Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

Title 22. Examining Boards

Part 9. Texas Medical Board

Chapter 178. Complaints

22 TAC §178.4

The Texas Medical Board (Board) adopts an emergency basis the emergency amendment to 22 TAC §178.4(d) for purposes of the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 09 and amends certain reporting requirements under 22 TAC §178.4(d) for instances of physicians undertaking and performing non-urgent elective surgeries or procedures.

The emergency rule amendment is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Medical Practice Act, Chapters 151 and 164, Texas Occupations Code.

§178.4. Complaint Initiation.

(a) A complainant may initiate a complaint by submitting the information concerning the complaint to the board. This information should include at a minimum:

(1) The name and contact information of the complainant;

(2) The name of the licensee against who the complaint is filed;

(3) The time and place of the alleged violation of the Act; and

(4) If applicable, the name and birth date of the patient who the physician has allegedly harmed.

(b) The board may file a complaint on its own initiative.

(c) The identity of a complainant, as well as the complaint itself, is part of the investigative information gathered by board employees and shall remain confidential. All complaints must provide sufficient information to identify the source or the name of the person who filed the complaint. Confidentiality shall be waived only by a written statement of the complainant specifically waiving confidentiality or by the complainant testifying in a contested case hearing. Notwithstanding the previous provisions, the name and address of an insurance agent, insurer, pharmaceutical company or third-party administrator that files a complaint against a physician shall be reported to the subject physician within 15 days of receipt by the board, unless the notice would jeopardize an investigation.

(d) A peer review committee, licensee, and all other groups named in §§160.003, 204.208, 205.304, and 206.159 of the Act shall report relevant information to the board relating to the acts of the licensee in this state if, in their opinion, that licensee poses a continuing threat to the public welfare through the licensee's continued practice. The report shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based; and it shall be made to the board as soon as possible after the threat is identified and the relevant information can be assembled. Pursuant to Executive Order GA 09, and notwithstanding any other statute, rule or provision concerning timing or when a report must be made to the Board, any peer review committee, licensee, and other group, entity, or person named in §§160.003, 204.208, 205.304, and 206.159 of the Act shall be immediately required to report any physician scheduling to perform, preparing to perform, performing, or who has performed a non-urgent elective surgery or procedure, as defined in §187.57(c) of this subtitle, while Executive Order GA 09 is in effect, immediately to the board.

This duty to report is mandatory whether any type of proceeding, inquiry, investigation, or action of any kind is being considered, has been initiated, or is on-going at a hospital, ambulatory surgical center, or any other facility or medical setting. All reporting under this emergency rule is subject to confidentiality under §§160.004-160.008 of the Act; immunity for civil liability under §160.010 of the Act; and the prohibitions against discipline and discrimination under §160.012 of the Act.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

Chapter 187. Procedural Rules
SUBCHAPTER F.  TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

22 TAC §187.57

The Texas Medical Board (Board) adopts an emergency basis an amendment to 22 TAC §187.57(c) for purposes of the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 09 and amends the definition of "Continuing Threat" under 22 TAC §187.57(c).

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Medical Practice Act, Chapters 151 and 164, Texas Occupations Code.


(a) The disciplinary panel shall determine from the evidence or information presented to it whether a person’s continuation in practice constitutes a continuing threat to the public welfare.

(b) If the disciplinary panel determines that a person’s continuation in practice would constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license of that person.

(c) In accordance with the Act, §151.002(a)(2), “continuing threat to the public welfare,” means a real danger to the health of a physician’s patients or the public caused through the physician’s lack of competence, impaired status, performance of a non-urgent elective surgery or procedure, or failure to care adequately for the physician’s patients. A real danger exists if patients have an exposure to or risk of injury that is not merely abstract, hypothetical or remote and is based on actual actions or inactions of the physician. Information that the physician has committed similar actions or inactions in the past shall be considered by the disciplinary panel.

(1) For purposes of this rule all licensed health care professionals shall postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient’s physician.

(2) Provided, however, that this prohibition shall not apply to any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster.

(d) The disciplinary panel may also temporarily restrict or suspend a license of a person upon proof that a person has been arrested for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or

(4) Section 21.11, Penal Code (indecency with a child).

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency’s legal authority to adopt.

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PART 15.  TEXAS STATE BOARD OF PHARMACY

CHAPTER 291.  PHARMACIES

SUBCHAPTER A.  ALL CLASSES OF PHARMACIES

22 TAC §291.30

The Texas State Board of Pharmacy adopts an emergency basis new rule §291.30, concerning Medication Limitations, and finds that it is not practical to provide the usual 30 days’ prior notice and hearing. The Texas State Board of Pharmacy recognizes the extraordinary demand for chloroquine, hydroxychloroquine, melfloquine, or azithromycin as a result of COVID-19 (coronavirus).

The new rule is adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by shortages of medication for existing conditions due to COVID-19 (coronavirus).

Emergency new rule §291.30 provides limitations on the dispensing of chloroquine, hydroxychloroquine, melfloquine, or azithromycin.

The emergency new rule is adopted under §551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. In addition, the new rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior
notice and comment based upon a determination of imminent peril to the public health, safety or welfare.


§291.30. Medication Limitations.
No prescription or medication order for chloroquine, hydroxychloroquine, mefloquine, or azithromycin may be dispensed or distributed unless all the following apply:

(1) the prescription or medication order bears a written diagnosis from the prescriber consistent with the evidence for its use;

(2) the prescription or medication order is limited to no more than a fourteen (14) day supply, unless the patient was previously established on the medication prior to the effective date of this rule; and

(3) no refills may be permitted unless a new prescription or medication order is furnished.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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TRD-202001208
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 500. COVID-19 EMERGENCY
HEALTH CARE FACILITY LICENSING
26 TAC §500.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis new §500.1 Hospital Off-Site Facilities in Response to COVID-19, in Title 26, Texas Administrative Code, Chapter 500, concerning an emergency rule to allow hospitals to treat and house patients more effectively in response to COVID-19. As authorized by Government Code §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE
The purpose of the new emergency rule is to support the Governor’s March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for hospital off-site facilities in response to COVID-19.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed hospital to operate an off-site inpatient facility without obtaining a new license at: (1) another type of facility currently licensed or licensed within the past 36 months or a facility pending licensure that has passed its final architectural review inspection, such as an ambulatory surgical center, an assisted living facility, a freestanding emergency medical care facility, an inpatient hospice unit, a mental hospital, or a nursing facility; (2) an outpatient facility operated by the hospital; (3) a formerly licensed hospital that closed within the past 36 months or a hospital pending licensure that has passed its final architectural review inspection; (4) a hospital exempt from licensure; and (5) a mobile, transportable, or relocatable unit.

STATUTORY AUTHORITY


(a) A hospital licensed under Health and Safety Code Chapter 241 that meets the requirements of this emergency rule may use an off-site facility for inpatient care under its existing license for the duration this emergency rule is in effect or any extension of this emergency rule is in effect:

(b) The off-site facility must be:

(1) an inpatient hospice unit licensed under Health and Safety Code Chapter 142 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(2) a hospital no longer licensed under Health and Safety Code Chapter 241 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(3) a hospital exempt from licensure under Health and Safety Code Chapter 241;

(4) a mobile, transportable, or relocatable unit, as defined in Title 25 Texas Administrative Code (TAC) §133.166 (relating to Mobile, Transportable, and Relocatable Units), that otherwise complies with that section;
(5) a nursing facility or other institution licensed under Health and Safety Code Chapter 242 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(6) an ambulatory surgical center licensed under Health and Safety Code Chapter 243 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(7) an assisted living facility licensed under Health and Safety Code Chapter 247 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(8) a freestanding emergency medical care facility licensed under Health and Safety Code Chapter 254 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(9) a mental hospital licensed under Health and Safety Code Chapter 577 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(10) an outpatient facility operated by the hospital, either currently or within the past 36 months.

c. The hospital must submit an application to use an off-site facility for inpatient care to the Texas Health and Human Services Commission (HHSC) via email at infohfc@hhsc.state.tx.us and receive written approval from HHSC prior to using an off-site facility for inpatient care.

d. HHSC has the discretion to approve or deny any application to use an off-site facility for inpatient care. HHSC may require an inspection or additional documentation of the off-site facility prior to considering an application.

e. In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for a hospital to use the off-site facility for inpatient care at any time. Any patients being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

f. The requirements of 25 TAC §133.21(c)(4)(B) - (C) (relating to Scope of Hospital License) do not apply to an off-site facility applied for or used under this section.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.11

The Texas Bond Review Board (BRB) hereby adopts a new emergency rule to Texas Administrative Code (TAC) Title 34, Part 9, Chapter 181, Subchapter A, adding §181.11, concerning Emergency Rule for Board Approval Through the BRB Exempt Process. This emergency rule is implemented as a result of the governor's declaration of a statewide emergency over the coronavirus (COVID-19). The purpose of the emergency rule is to reduce the need to hold a government public meeting to approve state debt, minimizing face-to-face contact and the public's potential exposure to the coronavirus. The BRB finds that the state of emergency presents imminent peril to public health, safety and welfare that requires the adoption of this emergency rule upon less than 30 days' notice.

The emergency rule will have no adverse economic effect on micro-businesses, small businesses or rural communities because the rule only affects the administration debt transaction submission and review. The emergency rule does not affect operations of any small or micro-business and should not have an impact on rural communities that differs from any other part of the state. The emergency rule does not affect any local economy within the state.

The emergency rule does not impose a cost on regulated persons, including other state agencies, special districts, or local governments because the rule merely adjusts the processes for submission and review of proposed public debt transactions.

The emergency rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

The emergency rule is adopted under Texas Government Code §1231.022(1) authorizing the BRB to adopt rules relating to applications for review, the review process, and reporting requirements. This emergency rule is adopted without prior notice or hearing pursuant to Texas Government Code §2001.034.

No other statute, articles, or codes are affected by the new rule.

§181.11. Emergency Rule for Board Approval Through the BRB Exempt Process

Pursuant to section 1231.022(3) of the Government Code, authority to approve a state security on behalf of the board is hereby delegated to the executive director; provided, however, if any board member makes a written request pursuant to §181.9(d) (relating to State Exemptions), requiring an issuer to follow the formal approval process for a state security, the executive director will be divested of approval authority for such state security and the board will acquire approval authority for the state security. All issuers of state securities requiring approval under section 1231.041(a)(1) shall file a notice of intent pursuant to §181.2 (relating to Notice of Intention to Issue) and follow the exempt approval process required for state securities exempted under section 1231.041(a)(2). As with exempted state securities, one or more board members may make a written request pursuant to §181.9(d) requiring the issuer to follow the formal approval process. To the extent there is any conflict between this section and any other rule in chapter 181 of the Texas Administrative Code, this section controls.
The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Rob Latsha
Executive Director
Texas Bond Review Board
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For further information, please call: (512) 463-1741

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