Clark, PNP, testified on her work for the past 8 years in the pain management clinic at Children's Hospital in Dallas. She used examples illustrating that effective pain management can return patients to functional lives. Of all the APNs, Lynn faced the most questions since delegation of Schedule II drugs was under such scrutiny. The committee commented on how knowledgeable she was and she did a great job of addressing the questions. Lynn also presented a letter from Robin Davis, FNP and Advanced Certified Hospice & Palliative Nurse from Odessa, who wrote about her need to prescribe Schedule II drugs for her patients.

Holly Jeffreys, FNP, testified that many of her students at West Texas A&M in Canyon practice in New Mexico or move to other states where they do not have to deal with restrictions on prescriptive authority. This testimony shows that Texas is not getting full value for the money it invests in educating APNs solely because of unnecessarily restrictive laws on prescriptive authority. She also discussed a clinic in Vega and one in Panhandle that are no longer open because no physician will delegate prescriptive authority.

Lindsay Kragle Stephens, CNM, is in a practice associated with University of North Texas Health Science Center at Fort Worth. The practice has 5 full-time CNMs and 15 Women's Health NPs who serve John Peter Smith Hospital's L&D triage unit and outlying clinics. She testified that the APNs in these clinics and at Parkland do not even have prescriptive authority because administrators consider it too complicated, Lindsay also presented letters from the head CNMs at Parkland and Baylor in Houston attesting to the number of deliveries attended by nurse-midwives in the Dallas and Harris County Hospital systems. CNMs now attend 15% of all deliveries in Texas and over 96% take place in hospitals.

In addition to my testimony, the following APNs testified in favor of HB 1107.

Patrice Capan, Community Health CNS, described her 21-year challenge to keep medical directors and the loss of a physician willing to delegate prescriptive authority to a FNP at Family Health Care, Inc., a nurse-managed non-profit 501(c)(3) clinic in Denton. Patrice brought letters of support from two physicians and one local hospital administrator. Patrice did an outstanding job and has a very powerful story. When Patrice left the Capitol at 10:15 p.m. she was facing a long drive back to Denton and 40 patients scheduled the next day.

Garry Brydges, CRNA, ACNP, and chief CRNA at MD Anderson Cancer Center, described the work that APNs do and the need for a better system of prescriptive authority. Gary especially emphasized the need in the Rio Grande Valley where he started his career.

Mike Hazel, FNP, testified about the practice he had to close in Navasota, because no physician was willing to come on site and meet the physician supervision requirements. Now Mike sees many of those patients in the Bryan ER where he works as a FNP. Sixty percent of the patients Mike saw in his clinic were on Medicaid and those patients now have to wait at least three weeks for an appointment with the one remaining physician who will see them.

Amendments to SB 532

At this point, Rep. Orr is working with Rep. Coleman to include some of the elements that are in HB 696 into SB 532. As you know, SB 532 is out of the Senate so that is definitely the best bill to amend.

Most likely, APNs can expect to see the ratio of physicians who delegate prescriptive authority to APNs in primary practice sites, alternate practice sites and long-term care facility-based practices raised from 3 to 5. We also know that Rep. Orr is trying to include language that would standardize the supervisory requirements and give physicians much more discretion in determining the appropriate supervision. Currently only 2 other states require physicians to be on site with APNs. Of course, we will work to get the charity care clinics back into the bill.

Moving Forward: What can you do?

We still have much work to do. Hopefully many of you will invest the 3 hours and 40 minutes it takes to watch the [video of the hearings](#). (Go to the link provided and click on "04/14/09 1:07 p.m. – 12:38 a.m.") The hearing on HB 696 begins at 5 hours: 51 minutes. The hearing on HB 1107 begins at

7:31:20 and ends at 9:04. Then the hearing on SB 532 begins at 9:35 and ends at 10:16. Viewing the testimony and discussion will help you understand how to respond to legislators' concerns about safety and Schedule II drugs. It will also help you understand how important it is to visit legislators regularly and educate them about your practice and why your practice is safe. The red herring of safety still looms large in legislators' minds.

Requests to Legislators.

1. Any APN who needs to order or prescribe Schedule II drugs for patients needs to write or call Chairwoman Kolkhorst and Rep. Coleman now. It is even more powerful if your delegating physician is also willing to write those Representatives. If Chairwoman Kolkhorst and Rep. Coleman can hear from patients, that can also be very influential. Our only chance of allowing physicians to delegate prescriptive authority for Schedule II drugs this session is a ground swell of public reaction to encourage them to include Schedule II drugs in a physician's authority to delegate prescriptive authority.
2. If you would like to work in a charity care clinic, Chairwoman Kolkhorst and Rep. Coleman also need to hear from you. This provision does not need to include Physician Assistants. The fact the PA association is concerned about this provision should not mean that physicians will not be allowed to delegate prescriptive authority to APNs who work in charity care clinics. Encourage them to include the charity care clinic provision that just includes allowing physicians to delegate to APNs in these sites.
3. Please describe the importance of eliminating the statutory requirement for physicians to physically be on site with the APN, and leaving it to the physician's judgment based on the type of practice and the experience of the APN or PA. This the statutorily mandated on-site requirement is the most common reason that physicians are not willing to delegate prescriptive authority to APNs, and is definitely limiting access to care in underserved sites. Explain that only 2 other states have these types of requirements and current law does not require physicians and APNs to practice together in all sites. No bad outcomes can be demonstrated by eliminating these on-site requirements.

Contact Information

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Please remember the [guidelines for writing](#) and always be polite. Please express appreciation that she permitted a hearing on HB 1107 and allowed so much discussion on both HB 1107 and HB 696. Show respect for her opinions and concerns. Chairwoman Kolkhorst takes her legislative responsibilities very seriously and is doing her best to protect the interests of Texans.

Rep. Coleman:

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Rep. Coleman also deserves your appreciation for accepting amendments to HB 2907 / SB 532. Then discuss the importance of one or all of the three requests for amendments discussed above.

It is likely that those of you that are constituents in other Public Health Committee members' districts will hear from me with specific requests for you to contact your representative. Please respond when you receive those messages

We learned a lot from the hearings and, after giving myself some time to process the information, I have some new ideas about how to approach the knowledge gap as we move forward through the rest of this session and beyond. If you have ideas after listening to the testimony, please send those to me. Knocking down the current belief system may take several years, but when it crumbles, it will happen quickly. I believe more than ever that the change we seek is inevitable.

