

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

##### SUBCHAPTER B. LICENSING OF SALES AGENTS

###### 16 TAC §401.158, §401.160

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.158 (Suspension or Revocation of License) and §401.160 (Standard Penalty Chart). The purpose of the proposed amendments is to reinforce the Commission's zero tolerance policy regarding a Texas Lottery sales agent (retailer) selling lottery tickets to a minor by requiring revocation of the retailer's license in all cases involving a violation of a law or Commission rule where the licensee intentionally or knowingly sells or offers to sell a lottery ticket to a person that the licensee knows is younger than 18 years of age. See Texas Government Code §466.3051(a) (Sale of Ticket to or Purchase of Ticket by Person Younger Than 18 Years of Age).

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is that Texas Lottery retailers will clearly understand that the penalty for selling or offering to sell a Texas Lottery ticket to a person younger than 18 years is license revocation, which is anticipated to result in enhanced protection against the sale of lottery tickets to minors.

Sergio Rey, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Sergio Rey, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015(b)(3), which requires the Commission to adopt rules governing the enforcement of prohibitions on the sale of tickets to or by an individual younger than 18 years of age, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.158. *Suspension or Revocation of License.*

(a) (No change.)

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) - (25) (No change.)

[(26) licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years;]

(26) [(27)] licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act;

(27) [(28)] licensee sells tickets over the telephone or via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) - (B) (No change.)

(28) [(29)] licensee intentionally or knowingly alters or forges a ticket;

(29) [(30)] licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game;

(30) [(31)] licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

(31) [(32)] licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property;

(32) [(33)] licensee:

(A) - (D) (No change.)

(33) [(34)] licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report;

(34) [(35)] licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report;

(35) [(36)] licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act;

(36) [(37)] licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule;

(37) [(38)] licensee commits an offense of conspiracy as defined in the State Lottery Act;

(38) [(39)] licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest;

(39) licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years (revocation only);

(40) - (42) (No change.)

§401.160. Standard Penalty Chart.

(a) - (g) (No change.)

(h) Standard Penalty Chart.

Figure 16 TAC §401.160(h)

[Figure 16 TAC §401.160(h)]

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

Filed with the Office of the Secretary of State on September 11, 2024.

TRD-202404413

Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 160. MEDICAL PHYSICISTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 - 160.5 and §160.7 - 160.31.

The Board also proposes new Chapter 160, concerning General Provisions, §§160.1 - 160.7, 160.10 and 160.11.

Also, the Board contemporaneously proposes the repeal of current Chapter 161, concerning General Provisions, §§161.1 - 161.7, 161.10, and 161.11.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 160 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

#### SUBCHAPTER A. GENERAL.

New §160.1, Definitions, defines terms used throughout the Boards rules.

New §160.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §160.3, Officers of the Board, explains the roles and duties of the Board President, Vice-President, and Secretary-Treasurer.

New §160.4, Meetings, explains how Board meetings are conducted.

New §160.5, Committees, explains the four standing committees of the Board. It also explains when other committees may be appointed.

New §160.6, District Review Committees, explains the four districts of the Board established by the Medical Practice Act, as well as the Texas counties belonging to each.

New §160.7, Memorandum of Understanding with Texas Physician Health Program, explains the authority for the agreement between the Board and the Texas Physician Health Program (TX PHP).

#### SUBCHAPTER B. RULEMAKING.

New §160.10, Petition for Rulemaking, describes the process used by the Board when a member of the public initiates a petition for rulemaking under the Administrative Procedures Act.

New §160.11, Input in Rulemaking, describes public input in the Board's rulemaking process.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/fKF0p6vbfY>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## **22 TAC §§160.1 - 160.5, 160.7 - 160.31**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

- §160.1. *Purpose.*
- §160.2. *Definitions.*
- §160.3. *Meetings.*
- §160.4. *Specialty License.*
- §160.5. *Exemptions from License Requirement.*
- §160.7. *Qualifications for Licensure.*
- §160.8. *Application Procedures.*
- §160.9. *Licensure Documentation.*
- §160.10. *Temporary Licensure.*
- §160.11. *Provisional License.*
- §160.12. *License Renewal.*
- §160.13. *Criminal History Record Information Required for Renewal.*
- §160.14. *Relicensure.*
- §160.15. *Licenses and License Holder Duties.*
- §160.16. *Continuing Education Requirements.*
- §160.17. *Medical Physicist Scope of Practice.*
- §160.18. *Complaints and Complaint Procedure Notification.*
- §160.19. *Subpoenas; Confidentiality of Information.*
- §160.20. *Grounds for Denial of Licensure and for Disciplinary Action.*
- §160.21. *Disciplinary Guidelines.*
- §160.22. *Procedural Rules for Hearings.*
- §160.23. *Disciplinary Process or Discipline of Medical Physicists.*
- §160.24. *Code of Ethics.*
- §160.25. *Impaired Medical Physicists.*
- §160.26. *Compliance.*

§160.27. *Voluntary Relinquishment or Surrender of a License.*

§160.28. *Administrative Procedure.*

§160.29. *Criminal Convictions Related to Profession of Medical Physics.*

§160.30. *Construction.*

§160.31. *Exemption from Licensure for Certain Military Spouses.*

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 160. GENERAL PROVISIONS

### SUBCHAPTER A. GENERAL

#### 22 TAC §§160.1 - 160.7

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §160.1. *Definitions.*

The following words and terms used in this Part shall have the following meaning:

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, also known as the Medical Practice Act.

(2) Board--Texas Medical Board.

(3) Licensee--A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission to practice in the state of Texas as authorized by law.

#### §160.2. *Functions and Duties.*

(a) The board duties and functions include:

(1) establishing standards for the practice of medicine;

(2) regulating the practice of medicine through the licensure and discipline of physicians;

(3) reviewing, modifying, proposing, and adopting rules, including those for advisory boards and advisory committees subject to the board oversight;

(4) considering, reviewing, and approving policy and changes as necessary; and

(5) acting as a resource concerning proposed legislation.

(b) Individual Duties and Obligations. Board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with Chapter 152 of the Act;

(3) maintain the highest levels of professional and ethical conduct;

(4) refrain from making any statement that implies that the board member is speaking for the board unless the board has given the board member such authority; and

(5) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in Chapter 152 of the Act or this section of the rules will be reported to the office of the Governor.

#### §160.3. *Officers of the Board.*

(a) Officers are selected through a process beginning with nomination, including self-nomination, followed by an election. A simple majority vote of board members is required for election.

(b) Duties of the President include:

(1) presiding at board meetings;

(2) reviewing the board agenda;

(3) appearing in legislative matters;

(4) appointing committee chairs and members, including advisory committees of the board;

(5) conducting the annual performance review of the executive director; and

(6) performing other duties pertaining to the office of President.

(c) Duties of the Vice President include:

(1) acting in the absence or incapacity of the President;

(2) servng as President in the event of a vacancy; and

(3) performing other duties as assigned by the board.

(d) Duties of the Secretary-Treasurer include:

(1) acting in the absence or incapacity of the President and Vice President;

(2) servng as President in event of President and Vice President vacancies; and

(3) performing other duties as assigned by the board.

(e) In the event that all officers are absent or incapacitated, the board may elect another member to serve as interim President for the duration of the absence or incapacity.

(f) The board shall hold an election to fill any vacant officer position.

#### §160.4. *Meetings.*

(a) Board meetings are conducted:

(1) in accordance with Chapter 551 of the Tex. Gov't. Code; and

(2) in general accordance with Robert's Rules of Order Newly Revised.

(b) Special meetings maybe called by the President, by resolution of the board, or upon written request by five members of the board.

(c) The board may only act upon a simple majority vote of its members present and voting. No proxy votes allowed.

§160.5. Committees.

(a) There are four standing committees of the board.

(1) Executive Committee:

(A) acts on urgent matters between board meetings as needed;

(B) recommends, reviews and develops agency goals, objectives, rules, policies, procedure, legislative issues, and other matters brought to their attention;

(C) delegates tasks to other committees; and

(D) assists in preparation and presentation of information before the legislature as needed.

(2) Finance Committee reviews and makes recommendations regarding finances and the budget.

(3) Disciplinary Process Review Committee:

(A) reviews and makes recommendations to resolve complaints, investigations, and cases, and to hear complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(4) Licensure Committee:

(A) reviews applications and makes recommendations for licensure, certification, and permits of physicians, physicians in training, Acudetox Specialists, Surgical Assistants, Medical Perfusionists, Medical Physicists, and non-profit health organizations; and

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary

(b) The President, in consultation with the board, may appoint other committees as deemed necessary.

§160.6. District Review Committees.

(a) Members of District Review Committees shall comply with Chapter 163 of the Act.

(b) District Review Committee regions are designated as follows:

(1) District 1 - Brazoria, Galveston, and Harris counties.

(2) District 2 - Anderson, Angelina, Austin, Bowie, Brazos, Camp, Cass, Chambers, Cherokee, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Grimes, Hardin, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Leon, Liberty, Limestone, Madison, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Tyler, Trinity, Upshur, Van Zandt, Walker, Waller, and Wood counties.

(3) District 3 - Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Brewster, Briscoe, Brown, Callahan, Carson, Castro,

Childress, Clay, Cochran, Coke, Coleman, Collinsworth, Comanche, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallas, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kent, Kimble, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Mason, Menard, McCulloch, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Yoakum, and Young counties.

(4) District 4 - Aransas, Atascosa, Bandera, Bastrop, Basque, Bee, Bell, Bexar, Blanco, Brooks, Burlson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal, Coryell, Dewitt, Dimmit, Duval, Edwards, Falls, Fayette, Fort Bend, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hamilton, Hayes, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleburg, Lampasas, LaSalle, Lavaca, Lee, Live Oak, Llano, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Nueces, Real, Refugio, San Patricio, Starr, Travis, Uvalde, Valverde, Victoria, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala counties.

§160.7. Memorandum of Understanding with Texas Physician Health Program.

By rule, the board and the Texas Physician Health Program (TXPHP) shall adopt a memorandum of understanding (MOU) in accordance with §167.012 of the Act.

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER B. RULEMAKING

### 22 TAC §160.10, §160.11

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§160.10 Petition for Rulemaking.

(a) As authorized by §2001.021(a) of the Texas Government Code, an interested person by petition to the board may request the adoption of a rule.

(b) A person must submit a petition for adoption of rules in writing via mail or hand-delivery (addressed to the Executive Director or General Counsel of the board) or email (sent to rules.development@tmb.state.tx.us).

(c) The petition shall contain the following information as applicable and except as may be waived by the board:

(1) the name and contact information of the petitioning party and their interest in the adoption of the rule;

(2) a statement of the legal authority and jurisdiction under which the petition is filed;

(3) the exact language of the proposed rule requested to be adopted;

(4) a statement and legal references regarding whether, to the petitioner's knowledge, the requested rule is in conflict with any existing rule, ruling, order or opinion of the board or any other rules or statutes; and

(5) a statement of the purpose of the requested rule.

(d) During the sixty (60) day period following receipt of the petition by the board, the board or one of its committees shall meet to consider the petition. Not less than ten (10) days prior to such meeting, the board shall notify the petitioning party in writing of the date, time, and place the petition shall be considered.

(1) At this meeting, the petitioning party may be given an opportunity to present matters to the board or its committee, at the board's or committee's discretion.

(2) If the request is considered by the full board, the board shall decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the petition is denied, the board shall state its reasons for denial in writing to the petitioning party. Publication of the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the Texas Government Code.

(3) If the request is considered by a committee of the board, the committee shall decide whether to deny the petition or to recommend to the full board at its next meeting to publish the requested rule in the *Texas Register* for comment. If the petition is denied, the committee shall state its reasons for denial in writing to the petitioning party. A committee's recommendation to the full board to publish the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the Texas Government Code.

(4) At the next board meeting following the committee's recommendation to publish the requested rule for comment, the board shall consider the committee's recommendation. The board shall then decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the board decides to deny the petition, the board shall state its reasons for denial in writing to the petitioning party.

#### §160.11. Input in Rulemaking.

(a) When engaged in rulemaking the board will ensure:

(1) adequate stakeholder input through notice of proposed rules on the TMB website;

(2) a comment form is provided, when needed, on the TMB website; and

(3) compliance with the applicable provisions of the Texas Administrative Procedures Act.

(b) For rules impacting other licensed occupations of advisory boards overseen by the board, the board will follow the process for rulemaking as set out in subsection (a) of this section and in:

(1) applicable sections of the Texas Occupations Code for the specific regulated occupation; and

(2) the Medical Practice Act.

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 161. GENERAL PROVISIONS

The Texas Medical Board (Board) proposes the repeal of current Chapter 161, concerning General Provisions, 22 TAC §§161.1 - 161.7, 161.10 and 161.11.

The Board also proposes new Chapter 161, concerning Physician Licensure. This includes new Subchapter A, concerning Pre-Licensure Criminal History Evaluations, §161.1; Subchapter B, concerning General Licensure Requirements, §§161.5 - 161.7; Subchapter C, concerning U.S. and Canadian Medical Graduates, §161.10; Subchapter D, concerning Foreign Medical Graduates, §§161.15 - 161.17; Subchapter E, concerning Licensure For Military Service Members, Veterans, and Spouses, §161.20; Subchapter F, concerning Application Procedure, §161.25; Subchapter G, concerning Registration of License, §161.30 and §161.31; Subchapter H, concerning Continuing Medical Education Requirements for License Renewal, §161.35; Subchapter I, concerning Full Medical License, §161.40; Subchapter J, concerning Limited Licenses, §§161.45 - 161.47; Subchapter K, concerning Temporary Licenses, §§161.50 - 161.52; Subchapter L, concerning Physician-In-Training Permits, §§161.55 - 161.58; Subchapter M, concerning Fellowship Program Approval, §161.65; and Subchapter N, concerning Emergency Practice Authorization, §§161.70 - 161.73.

Also, the Board contemporaneously proposes the repeal of the following current chapters:

Chapter 163, concerning Licensure, §§163.1 - 163.6, 163.8 - 163.11, and 163.13;

Chapter 166, concerning Physician Registration, §§166.1 - 166.7;

Chapter 167, concerning Reinstatement and Reissuance, §§167.1 - 167.8;

Chapter 168, concerning Criminal History Evaluation Letters, §168.1, and §168.2;

Chapter 171, concerning Postgraduate Training Permits, §§171.1 - 171.6;

Chapter 172, concerning Temporary And Limited Licenses. This includes Subchapter A, concerning General Provisions and Definitions, §172.1, and §172.2; Subchapter B, concerning Temporary Licenses, §§172.3 - 172.11; Subchapter C, concerning Limited Licenses, §§172.12, 172.13, 172.15 - 172.19; and Subchapter D, concerning Disaster Emergency Rule, §172.20 and §172.21; and

Chapter 175, concerning Fees and Penalties, §§175.1 - 175.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 161 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

#### SUBCHAPTER A. PRE-LICENSURE CRIMINAL HISTORY EVALUATIONS.

New §161.1, Pre-Licensure Criminal History Evaluation, describes the process for a potential applicant to obtain a criminal history evaluation letter to determine potential ineligibility for a license.

#### SUBCHAPTER B. GENERAL LICENSURE REQUIREMENTS.

New §161.5, Definitions, defines terms used throughout new Chapter 161.

New §161.6, General Requirements for Licensure, outlines the general requirements for licensure for a Texas medical license.

New §161.7, Examination Requirements, outlines the examinations required for licensure, in accordance with Sections 155.051, 155.0511 and 155.054 of the Medical Practice Act ("the Act").

#### SUBCHAPTER C. U.S. AND CANADIAN MEDICAL GRADUATES.

New §161.10, Specific Requirements for U.S. and Canadian Medical School Graduates, explains that all U.S. and Canadian medical school graduates must the requirements set forth in Section 155.003 of the Act for licensure.

#### SUBCHAPTER D. FOREIGN MEDICAL GRADUATES.

New §161.15, Specific Requirements for Foreign Medical Graduates, sets forth specific licensure requirements for Foreign Medical Graduates from substantially equivalent medical schools.

New §161.16, Foreign Medical Graduates of a Medical School That Is Not Substantially Equivalent, sets forth specific licensure requirements for Foreign Medical Graduates from non-substantially equivalent medical schools.

New §161.17, Other Foreign Medical Graduates, explains how Foreign Medical Graduates of a medical school who are not substantially equivalent and do not meet the criteria in §161.15 and §161.16 of this title can demonstrate substantial equivalence.

#### SUBCHAPTER E. LICENSURE FOR MILITARY SERVICE MEMBERS, VETERANS AND SPOUSES.

New §161.20, Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses, describes the licensure process for military service members, veterans, and spouses.

#### SUBCHAPTER F. APPLICATION PROCEDURE.

New §161.25, Procedural Rules for Licensure Applicants, explains the sections of the Act that apply to how licensure applications are processed.

#### SUBCHAPTER G. REGISTRATION OF LICENSE.

New §161.30, Registration and Renewal, explains the registration and renewal process for a physician license.

New §161.31, Exceptions from Certain Renewal Requirements, explains the exceptions from certain renewal requirements for Texas-licensed military service members, retired physicians, and voluntary charity care physicians.

#### SUBCHAPTER H. CONTINUING MEDICAL EDUCATION REQUIREMENTS FOR LICENSE RENEWAL.

New §161.35, Continuing Medical Education (CME) Requirements for License Renewal, explains the continuing medical education requirements physicians must meet for license renewal. It also explains how to correct any deficiencies in CME requirements and how CME may be carried forward between licensure renewals.

#### SUBCHAPTER I. FULL MEDICAL LICENSE.

New §161.40, Medical License, explains that all physicians practicing in Texas, with limited named exceptions, must hold a full Texas medical license.

#### SUBCHAPTER J. LIMITED LICENSES.

New §161.45, Conceded Eminence License, explains the requirements and process for seeking a conceded eminence license.

New §161.46, Administrative Medicine License, explains the requirements and process for seeking an administrative medicine license. It also explains the limitations of that type of license.

New §161.47, Military Volunteer License, explains the requirements and process for seeking a military volunteer license.

#### SUBCHAPTER K. TEMPORARY LICENSES.

New §161.50, Regular Temporary License, explains the purpose of the regular temporary license.

New §161.51, Faculty Temporary License, explains the requirements and application process for a Faculty Temporary License.

New §161.52, Visiting Physician Temporary Permit, explains the purpose, requirements, and application process for a Visiting Physician Temporary Permit. It also explains the limitations of such a permit.

#### SUBCHAPTER L. PHYSICIAN-IN-TRAINING PERMITS.

New §161.55, Physician-In-Training Permit (PIT), explains the purpose, requirements, and application process for PIT permits. It also explains the limitations of such a permit.

New §161.56, Rotator PIT Permits, explains the purpose, requirements, and application process for Rotator PIT permits.

New §161.57, Duties of Permit Holders to Report, explains the reporting obligations of the permit holder to the board and the time period to make a required report.

New §161.58, Duties of Program Directors to Report, explains the reporting obligations of the training program directors to the board and the time period to make a required report.

#### SUBCHAPTER M. FELLOWSHIP PROGRAM APPROVAL.

New §161.65, Process for Board-Approval of Fellowships, explains the requirements and application process for board approval of fellowships.

#### SUBCHAPTER N. EMERGENCY PRACTICE AUTHORIZATION.

New §161.70, Emergency Practice Authorization (EPA), explains when certain licensure requirements can be waived by the board in event of a disaster or emergency.

New §161.71, Emergency Practice Authorization (EPA) Requirements and Procedures for Healthcare Professionals, explains the purpose, requirements, and authorization process for healthcare professionals not licensed in Texas to practice in Texas during a disaster or emergency.

New §161.72, Board Regulation of Emergency Practice Authorization, explains the board's authority and jurisdiction over individuals practicing under an Emergency Practice Authorization.

New §161.73, Confidentiality, explains that confidentiality under §164.007 (c) of the Act applies to all board files, information, or investigative materials for healthcare providers practicing in Texas under an Emergency Practice Authorization.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/7w0wqZgqvU>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### **22 TAC §§161.1 - 161.7, 161.10, 161.11**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

*§161.1. Introduction.*

*§161.2. Purpose and Functions.*

*§161.3. Organization and Structure.*

*§161.4. Officers of the Board.*

*§161.5. Meetings.*

*§161.6. Committees of the Board.*

*§161.7. Executive Director.*

*§161.10. General Counsel.*

*§161.11. Memorandum of Understanding between Texas Medical Board (TMB) and Texas Physician Health Program (TXPHP).*



The agency certifies that legal counsel has reviewed the proposal 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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## CHAPTER 161. PHYSICIAN LICENSURE

### SUBCHAPTER A. PRE-LICENSURE CRIMINAL HISTORY EVALUATIONS

#### 22 TAC §161.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.1. Pre-Licensure Criminal History Evaluation.

(a) In accordance with §53.102 of the Texas Occupations Code, an individual may request a criminal history evaluation letter to determine potential ineligibility for a license based on the person's criminal history.

(1) Requestors must submit a completed board form along with a \$100 fee.

(2) Additional documentation, including a set of fingerprints, may be required.

(b) The board will notify the requestor of the determination.

(c) An individual may still apply for licensure regardless of the criminal history evaluation determination.

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## SUBCHAPTER B. GENERAL LICENSURE REQUIREMENTS

#### 22 TAC §§161.5 - 161.7

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.5. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

(2) Approved graduate medical training program--A program that is approved by the board and is:

(A) accepted for certification by a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; or

(C) a board-approved fellowship performed in Texas;  
or

(D) a U.S. or Canadian graduate medical education training program, that subsequently received accreditation by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA) or Royal College of Physicians, and was accepted by a specialty board that is a member of the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the Royal College of Physicians for board certification purposes.

(3) Substantially equivalent medical school--A medical school or college that is accredited by an agency recognized by the World Federation of Medical Education (WFME) Recognition Programme, or that is recognized by the board.

#### §161.6. General Requirements for Licensure.

(a) All applicants for a Texas medical license must meet the general eligibility requirements set forth in §155.003 of the Act.

(b) All applicants must submit a completed application for licensure and all documents and information necessary to complete an applicant's request for licensure including, but not limited to:

- (1) the required fee of \$817;
- (2) additional fees and surcharges as applicable;
- (3) Dean's Certification of Graduation form;
- (4) certified transcript of Examination Scores;
- (5) birth certificate or other similar proof of age;
- (6) graduate training verification;
- (7) Professional or Work History Evaluation forms demonstrating or relating to the practice of medicine for the preceding 5 years from the date of the application;
- (8) FBI/DPS Fingerprint Report;
- (9) documentation of alternate name or name change, if applicable;
- (10) medical school transcript, if requested;
- (11) specialty board certification, if applicable;
- (12) arrest records, if applicable;
- (13) malpractice records, if applicable;
- (14) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;
- (15) military orders or DD214, if applicable;
- (16) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and
- (17) any other documentation deemed necessary to process an application.

(c) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

- (1) delay in processing application;
- (2) referral of the applicant to the Licensure Committee;
- (3) unanticipated military assignments, medical reasons, or catastrophic events; or
- (4) other extenuating circumstances.

§161.7. Examination Requirements.

(a) Applicants must take and pass examinations in accordance with §§155.051, 155.0511, and 155.054 of the Act.

(b) Required Examinations:

- (1) United States Medical Licensing Examination (USMLE), or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;
- (2) COMLEX-USA, or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;
- (3) Federation Licensing Examination (FLEX), on or after July 1, 1985, passage of both components with a score of 75 or better on each component;
- (4) Federation Licensing Examination (FLEX), before July 1, 1985, with a FLEX weighted average of 75 or better in one sitting;
- (5) National Board of Medical Examiners Examination (NBME) or its successor;

(6) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor;

(7) Medical Council of Canada Examination (LMCC) or its successor; or

(8) state board licensing examination.

(c) The following examination combinations are acceptable with a score of 75 or better on each part, level, component, or step:

(1) FLEX I plus USMLE 3;

(2) USMLE 1 and USMLE 2, plus FLEX II;

(3) NBME I or USMLE 1, plus NBME II or USMLE 2, plus NBME III or USMLE 3;

(4) NBME I or USMLE 1, plus NBME II or USMLE 2, plus FLEX II;

(5) The NBOME Part I or COMLEX Level I, plus NBOME Part II or COMLEX Level II, plus NBOME Part III or COMLEX Level III; or

(6) other examination combination acceptable to the board.

(d) Examination Attempt Limits and Time Limits. Each part of an examination must be passed in accordance with §155.051 and §155.056 of the Act, unless the applicant meets an exception described in §155.0561 of the Act.

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General Counsel

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## SUBCHAPTER C. U.S. AND CANADIAN MEDICAL GRADUATES

### 22 TAC §161.10

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.10. Specific Requirements for U.S. and Canadian Medical School Graduates.

All U.S. and Canadian medical school graduates must meet the requirements set forth in §155.003 of the Act.

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## SUBCHAPTER D. FOREIGN MEDICAL GRADUATES

### 22 TAC §§161.15 - 161.17

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.15. Specific Requirements for Foreign Medical Graduates.

(a) Foreign Medical Graduates from substantially equivalent medical schools must provide:

(1) an Educational Commission for Foreign Medical Graduates (ECFMG) status report; and

(2) proof of one of the following:

(A) successful completion of two years of approved medical graduate training that is progressive in nature; or

(B) board certification from a member board of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(b) Alternative approved training may be demonstrated by practicing within the teaching confines of the applying institution under a Faculty Temporary License. Each year in a teaching faculty position under a Faculty Temporary License shall be considered the equivalent of one year of approved postgraduate training.

#### §161.16. Foreign Medical Graduates of a Medical School That Is Not Substantially Equivalent.

Foreign Medical Graduates of a medical school that is not substantially equivalent must provide:

(1) an Educational Commission for Foreign Medical Graduate (ECFMG) status report; and

(2) proof of one of the following:

(A) completion of at least two years of an approved medical graduate training program that is progressive in nature, along with an International Credential Evaluation from the Foreign Credential Service of America (FCSA) determining the foreign medical education program is equivalent to a U.S. medical education;

(B) successful completion of an approved medical graduate training program;

(C) board eligibility or certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(D) practice under an unrestricted full license issued in the U.S. for at least five years, without any disciplinary action in any state.

#### §161.17. Other Foreign Medical Graduates.

Foreign Medical Graduates of a medical school that is not substantially equivalent and do not meet the criteria set forth in §161.15 and §161.16 of this chapter (relating to Specific Requirements for Foreign Medical Graduates and relating to Foreign Medical Graduates of a Medical School That Is Not Substantially Equivalent) must demonstrate substantial equivalence through alternate means as set by the board.

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## SUBCHAPTER E. LICENSURE FOR MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES

### 22 TAC §161.20

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.20. Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

In accordance with Chapter 55 of the Texas Occupations Code, military service members, veterans, and spouses must:

(1) meet the general requirements for licensure as set forth in §161.6 of this chapter (relating to General Requirements for Licensure); and

(2) submit a completed application on the board-approved form and all additional documentation as required, with the exception of application fee.

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## SUBCHAPTER F. APPLICATION PROCEDURE

### 22 TAC §161.25

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.25. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §155.007 of the Act.

(b) Applicants seeking reinstatement or reissuance of a license will be reviewed and processed in accordance with §§164.151 through 164.153 of the Act.

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## SUBCHAPTER G. REGISTRATION OF LICENSE

### 22 TAC §161.30, §161.31

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.30. Registration and Renewal.

(a) In accordance with Chapter 156 of the Act, a physician license must be registered with the board and renewed every two years after it is issued.

(b) A renewal notice will be sent to the physician's address of record at least 60 days prior to the expiration date of the registration.

(c) The physician must:

(1) complete the renewal form;

(2) pay the renewal fee and any additional fees, as applica-

ble:

(A) initial biennial permit - \$456.00;

(B) subsequent biennial permit - \$452.00;

(3) verify and update their physician profile; and

(4) provide any other relevant information requested.

#### §161.31. Exceptions From Certain Renewal Requirements.

(a) Texas-licensed military service members are allowed two additional years to complete biennial continuing medical education requirements.

(b) Officially Retired Physicians are exempt from renewal registration fees and continuing medical education requirements upon the filing of a board-approved form certifying that they:

(1) have ceased practicing medicine in Texas; and

(2) are not under investigation or current board order.

(c) Voluntary Charity Care Physicians are exempt from the biennial registration fee upon the filing of a board-approved form certifying that they:

(1) provide medical care only:

(A) to indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization;

(2) do not provide any medical services to family members:

and

(3) receive no compensation for services rendered, with the exception of payment or reimbursement of reasonably necessary travel and related expenses.

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## SUBCHAPTER H. CONTINUING MEDICAL EDUCATION REQUIREMENTS FOR LICENSE RENEWAL

### 22 TAC §161.35

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.35. Continuing Medical Education (CME) Requirements for License Renewal.

(a) Forty-eight total CME credits are required, biennially, as follows:

(1) Minimum of 24 formal credits of AMA/PRA Category 1 designated by:

(A) the Accreditation Council for Continuing Medical Education;

(B) a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(C) the American Academy of Family Physicians;

(D) the AOA Category 1-A;

(E) the Texas Medical Association;

(F) the board, but only as it applies to medical ethics and/or professional responsibility; or

(G) a board-appointed physician performing a competency evaluation or practice monitoring of another physician, which may receive one (1) formal CME credit for each hour of time spent on these duties up to 12 hours.

(2) As part of the 24 formal credits, the following are required:

(A) a human trafficking prevention course, in accordance with §156.060 of the Act;

(B) two credits in the topic of medical ethics and/or professional responsibility; and

(C) two credits in accordance with §156.055 of the Act.

(3) Informal CME credits may include:

(A) informal self-study; or

(B) attendance at hospital lectures, grand rounds, or case conferences.

(b) Alternate proof of CME compliance is presumed if the physician:

(1) meets the criteria set forth in §156.052 of the Act;

(2) is currently in a residency/fellowship training; or

(3) completed residency/fellowship training within six months prior to obtaining licensure.

(c) CME Deficiencies and Carry Forward Procedures:

(1) Any CME deficiency can be remedied within 30 days after registration renewal due;

(2) A maximum of 48 total excess credits may be carried forward only to the next registration period; and

(3) Required formal credits described in subsection (a)(2) of this section cannot be carried forward.

(d) In accordance with §156.053 of the Act, exemptions from CME may be allowed upon a written request at least 30 days before renewal is due.

(e) Voluntary Charity Care CME requirements are reduced to twelve informal CME credits per biennium.

(f) In accordance with §323.0045 of the Health and Safety Code, recognized forensic examination CME must be:

(1) a formal category 1 course; or

(2) approved or recognized by the Texas Board of Nursing.

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## SUBCHAPTER I. FULL MEDICAL LICENSE

### 22 TAC §161.40

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.40. Medical License.

(a) In accordance with §§155.001 and 151.056 of the Act, all physicians must hold a full Texas medical license to practice in Texas, including physicians practicing telemedicine.

(b) Subsection (a) of this section does not apply to the following:

(1) physicians who meet the exceptions set forth in §151.056(b) of the Act;

(2) physicians who are exempt pursuant to §151.0521 of the Act; and

(3) physicians who hold a temporary or limited license issued under Chapter 155 of the Act.

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## SUBCHAPTER J. LIMITED LICENSES

### 22 TAC §§161.45 - 161.47

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.45. Conceded Eminence License.

All applicants for a conceded eminence license must meet the requirements of §155.006 of the Act, and submit:

- (1) a completed board-required application form;
- (2) the required fee of \$817.00;
- (3) additional fees and surcharges as applicable; and
- (4) the following documentation:

(A) proof of conceded eminence and authority in the applicant's specialty including, but not limited to:

(i) a high level of academic or professional recognition, domestically or internationally, for excellence in research, teaching, or the practice of medicine within the applicant's specialty;

(ii) professional honors, awards, and recognition in the international or domestic medical community for achievements, contributions, or advancements in the field of medicine, or medical research publications in recognized scientific, medical, or medical research journals;

(iii) acknowledgement of expertise from recognized U.S. authorities in the applicant's field of medical specialty; and

(iv) other meritorious considerations.

(B) letters of recommendation from five renowned specialists including three Texas-licensed physicians who practice in the same specialty;

(C) proof of successful completion of an acceptable licensing examination as set forth in §161.7 of this chapter (relating to Examination Requirements);

(D) evidence of the practice of medicine for at least 10 years, 5 years of which occurred immediately preceding the date of application; and

(E) an acceptable disciplinary and criminal history.

#### §161.46. Administrative Medicine License.

(a) All applicants for an administrative medicine license must meet the requirements of §155.009 of the Act, and must:

(1) meet the general requirements set forth in §161.6 of this chapter (relating to General Requirements for Licensure);

(2) submit a completed application on the board-approved form;

(3) pay the required fee of \$817.00 and any additional fees and surcharges, as applicable; and

(4) submit any additional documentation as requested.

(b) An administrative medicine license:

(1) is limited to administration or management that utilizes the medical and clinical knowledge, skill, and judgment of a licensed physician and is capable of affecting the health and safety of the public or any person; and

(2) does not grant authority to do the following:

(A) the practice of clinical medicine;

(B) direct patient care, treatment, or diagnosis;

(C) the prescribing of dangerous drugs or controlled substances; and

(D) supervision and delegation.

#### §161.47. Military Volunteer License.

(a) All applicants for a Military Volunteer License must meet the requirements of §155.103 of the Act, and must submit:

(1) proof of active or retired military status; and

(2) a completed board required application form.

(b) A Military Volunteer License is valid for two years.

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Scott Freshour  
General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER K. TEMPORARY LICENSES

### 22 TAC §§161.50 - 161.52

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.50. Regular Temporary License.

In accordance with §155.104 (a) of the Act, temporary licenses may be issued to applicants approved for full licensure pending final board approval.

§161.51. Faculty Temporary License.

(a) All applicants for a Faculty Temporary License must meet the requirements of §§155.104(b) and (c) of the Act, as applicable, and must submit:

(1) a completed board-required application form at least 45 days prior to the effective date of the appointment of the physician, in accordance with §155.104(h) of the Act;

(2) the required fee of \$552.00;

(3) any additional fees and surcharges, as applicable; and

(4) documentation of:

(A) an acceptable disciplinary and criminal history; and

(B) required statements and affidavits from the applying institution, in accordance with §§155.104(d) and (e) of the Act.

(b) A Faculty Temporary License is valid for one year.

(c) Each year practicing under a Faculty Temporary License may be treated as equivalent to one year of approved postgraduate training for purposes of license eligibility.

§161.52. Visiting Physician Temporary Permit.

(a) In accordance with §155.104(a) of the Act, the Executive Director may issue a Visiting Physician Temporary Permit (VPTP) for the following:

(1) educational purposes, including short-term medical faculty teaching positions not to exceed 6 months;

(2) to practice charity care for underserved populations in Texas;

(3) in cases of declared emergency disasters;

(4) for the provision of forensic psychiatric examinations related to criminal matters; or

(5) for the provision of specialized medical care for which the applying physician has demonstrated good cause for the issuance of the permit.

(b) A VPTP cannot be used for training in a postgraduate medical training program or fellowship.

(c) Applicants for a VPTP must submit:

(1) a completed board-required application form at least 30 days prior to the effective date of the appointment of the physician;

(2) documentation of:

(A) a current and unrestricted medical license in another state, territory, Canadian province, or country;

(B) an acceptable disciplinary and criminal history, and no current or pending complaints, investigations, or disciplinary actions; and

(C) supervision by a physician who has:

(i) a current and unrestricted medical license in Texas; and

(ii) an acceptable disciplinary and criminal history, and no current or pending complaints, investigations, or disciplinary actions in any jurisdiction.

(d) Texas supervising physicians must provide written verification:

(1) agreeing to supervise the applicant; and

(2) listing the specified location and purpose requiring the VPTP.

(e) A VPTP is valid for ten working days, unless otherwise approved by the Executive Director, except as provided in subsection (a)(1) of this section.

(f) A VPTP necessary to participate in the Texas A&M KSTAR program will be issued for the length of the program upon receipt of written verification from the KSTAR program of acceptance into the program and the dates of the program.

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**SUBCHAPTER L. PHYSICIAN-IN-TRAINING PERMITS**

**22 TAC §§161.55 - 161.58**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.55. Physician-in-Training Permits.

(a) In accordance with §155.105 of the Act, the Executive Director or board may issue a Physician-in-Training (PIT) permit.

(b) A PIT permit may be issued only after receipt of certification from an approved graduate medical training program that:

(1) the program is an approved program;

(2) the applicant has been accepted into the program; and

(3) the applicant is graduating from medical school prior to the start of the training program.

(c) Applicants for a PIT permit must submit:

(1) a board-required application form;

(2) the required fee of \$200.00;

(3) additional fees and surcharges as applicable; and

(4) documentation of the following:

(A) all US or Canadian approved graduate medical training programs attended;

(B) documentation of alternate name or name change, if applicable;

(C) arrest records, if applicable;

(D) malpractice records, if applicable;

(E) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable; and

(F) other documentation deemed necessary to process an application.

(d) PIT permit applications should be submitted at least 60 days prior to the start of the training program and no more than 120 days before training begins.

(e) A PIT permit is valid for participation in an approved graduate medical training program for the duration of the training program.

(f) PIT permits expire upon any of the following, whichever occurs first:

(1) the end date of the approved graduate medical training program;

(2) the permit holder's termination or release from the approved graduate medical training program; or

(3) on the date a full, limited, or temporary physician license is issued.

(g) PIT permit holders are limited to the practice of medicine within the training program for which it was approved.

(h) A PIT permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program and does not allow for the practice of medicine outside of the approved program.

(i) A transfer to a new approved graduate medical training program requires the applicant to submit a new PIT permit application, required documentation, and the following fees, as applicable:

(1) \$141.00, if transferring to a program not within same institution; and

(2) \$200.00, if transfer application is made after current PIT permit is expired.

(j) The board may allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents are presented.

§161.56. Rotator PIT Permits.

Out-of-state or military PIT applicants completing a rotation in Texas of less than 60 consecutive days as part of an approved graduate medical training program must:

(1) submit an application and required documentation described in §161.55 of this title;

(2) pay a required fee of \$131.00; and

(3) have the Texas Licensed physician supervising the Texas rotations submit certification of the following:

(A) the facility at which the rotation will be completed;

(B) the dates the rotations will be completed in Texas; and

(C) that the Texas on-site preceptor physician will supervise and be responsible for the applicant during the rotations.

§161.57. Duties of Permit Holders to Report.

PIT permit holders must report the following to the board within 30 days:

(1) an investigation or disciplinary action by any licensing entity other than the board;

(2) an arrest (excluding traffic tickets, unless drugs or alcohol were involved);

(3) any criminal charge or conviction, including disposition;

(4) any indictment;

(5) imprisonment; and

(6) any diagnosis or treatment of a physical, mental, or emotional condition that affects the ability to practice medicine.

§161.58. Duties of Program Directors to Report.

In accordance with §§160.002 and 160.003 of the Act, Program Directors must report the following to the board within 30 days:

(1) a PIT permit holder who did not begin the training program for any reason, including failure to graduate from medical school;

(2) a PIT permit holder who is absent from the program for more than 21 consecutive days (excluding vacation, military, or family leave not related to the participant's medical condition) and the reason(s) why;

(3) a PIT permit holder who has been arrested;

(4) a PIT permit holder who poses a continuing threat to the public welfare, as defined by §151.002(a)(2) of the Act;

(5) any final action against a PIT permit holder that adversely affects the permit holder's status or privileges for a period longer than 30 days;

(6) a PIT permit holder who is suspended from the program; or

(7) a PIT permit holder who is released, terminated, withdraws, or resigns from the program.

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General Counsel

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## SUBCHAPTER M. FELLOWSHIP PROGRAM APPROVAL

### 22 TAC §161.65

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for read-



option, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.65. Process for Board-Approval of Fellowships.

(a) To obtain board approval of a fellowship, the institution, through its designated institutional official (DIO) and chair of the Graduate Medical Education Committee (GMEC), must submit:

- (1) a completed board application form;
- (2) required fee of \$250.00; and
- (3) documentation demonstrating:
  - (A) goals and objectives;
  - (B) documented curriculum;

(C) qualifications of the program director and program faculty including, but not limited to, current Texas medical license, certification by the appropriate specialty board, and/or appropriate educational qualifications;

(D) candidate selection process including prerequisite requirements;

(E) duties and responsibilities of the fellows in the program;

(F) supervision of the fellows;

(G) progressive nature of the training program;

(H) evaluation of the fellows;

(I) duration of the fellowship training program for fellows; and

(J) other information as requested by the board.

(b) The application must be submitted a minimum of 120 days prior to the beginning date of the program.

(c) Renewals for fellowship approval must be submitted at least 120 days before the expiration of the approval.

(d) The approval period of the fellowship program may not exceed five years.

(e) If the program subsequently becomes approved by the ACGME, AOA, ABMS, or BOS, the program must notify the board within 30 days of approval, as fellowship programs may not be dually approved.

(f) Changes to a board-approved program may require submission of a new application.

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## SUBCHAPTER N. EMERGENCY PRACTICE AUTHORIZATION

22 TAC §§161.70 - 161.73

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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 and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.70. Emergency Practice Authorization (EPA).

(a) The board may waive requirements for licensure for the board and its advisory boards and committees and issue an Emergency Practice Authorization (EPA):

(1) pursuant to a lawful emergency or disaster for which the Governor of the State of Texas has declared a state of emergency or state of disaster, in accordance with the Texas Government Code;

(2) in the event of an occurrence for which a county or municipality has declared a state of emergency or state of disaster; or

(3) to protect the public health, safety, or welfare of the citizens of Texas.

(b) For the purposes of this subchapter, "healthcare professional" means an out-of-state individual that holds a valid and current license, permit, or certificate type that is issued by a state licensing board.

§161.71. Emergency Practice Authorization (EPA) Requirements and Procedures for Healthcare Professionals.

(a) Hospital-to-Hospital Practice Authorization: A healthcare professional may practice within the scope of their license, permit, or certificate at a Texas hospital upon demonstration of the following:

(1) The healthcare professional:

(A) holds a full, unlimited, and unrestricted license, certificate, or permit to practice in another U.S. state, territory, or district; and

(B) has unrestricted hospital credentials and privileges in any U.S. state, territory, or district.

(2) The licensed Texas hospital:

(A) shall verify each healthcare professional's credentials and privileges;

(B) shall keep a list of all healthcare professionals coming to practice at that facility;

(C) must provide this list to the board within ten days of each healthcare professional starting practice at the facility; and

(D) must provide the board a list of when each healthcare professional has stopped practicing in Texas under this section within ten days after each healthcare professional has stopped practicing under this section.

(b) Non-Hospital Practice Authorization:

(1) The sponsored healthcare professional must:

(A) hold a full, unlimited, and unrestricted license, certificate, or permit to practice in another U.S. state, territory, or district;

(B) have no disciplinary actions in any jurisdiction; and

(C) be sponsored by a Texas-licensed physician.

(2) The Texas-licensed sponsoring physician:

(A) must hold a full unrestricted Texas medical license;

(B) must provide a written statement describing how the sponsored healthcare professional will assist directly in response to the declared emergency or disaster; and

(C) shall be considered the supervising physician for the sponsored healthcare professional.

(3) The board may limit the sponsored healthcare professional's practice locale and scope of practice.

§161.72. Board Regulation of Emergency Practice Authorization (EPA).

(a) The board shall have jurisdiction over healthcare professionals practicing under this subchapter.

(b) Each healthcare professional must comply with all applicable provisions of the Texas Occupations Code and all other applicable state and federal laws.

(c) The board's jurisdiction over the healthcare professional and the care provided in Texas during the emergency continues even after the healthcare professional ceases practicing in Texas.

(d) An EPA is valid for no more than thirty (30) days unless otherwise indicated by the continued emergency or disaster, as determined by the board.

(e) Healthcare professionals practicing under this subchapter shall not receive any compensation outside of their usual compensation for the provision of healthcare services during a disaster or emergency.

§161.73. Confidentiality.

In accordance with §164.007(c) of the Act, all board files, information, or investigative materials regarding healthcare professionals practicing under this chapter are confidential.

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## CHAPTER 162. SUPERVISION OF MEDICAL SCHOOL STUDENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 162, concerning Supervision of Medical Students, §162.1 and §162.2.

The Board also proposes new Chapter 162, concerning Physician Profiles, §§162.1 - 162.3.

Also, the Board contemporaneously proposes the repeal of current Chapter 173, concerning Physician Profiles, §§173.1 - 173.5, and §173.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 162 is more

efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §162.1, Profile Contents, provides a description of the content of a physician's public profile.

New §162.2, Profile Updates, provides a description of mandatory updates required to be reported by a physician to the board.

New §162.3, Profile Disputes, explains the process by which a physician may dispute their public profile information.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals and new sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/9KcRP3vMGq>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §162.1, §162.2

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

*§162.1. Supervision of Medical Students.*

*§162.2. Physician Supervision of a Student Physician Assistant.*

The agency certifies that legal counsel has reviewed the proposal 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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## CHAPTER 162. PHYSICIAN PROFILES

### 22 TAC §§162.1 - 162.3

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of §§154.006(h) and 156.001. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §162.1. Profile Contents.

In addition to the information required by §154.006(b) of the Act, a physician's public profile shall include:

- (1) full name as displayed on the physician license;
- (2) the original date of issuance of the physician's Texas medical license;
- (3) the expiration date of the physician's current registration permit;
- (4) a mailing address (street or P.O. Box address, city, state, and zip code), if the physician does not have a primary practice location;
- (5) primary and secondary areas of practice, as designated by the physician;
- (6) a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters; and
- (7) utilization review services for an insurance company other than utilization review in relation to worker's compensation claims.

#### §162.2. Profile Updates.

(a) Upon renewal, physician updates to the board must be completed as required by §§156.001(c) and (e) of the Act.

(b) Mandatory Updates shall be reported by a physician within 10 business days of the event, including:

- (1) A description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court;
- (2) change of mailing or practice address;
- (3) incarceration in a state or federal penitentiary;
- (4) conviction described in §154.006(b)(9) of the Act;
- (5) any charges as described in §154.006(b)(10) of the Act;
- (6) An initial finding of guilt for a crime set forth in §164.057 of the Act;
- (7) any disciplinary action described in §§154.006(b)(12) and (13) of the Act;
- (8) any medical malpractice claim listed in §154.006(b)(16) of the Act; or
- (9) changes in the physician's American Board of Medical Specialties or the Bureau of Osteopathic Specialists specialty certification.

(c) A physician may submit any other corrections as they occur.

§162.3. Profile Disputes.

A physician may dispute public profile information by submitting a written description of the dispute and any supporting information to the General Counsel's office for review, consideration, and resolution of the dispute.

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

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## CHAPTER 163. LICENSURE

The Texas Medical Board (Board) proposes the repeal of current Chapter 163, concerning Licensure, §§163.1 - 163.6, 163.8 - 163.11 and 163.13.

The Board also proposes new Chapter 163, concerning Medical Records. This includes new Subchapter A, concerning General Documentation Provisions, §§163.1 - 163.5; and Subchapter B, concerning Abortion Documentation, §§163.10 - 163.13.

Also, the Board contemporaneously proposes the repeal of current Chapter 165, concerning Medical Records, §§165.1 - 165.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 163 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. GENERAL PROVISIONS.

New §163.1, Medical Records, describes the necessary content of a medical record and the appropriate method for documenting each patient encounter.

New §163.2, Medical Record Retention, explains providers responsible for retaining medical records and the amount of time those providers must retain medical records.

New §163.3, Requests for Medical Records, explains a provider's responsibility for providing medical records to patients upon request. It also explains allowable charges for responding to requests for medical records or diagnostic imaging.

New §163.4, Physician Responsibilities when Leaving a Practice, explains a provider must provide notice to patients when they leave, retire, or terminate a practice.

New §163.5, Appointment of Record Custodian of a Physician's Records, explains who the appropriate records custodian is of medical records in certain situations. It also explains the process by which a records custodian is appointed and outlines the custodian's responsibilities.

### SUBCHAPTER B. ABORTION DOCUMENTATION.

New §163.10, Definitions, describes the specific definitions for certain terms used in this subchapter.

New §163.11, Required Form Regarding an Abortion on an Unemancipated Minor, details the required disclosure and consent form to be completed when performing an abortion or related procedure on an unemancipated minor.

New §163.12, Abortion Ban Exception Performance and Documentation, explains that physicians need to comply with all applicable laws, rules, and court opinions related to abortion and its exceptions in Texas. The rules also provide the minimum required information that must be included in the medical record.

New §163.13, Complaints Regarding Abortions Performed, explains the procedures that the Board will utilize in the event a complaint is received. The rule also explains the limitation of any Board decision and that possible criminal or civil action under the law is separate and independent of any Board decision.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/ENi91rHrTG>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§163.1 - 163.6, 163.8 - 163.11, 163.13

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§163.1. *Definitions.*

§163.2. *Full Texas Medical License.*

§163.3. *Exemption from Licensure for Certain Military Spouses.*

§163.4. *Procedural Rules for Licensure Applicants.*

§163.5. *Licensure Documentation.*

§163.6. *Examinations Accepted for Licensure.*

§163.8. *Authorization to Take Professional Licensing Examination.*

§163.9. *Only One License.*

§163.10. *Relicensure.*

§163.11. *Active Practice of Medicine.*

§163.13. *Expedited Licensure.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## CHAPTER 163. MEDICAL RECORDS SUBCHAPTER A. GENERAL DOCUMENTATION PROVISIONS

### 22 TAC §§163.1 - 163.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of §164.052(c). The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §163.1. Medical Records.

(a) The medical record must be a complete, contemporaneous, and legible documented account of each patient encounter by a physician or delegate.

(b) A medical record must include, at a minimum:

(1) a reason for the encounter, relevant history, physical examination findings (ensuring any pre-populated fields contain current and accurate patient information), and any diagnostic test results;

(2) an assessment, clinical impression, and diagnosis;

(3) a plan for care (including diagnostics, risk factors, consultations, referrals, ancillary services, discharge plan if appropriate, patient/family education, disclosures, and follow-up instructions), treatments, and medications (including amount, frequency, number of refills, and dosage);

(4) late entries, if any, that indicate the time and date entered, as well as the identity of the person who made the late entry;

(5) summary or documentation of communications with the patient;

(6) sufficient documentation of requests for records from other providers and any records received;

(7) clear identification of any amendment or correction to the medical record, including the date it was amended or corrected and the identity of the author of the amendment or correction, with the original text remaining legible; and

(8) documentation of a review of the patient's Texas Prescription Monitoring Program (PMP) prescribing history.

#### §163.2. Medical Record Retention.

(a) Medical records must be retained by a physician or a physician's employer, including group practices, professional associations, and non-profit health organizations, consistent with this chapter.

(b) Providers must maintain access to medical records for the duration of the required retention period.

(c) Retention periods.

(1) The standard retention period is at least seven years from the date of last treatment by the physician or longer if required by other federal or state law.

(2) The retention period for a patient under 18 years old is until the patient reaches age 21 years old or seven years from the date of last treatment, whichever is longer.

(d) Forensic medical examinations for sexual assault must be retained in accordance with §153.003 of the Act.

§163.3. Requests for Medical Records.

(a) Upon receipt of a request for medical records that complies with §159.005 of the Act, a physician must provide the information within 15 days of the request and in accordance with Chapter 159 of the Act.

(b) Requests for diagnostic imaging, including static films, non-static films, and imaging studies, must specify whether a copy or the original of the study is sought.

(c) Allowable charges for records:

(1) paper records - the maximum fee may be \$25.00 for the first twenty pages and \$.50 per page thereafter

(2) electronic records - the maximum fee may be \$25.00 for 500 pages or less and \$50.00 for more than 500 pages;

(3) hybrid records (part paper and electronic) - the fee for each different format may be utilized, including diagnostic studies;

(4) if an affidavit is requested for the records, the maximum fee may be \$15.00;

(5) if a narrative is provided in lieu of records, the maximum fee may be \$20.00;

(6) requests that all records be in paper format even though available as electronic records - the paper record fee may be charged; and

(7) if records are mailed to the requestor - actual postage cost may be charged.

(d) A provider cannot deny a request for medical records due to a delinquent account or amounts owed to the provider.

(e) A provider cannot require a subpoena for the records if a proper request is made in accordance with §159.005 of the Act.

(f) A denial of a request for records must be in accordance with §159.006(e) of the Act.

§163.4. Physician Responsibilities when Leaving a Practice.

(a) Upon retirement, termination of employment, or leaving a medical practice, a physician must provide patients reasonable notice to obtain copies of their records or arrange for the transfer of their medical records by:

(1) letter or email to each patient seen in the last two years by the departing physician; and

(2) posting a notice in a conspicuous location in the physician's/practice office and on the practice website at least 30 days prior to the termination, leaving, or sale or relocation of practice.

(b) The notice must include:

(1) the date of the termination, retirement, or departure;

(2) instructions as to how patients may obtain or transfer their medical records;

(3) the name and location of new practice, if any; and

(4) the name of another licensed physician, practice, or custodian if ownership of records is changing.

(c) If the physician's license is surrendered or revoked, the notice must be provided immediately in accordance with this section.

(d) The following physicians are exempt from providing notice to patients:

(1) a locum tenens physician at a practice location for less than six months;

(2) a physician who only treated the patient in the following settings:

(A) a hospital, as defined under §157.051(6) of the Act;

(B) an emergency room;

(C) a birthing center; or

(D) an ambulatory surgery center; or

(3) a physician who only provided the following service:

(A) anesthesia;

(B) radiology; or

(C) pathology.

(e) Responsibilities of Practice:

(1) A physician, physician group, or practice must provide a list of patients seen by the departing physician in the last two years for the purposes of providing notice to patients.

(2) A departing physician's group or practice is not required to provide the requisite notice to patients.

(3) If the departing physician's group or practice agrees to provide the requisite notices to patients, they must do so in accordance with this section.

(4) No physician remaining at the group or practice may prevent or interfere with the departing physician's duties to provide notices described by this section.

§163.5. Appointment of Record Custodian of a Physician's Records.

(a) In accordance with §159.0061 of the Act, a custodian of records is as follows:

(1) physician death - the administrator, executor of the estate, or other court appointed individual, unless part of a group practice or pre-existing appointments/instructions are in place;

(2) physician mental or physical incapacity - individual with Power of Attorney, court appointed individual, or legally appointed representative of the physician;

(3) other circumstances or abandonment of records - custodian is determined on a case-by-case basis.

(b) A records custodian must:

(1) maintain the confidentiality of the medical records;

(2) within 30 days of appointment, provide notice of the custodianship of the records to the board and patients by:

(A) posting visible notice in physician's/practice office, if accessible;

(B) posting notice on a physician or practice website, if accessible; or

(C) posting notice in a newspaper of greatest general circulation in county where physician practice was located.

(3) retain the medical records in accordance with state and federal law for at least 90 days before destroying any records, including the 30-day notice period;

(4) include the following information in the notice:

(A) the name of custodian and contact information;

(B) instructions as to how patients can obtain or request transfer of medical records to another provider;

(C) all applicable fees to be charged for the records, in accordance with this chapter, including an additional \$25.00 custodial fee as applicable; and

(D) a statement that the records may be destroyed after 90 days and provide destruction date.

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER B. ABORTION DOCUMENTATION

### 22 TAC §§163.10 - 163.13

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of §164.052(c). The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §163.10. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral

contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

This definition is found at Chapter 245, §245.002(1) of the Texas Health and Safety Code.

(2) "Reasonable medical judgment" means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, §170A.001(4) of the Texas Health and Safety Code.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, §171.002(3) of the Texas Health and Safety Code.

(4) "Major bodily function" includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, §21.002(11-a) of the Texas Labor Code.

#### §163.11 Required Form Regarding an Abortion on an Unemancipated Minor.

In accordance with §164.052(c) of the Act, a physician must obtain the consent for an abortion to be performed on an unemancipated minor using the following form:

Figure 1:22 TAC §163.11

#### §163.12. Abortion Ban Exception Performance and Documentation.

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code, Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must document in the patient's medical record:

(1) that the abortion is performed in response to a medical emergency;

(A) that places the woman in danger of death unless the abortion is performed or induced; or

(B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;

(2) the major bodily function(s) at serious risk of substantial impairment;

(3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;

(4) how the danger of death or serious risk was determined;

(5) if applicable, the rationale on why the abortion was performed pursuant to §170A.002 (b)(3) of the Texas Health and Safety Code; and

(6) if applicable, that the treatment was in response to an ectopic pregnancy at any location or a previable premature rupture of

membranes, as those terms are used in §74.552 of the Texas Civil Practice and Remedies Code.

(c) The above documentation must be made before and/or after performing the procedure, but the initial documentation must be made within 7 days of the procedure.

(d) Imminence of the threat to life or impairment of a major bodily function is not required.

§163.13. Complaints Regarding Abortions Performed.

(a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.

(b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in §154.0561 of the Texas Occupations Code, to review the available information, including the patient's medical record.

(c) As done in other complaints, the independent expert physicians may review all relevant information including one or more of the following:

(1) how the decision was made to proceed with an abortion based on reasonable medical judgement including:

(A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and

(B) what alternative treatments were attempted and failed or were ruled out; and

(2) whether there was adequate time to transfer the patient to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

(d) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

(e) The Board shall not take any disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by §74.552 of the Texas Civil Practice and Remedies Code.

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 164. PHYSICIAN ADVERTISING

The Texas Medical Board (Board) proposes the repeal of current Chapter 164, concerning Physician Advertising, §§164.1 - 164.6.

The Board also proposes new Chapter 164, concerning Physician Advertising, §§164.1 - 164.4.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 164 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §164.1, Definitions, gives definitions of terms used in this chapter.

New §164.2, Physician Responsibilities, explains the physician's responsibilities as to form and content of advertisement of the practice of medicine.

New §164.3, Prohibited Acts or Omissions in Advertising, describes what is permissible or prohibited in advertising by physicians.

New §164.4, Advertising Board Certification, explains the permissible use of the term "board certified" in advertising. The new section also details the process for a physician or physician-based certifying organization to apply for recognition to advertise as "board certified."

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and



(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeal and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeal and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeal and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeal and new sections do not create new regulations.
- (6) These proposed repeal and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeal and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/T7zq3qSM1i>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§164.1 - 164.6

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§164.1. *Purpose.*

§164.2. *Definitions.*

§164.3. *Misleading or Deceptive Advertising.*

§164.4. *Board Certification.*

§164.5. *Advertising Records and Responsibility.*

§164.6. *Required Disclosures on Websites.*

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

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## 22 TAC §§164.1 - 164.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Texas Occupations Code, §101.201. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

### §164.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Advertising and advertisement--Any communication designed to attract attention to the practice of a physician.

(2) Testimonial--Statement about a physician's competence, services, treatments, or practice generally. Also includes expressions of appreciation or esteem, a character reference, or a statement of benefits received.

### §164.2. Physician Responsibilities.

(a) Every physician is:

(1) responsible for the form and content of any advertisement for their individual practice or group practice; and

(2) deemed to have reviewed and approved any and all advertisements.

(b) Patients must consent prior to any use of photographs or other representations in any advertising by a physician, practice, or entity.

(c) A recording or copy of any advertisement shall be retained by the physician for a period of two years from the last date of communication.

### §164.3. Prohibited Acts or Omissions in Advertising.

(a) Advertising regarding the practice of medicine, professional credentials, and qualifications is permissible. However, the information provided in the advertisement cannot be false, deceptive, or misleading.

(b) In addition to those items listed in §101.201 of the Texas Occupations Code, the following are also deemed false, deceptive, or misleading advertising:

(1) using the term "board eligible," "board qualified," or any similar language calculated to convey the same meaning as "board certified;"

(2) offering a permanent cure for an incurable disease, sickness, and/or illness;

(3) providing a testimonial without:

(A) a disclaimer or warning as to the credentials of the person making the testimonial; and

(B) a disclosure of compensation provided in exchange for the testimonial;

(4) failing to explicitly identify individuals as models or actors instead of actual patients;

(5) providing untruthful or deceptive claims regarding costs and fees, including claims of free service if a third-party is billed;

(6) claiming a unique or exclusive skill without substantiation and basis for such claim;

(7) failing to disclose that the advertisement, article, or infomercial is a "paid for" presentation; or

(8) failing to disclose medical directorship, supervision of, or delegation to non-physicians at a location that is not the physician's primary practice location and where care is delivered pursuant to standing orders and protocols.

§164.4. Advertising Board Certification.

(a) The use of the term "board certified" may be used by a physician if they are currently certified by a member board of:

(1) the American Board of Medical Specialties (ABMS);

(2) the American Osteopathic Association Bureau of Osteopathic Specialists (BOS);

(3) the American Board of Oral and Maxillofacial Surgery;  
or

(4) other certifying board certification as approved by the board under subsection (b) of this section.

(b) Physicians, or physician-based certifying organizations seeking approval on behalf of their members, to advertise other board certification not listed in subsection (a) of this section, must:

(1) submit a completed board application that is valid for one year; and

(2) submit payment of a \$200.00 application fee; and

(3) submit documentation that the certifying entity/board:

(A) has certification requirements that are substantially equivalent to the requirements of the ABMS or BOS; and

(B) requires members to complete an examination that has been psychometrically evaluated for validation and has been administered by a testing organization that tests knowledge and skills in the specialty or subspecialty;

(C) requires members successfully completed post-graduate training accredited by ACGME or AOA, with training in the specialty or subspecialty;

(D) utilizes appropriate peer-review processes;

(E) has a total membership of at least 100 duly licensed members, fellows, diplomates, or certificate holders from at least one-third of the states; and

(F) is tax exempt under the Internal Revenue Code pursuant to §501(c) with a permanent headquarters and staff.

(c) A certifying organization approved by the board under subsection (b) of this section must be reviewed every five years from the date of initial approval. As part of this review, the certifying organization must:

(1) submit payment of the \$200.00 renewal fee, and

(2) submit to the board, information of any substantive changes in the certifying organization's requirements for diplomates since the certifying board was last reviewed by the board.

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

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## CHAPTER 165. MEDICAL RECORDS

### 22 TAC §§165.1 - 165.9

The Texas Medical Board (Board) proposes the repeal of current Chapter 165, concerning Medical Records, §§165.1 - 165.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 165 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed repeals.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed repeals.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§165.1. *Medical Records.*

§165.2. *Medical Record Release and Charges.*

§165.3. *Patient Access to Diagnostic Imaging Studies in Physician's Office.*

§165.4. *Appointment of Record Custodian of a Physician's Records.*

§165.5. *Transfer and Disposal of Medical Records.*

§165.6. *Medical Records Regarding an Abortion on an Unemancipated Minor.*

§165.7. *Definitions.*

§165.8. *Abortion Ban Exception Performance and Documentation.*

§165.9. *Complaints Regarding Abortions Performed.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §§166.1 - 166.7

The Texas Medical Board (Board) proposes the repeal of current Chapter 166, concerning Physician Registration, §§166.1 - 166.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 166 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§166.1. *Physician Registration.*

§166.2. *Continuing Medical Education.*

§166.3. *Retired Physician Exception.*

§166.4. *Expired Registration Permits.*

§166.5. *Relicensure.*

§166.6. *Exemption from Registration Fee for Retired Physician Providing Voluntary Charity Care.*

§166.7. *Report of Impairment on Registration Form.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 167. REINSTATEMENT AND REISSUANCE

### 22 TAC §§167.1 - 167.8

The Texas Medical Board (Board) proposes the repeal of current Chapter 167, concerning Reinstatement and Reissuance, §§167.1 - 167.8.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 167 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§167.1. *Reinstatement or Reissuance of Medical License Following Suspension or Revocation.*

§167.2. *Procedure for Requests for Reinstatement.*

§167.3. *Disposition of Application for Request for Reissuance of a Revoked License.*

§167.4. *Best Interests of the Public.*

§167.5. *Best Interests of Physician.*

§167.6. *Final Action.*

§167.7. *Judicial Review.*

§167.8. *Certain Persons Ineligible for Reinstatement or Reissuance of License.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 168. CRIMINAL HISTORY EVALUATION LETTERS

### 22 TAC §168.1, §168.2

The Texas Medical Board (Board) proposes the repeal of current Chapter 168, concerning Criminal History Evaluation Letters, §168.1 and §168.2.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 168 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals are in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§168.1. *Purpose.*

§168.2. *Criminal History Evaluation Letters.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 169. AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

The Texas Medical Board (Board) proposes the repeal of current Chapter 169, concerning Authority of Physicians to Supply Drugs, §§169.1 - 169.8.

The Board also proposes new Chapter 169, concerning Delegation. This includes new Subchapter A, concerning Definitions and General Provisions, §169.1 and §169.2; Subchapter B, concerning Physician Assistants and Advanced Practice Registered Nurses, §169.5; Subchapter C, concerning Emergency Medical Services, §§169.10 - 169.15; Subchapter D, concerning Pharmacists, §169.20; and Subchapter E, concerning Other Delegated Acts, §§169.25 - 169.28.

Also, the Board contemporaneously proposes the repeal of current Chapter 193, concerning Standing Delegation Orders, §§193.1 - 193.13, and current Chapter 197, concerning Emergency Medical Services, §§197.1 - 197.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 169 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and section are as follows:

### SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS.

New §169.1, Definitions, explains words and terms used in new Chapter 169.

New §169.2, General Responsibilities of Delegating Physician, explains what is required of a physician delegating any medical act.

### SUBCHAPTER B. PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES.

New §169.5, Delegation to a Physician Assistant or Advanced Practice Registered Nurse, explains requirements for a physician delegating medical acts to a physician assistant or an advanced practice registered nurse.

### SUBCHAPTER C. EMERGENCY MEDICAL SERVICES.

New §169.10, Definitions, explains the resources for definitions of words and terms used in Subchapter C of new Chapter 169, as applied to physician supervision of emergency medical service (EMS) personnel.

New §169.11, Medical Supervision, explains the statutory authority physicians providing medical control and medical supervision of EMS providers must adhere to.

New §169.12, Medical Director Qualifications, explains the requirements for a physician to be a medical director of EMS services.

New §169.13, Medical Director Responsibilities, explains the responsibilities of a physician acting as medical director of EMS services.

New §169.14, Limits on Off-Line Medical Control, explains the limit on the number of EMS providers an off-line medical director may supervise.

New §169.15, Other Physician Presence at Medical Emergency, explains how care should be provided by another physician, other than an EMS medical director, at the scene of an emergency.

#### SUBCHAPTER D. PHARMACISTS.

New §169.20, General Standards, explains the general standards expected when a physician delegates to a licensed pharmacist in Texas. Drug therapy management, immunizations, and vaccinations may be authorized by the physician to be performed by the pharmacist under an order, standing medical order, standing delegation order, or protocol.

#### SUBCHAPTER E. OTHER DELEGATED ACTS.

New §169.25, Other Delegation, explains that delegation is required for non-surgical cosmetic procedures and other medical practices involving administration of other substances for human consumption.

New §169.26, General Standards, explains the responsibilities relating to the delegating physician for other medical procedures.

New §169.27, Physician Responsibilities related to Written Order, explains minimum requirements for orders provided to a non-physician performing delegated acts involving administration of substances for human consumption.

New §169.28, Notice and Identification Provisions, explains notice and identification requirements when performing these other delegated acts.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language in the rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has con-

sidered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/9LtjNnzmD>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### **22 TAC §§169.1 - 169.8**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-

laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§169.1. *Purpose.*

§169.2. *Definitions.*

§169.3. *Administration of Drugs.*

§169.4. *Providing, Dispensing, or Distributing Drugs.*

§169.5. *Exceptions.*

§169.6. *Administration or Provision of Drugs in Licensed Facilities.*

§169.7. *Record Keeping.*

§169.8. *Policy.*

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

Filed with the Office of the Secretary of State on September 6, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 169. DELEGATION

### SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

#### 22 TAC §169.1, §169.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§169.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise:

(1) Administer--To directly apply a prescription drug to the body of a patient by any means, including injection, inhalation, or ingestion, by a physician or an individual acting under the delegation and supervision of a physician.

(2) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in and as described under the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(3) Dangerous drug--A device or a drug that is unsafe for self-medication and that is not included in the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

(4) Device--Means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or that is designed or intended to affect the structure or any function of the body of a human.

(5) Drug therapy management--The performance of patient specific acts by pharmacists as authorized by a physician through a written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician-initiated protocol.

(6) Human consumption--The injection, inhalation, ingestion, or application of a substance to or into a human body.

(7) Medication order--An order from a practitioner or a practitioner's designated agent for administration of a drug or device, as defined by §551.003 of the Occupations Code, or an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital, as defined by Texas Health and Safety Code, §481.002.

(8) Midlevel practitioner--A physician assistant or advanced practice registered nurse.

(9) Nonprescription drug--A nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state and federal law.

(10) Prescribe or order a drug or device--Prescribing or ordering a drug or device, including the issuing of a prescription drug order or medication order.

(11) Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device and can be sold only to persons with prescriptive authority in the state in which they reside.

(12) Protocols--Written authorization delegating authority to initiate medical aspects of patient care, including delegation of the act of prescribing or ordering a drug or device at a facility-based practice. Prescriptive authority agreements may reference or include the terms of a protocol(s).

(13) Standing delegation order--Written instructions, orders, rules, or procedures designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. This type of order provides a general set of conditions and circumstances when action can be instituted prior to being examined or evaluated by a physician. Standing delegation orders may permit the administering or providing of the following types of dangerous drugs if specifically ordered by or using a pre-signed prescription from the delegating physician:

(A) oral contraceptives;

(B) diaphragms and contraceptive creams and jellies;



- (C) topical anti-infectives for vaginal use;
- (D) oral anti-parasitic drugs for treatment of pinworms;
- (E) topical anti-parasitic drugs;
- (F) antibiotic drugs for treatment of venereal disease; or
- (G) immunizations.

(14) Standing medical orders--Generally applicable orders, which are used as a guide in preparation for and carrying out medical acts or surgical procedures or both after patients have been evaluated by the physician or midlevel provider under delegation.

(15) Written protocol --A physician's order, standing medical order, standing delegation order, or other physician order or protocol.

§169.2. General Responsibilities of Delegating Physician.

(a) When delegating any medical act, a delegating physician must comply with Chapter 157 of the Act. Delegation must be through written protocols or prescriptive authority agreements depending on the type of delegate and the medical acts being delegated.

(b) General standards for Standing Delegation Orders, Standing Medical Orders, and Protocols require:

- (1) development and approval by the delegating physician or in accordance with facility bylaws and policies;
- (2) the order or protocol to be in writing and signed by the delegating physician;
- (3) a description of the specific instructions, orders, protocols, or procedures to be followed;
- (4) a notation of the level of supervision required, unless specified by other law;
- (5) plans for addressing patient emergencies;
- (6) annual review signed by the delegating physician; and
- (7) maintenance at the facility or practice site.

(c) These requirements may be different or modified as set out in the specific subchapters below. The specific provisions in a subchapter control over the general standards.

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

Filed with the Office of the Secretary of State on September 6, 2024.

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 Scott Freshour  
 General Counsel  
 Texas Medical Board  
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 For further information, please call: (512) 305-7030



**SUBCHAPTER B. PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES**

**22 TAC §169.5**

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §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. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§169.5. Delegation to a Physician Assistant or Advanced Practice Registered Nurse.

(a) When delegating to a physician assistant or an advanced practice registered nurse, a physician must comply with Chapter 157 of the Act.

(b) In accordance with §157.0511(b-2), a delegating physician must register with the board the following information within 30 calendar days of the delegation:

- (1) the name and license number of the physician assistant or advanced practice registered nurse;
- (2) the beginning date of the delegation; and
- (3) the location(s) where the delegate(s) practice.

(c) The delegating physician must notify the board in writing of the termination of delegation authority within 30 calendar days of termination. Any party to the agreement may submit the notice of termination.

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

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 Scott Freshour  
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**SUBCHAPTER C. EMERGENCY MEDICAL SERVICES**

**22 TAC §§169.10 - 169.15**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with

the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§169.10. Definitions.

The definitions found in the Health and Safety Code, Chapter 773, and Title 25, Texas Administrative Code, Chapter 157, including medical control, medical direction, medical oversight, medical supervision, and off-line medical direction, apply to physician supervision of emergency medical service (EMS) personnel under this subchapter.

§169.11. Medical Supervision.

Physicians providing medical control and medical supervision of emergency medical service (EMS) providers are subject to Chapter 157 of the Act and the board rules related to physician supervision and delegation.

§169.12. Medical Director Qualifications.

(a) In addition to holding an active Texas medical license, a medical director must meet all applicable standards as set forth in Title 25, Texas Administrative Code, Chapter 157 (related to Emergency Medical Care) for the emergency medical service (EMS) services being provided, training, education, and other delineated responsibilities.

(b) A medical director must complete one of the following requirements:

(1) a minimum of 12 hours of formal continuing medical education (CME), in the area of EMS medical direction within two years of initial notification to the Board of becoming a medical director;

(2) board certification in Emergency Medical Services by either the American Board of Medical Specialties or American Osteopathic Association; or

(3) a Texas Department of State Health Services (DSHS) approved EMS medical director course.

(c) A medical director must complete one hour of formal CME in the area of EMS medical direction in each subsequent biennial renewal of the registration.

§169.13. Medical Director Responsibilities.

A Medical Director must:

(1) register with the board on an approved form and provide all required documentation requested;

(2) review, approve, and sign protocols and/or standing delegation orders of emergency medical service (EMS) providers regarding:

(A) prehospital care, to be provided by EMS personnel;

(B) patient transport standards (voluntary and involuntary);

(C) criteria for selection of a patient's destination; and

(D) standard of care to be provided, patient care incidents, patient complaints, and deviations from established protocols.

(3) assist in developing, implementing, and revising protocols and/or standing delegation orders, as appropriate; and

(4) monitor compliance with protocols and standing orders by EMS providers.

§169.14. Limits on Off-Line Medical Control.

(a) If the medical control is provided as an off-line medical director, the medical director may not supervise more than 20 emergency medical service (EMS) providers unless a written request for a waiver is submitted to the board on the board approved form.

(b) Once received, the board will forward the waiver request to the Texas Department of State Health Services (DSHS). If approved, the board will update the registration as appropriate.

§169.15. Other Physician Presence at Medical Emergency.

(a) In the event a physician who is not the medical director is present at the scene of an emergency, the care provided by that physician must be appropriate for the circumstances.

(b) The medical director and physician present must communicate and coordinate care as appropriate under the circumstances.

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

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## SUBCHAPTER D. PHARMACISTS

### 22 TAC §169.20

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §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. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§169.20. General Standards.

(a) In accordance with §157.001 and §157.101 of the Act, a physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the performance of specific acts of drug therapy management, immunizations and vaccinations authorized by the physician through the physician's order, standing medical order, standing delegation order, other order, or protocol.

(b) A written protocol or order for drug therapy management must contain at a minimum:

(1) the identity of the physician and the pharmacist engaging in drug therapy management;

(2) the condition requiring drug therapy;

(3) the drugs to be used drug therapy management authorized, including allowing generically equivalent drug selection unless otherwise indicated; and

(4) the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority, including maintaining a record for each patient.

(c) A written protocol or order for immunizations and vaccination must contain at a minimum:

(1) the location(s) at which the pharmacist may administer immunizations or vaccinations;

(2) the immunizations or vaccinations that may be administered;

(3) procedures to follow when administering immunizations or vaccinations including:

(A) a requirement that if the patient is under 14 years of age, they have a physician referral;

(B) procedures if adverse reactions occur; and

(C) a requirement to report to the delegating physician the administration of the immunization or vaccination within 24 hours after administration.

(D) A periodic review and update, if necessary, of a written protocol for drug therapy management, immunizations, and vaccinations are required.

(E) A physician who provides care to persons over 65 years of age must comply with Chapter 161.0052 of the Texas Health and Safety Code regarding pneumococcal and influenza vaccines.

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

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## SUBCHAPTER E. OTHER DELEGATED ACTS

### 22 TAC §§169.25 - 169.28

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §169.25. Other Delegation.

(a) In accordance with §157.001 of the Act, the board determined the following to be the practice of medicine and such medical acts can be properly delegated and supervised:

(1) nonsurgical medical cosmetic procedures, including but not limited to the injection of medication or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes; and

(2) using a device to administer for human consumption a nonprescription drug, dangerous drug, or controlled substance.

(b) This does not include those delegations specifically authorized and described in Chapter 157 of Act or to procedures performed at a physician's practice by the physician or midlevel practitioners acting under the physician's supervision.

#### §169.26. General Standards.

(a) The delegating physician must ensure the individual performing these medical acts:

(1) has appropriate training regarding:

(A) techniques for the delegated act including pre-procedural care, post-procedural care, and infectious disease control;

(B) contraindications for the delegated act; and

(C) recognition and acute management of potential complications; and

(2) signs and dates a written protocol.

(b) A physician must either be appropriately trained or be familiar with and able to perform the delegated medical act according to the standard of care;

(c) Prior to performance of the delegated act, a physician, or a midlevel practitioner acting under the delegation of a physician, must:

(1) establish a practitioner-patient relationship;

(2) complete and maintain an adequate medical record in accordance with Chapter 163 of this title;

(3) disclose the identity and title of the individual who will perform the delegated act; and

(4) ensure at least one person trained in basic life support is present while the patient is onsite.

(d) A physician or midlevel practitioner must either:

(1) be onsite during the procedure; or

(2) be immediately available for emergency consultation in the event of an adverse outcome; and

(3) if necessary, the physician must be able to conduct an emergency appointment with the patient.

#### §169.27. Physician Responsibilities Related to Written Order.

(a) A physician may delegate acts under this subsection only if the physician has either:

(1) reviewed and approved in writing the business' or facility's existing written order; or

(2) developed their own written orders for the delegated acts.

(b) The written order must include:

(1) the identity of the delegating physician responsible for the delegation of the procedure;

(2) selection criteria for screening patients;

(3) a description of appropriate care; and

(4) procedures for common complications, serious injuries, or emergencies, including communication or feedback to the delegating physician or midlevel practitioner.

§169.28. Notice and Identification Provisions.

(a) Any individual, business, or facility providing any of the delegated acts under this subsection must post the following in each public area and treatment room:

(1) the notice of how to file a complaint with the board required under §177.2 of this title (relating to Mandatory Complaint Notification); and

(2) the name(s) of the delegating physician(s) including their Texas medical license number.

(b) Each person performing a delegated act under this subsection must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

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

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## CHAPTER 170. PRESCRIPTION OF CONTROLLED SUBSTANCES

The Texas Medical Board (Board) proposes the repeal of current Chapter 170, concerning Prescription of Controlled Substances. This includes Subchapter A, concerning Pain Management, §§170.1 - 170.3; Subchapter B, concerning Utilization of Opioid Antagonists, §§170.4 - 170.8; Subchapter C, concerning Prescription Monitoring Program Check, §170.9; and Subchapter D, concerning Electronic Prescribing of Controlled Substances, §170.10.

The Board also proposes new Chapter 170, concerning Standards for Use of Investigational Agents. This includes new Subchapter A, concerning Standards for Use of Investigational Drugs, Biological Products, or Devices, §170.1, and Subchapter B, concerning Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, §170.5 and §170.6.

Also, the Board contemporaneously proposes the repeal of current Chapter 198, concerning Standards For Use of Investigational Agents. This includes Subchapter A, concerning Standards For Use of Investigational Drugs, Biological Products, Or Devices, §§198.1 - 198.4; and Subchapter B, concerning Investi-

gational Stem Cell Treatments For Patients With Certain Severe Chronic Diseases Or Terminal Illnesses, §198.5 and §198.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 170 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES.

New §170.1, General Standards for Use of Investigational Agents, explains the standards required of a physician who administers or provides for the use of investigational agents, drugs, biological products, or devices.

### SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES.

New §170.5, General Standards for the Use of Investigational Stem Cell Treatments for Patients with Severe Chronic Diseases or Terminal Illnesses, explains the standard required of a physician who administers or provides for the use of Investigational Stem Cell treatments in patients.

New §170.6, Annual Reporting of Clinical Trial of Investigational Stem Cell Treatments, outlines reports required to be submitted to the board by IRBs overseeing clinical trials of investigational stem cell treatments.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed repeals and new sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/dN5CVcxeKm>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. PAIN MANAGEMENT

### 22 TAC §§170.1 - 170.3

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§170.1. *Purpose.*

§170.2. *Definitions.*

§170.3. *Minimum Requirements for the Treatment of Chronic Pain.*

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. UTILIZATION OF OPIOID ANTAGONISTS

### 22 TAC §§170.4 - 170.8

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§170.4. *Purpose.*

§170.5. *Definitions.*

§170.6. *Opioid Antagonist Prescription Guidelines.*

§170.7. *Liability for Act or Omission with Respect to Prescribing an Opioid Antagonist.*

§170.8. *Documentation.*

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

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## SUBCHAPTER C. PRESCRIPTION MONITORING PROGRAM CHECK

### 22 TAC §170.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

*§170.9. Prescription Monitoring Program Check.*

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

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## SUBCHAPTER D. ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

### 22 TAC §170.10

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

*§170.10. Electronic Prescribing of Controlled Substances.*

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

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## CHAPTER 170. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

## SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES

### 22 TAC §170.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

*§170.1. General Standards for Use of Investigational Agents.*

(a) Pursuant to Chapter 489 of the Texas Health and Safety Code, a physician who administers or provides for the use of investigational drugs, biological products, or devices must:

(1) comply with all applicable state and federal laws and rules;

(2) meet the standard of care;

(3) comply with ethical standards including Declaration of Helsinki and the Belmont Report;

(4) maintain adequate medical records; and

(5) document the proposed investigational agent to be used:

(A) is included in an FDA/NIH approved protocol or study; or

(B) is approved by an Institutional Review Board (IRB) meeting standards under subsection (b) of this section.

(b) The approving IRB must be:

(1) affiliated with an academic setting or a Texas-licensed hospital;

(2) accredited by the Association for the Accreditation of Human Research Protection Programs, Inc.

(3) registered by the U.S. Department of Health and Human Services Office for Human Research Protection, pursuant to 21 CFR Part 56; or

(4) accredited by a national accrediting organization recognized by the board.

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

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## SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

### 22 TAC §170.5, §170.6

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§170.5. General Standards for the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.

In accordance with Chapter 1003 of the Texas Health and Safety Code, physicians who administer or provide for the use of investigational stem cell treatments must:

- (1) comply with all applicable state and federal laws and rules;
- (2) be certified to administer stem cell in accordance with §1003.055 of the Texas Health and Safety Code;
- (3) ensure the patient is enrolled in a clinical trial investigating the use of adult stem cells in humans;
- (4) maintain adequate medical records including documentation of the patient's qualifying severe chronic disease or terminal illness;
- (5) obtain a signed written informed consent including the patient eligibility determination found in §1003.053(2)(a) of the Texas Health and Safety Code; and
- (6) provide stem cells in a qualifying facility.

§170.6. Annual Reporting of Clinical Trial of Investigational Stem Cell Treatments.

(a) In accordance with Chapter 1003 of the Texas Health and Safety Code, each IRB overseeing clinical trials of investigational stem cell treatments must submit an annual report to the board that:

- (1) sets forth the study's current findings;
- (2) specifies the number of patients participating in the trial(s);
- (3) documents the treatment results for patients, as applicable;
- (4) generally describes the effects of the treatments including all adverse events;
- (5) outlines the study's findings to date;
- (6) identifies the medical school or hospital the IRB is affiliated with;
- (7) provides the location where the patients' treatments were provided in accordance with §1003.055 of the Texas Health and Safety Code; and

(8) includes the names of all physicians certified by the IRB or the affiliated entity and the time-period of that certification.

(b) The annual report shall not include any patient identifying information.

(c) The annual report shall cover the time period beginning September 1 and ending on August 31.

(d) The report must be submitted to the board before the end of the calendar year in which the reporting time period ends.

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

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## CHAPTER 171. POSTGRADUATE TRAINING PERMITS

The Texas Medical Board (Board) proposes the repeal of current Chapter 171, concerning Postgraduate Training Permits, §§171.1 - 171.6.

The Board also proposes new Chapter 171, concerning New Complementary and Alternative Medicine Standards, §171.1 and §171.2.

Also, the Board contemporaneously proposes the repeal of current Chapter 200, concerning Standards For Physicians Practicing Complementary And Alternative Medicine, §§200.1 - 200.3.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 171 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §171.1, Definitions, defines terms used in the chapter.

New §171.2, Required Consent and Disclosure, details the required written consent and disclosure form required prior to the patient's treatment by the physician using complementary or alternative medicine.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there

will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; an

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/sytKBdXtLz>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§171.1 - 171.6

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§171.1. *Purpose.*

§171.2. *Construction.*

§171.3. *Physician-in-Training Permits.*

§171.4. *Board Approved Fellowships.*

§171.5. *Duties of PIT Holders to Report.*

§171.6. *Duties of Program Directors to Report.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 171. NEW COMPLEMENTARY AND ALTERNATIVE MEDICINE STANDARDS

### 22 TAC §171.1, §171.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§171.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise

(1) Alternative medicine--methods of diagnosis, treatment, or interventions that are not generally considered as conventional treatment or medicine and may or may not be regulated by the FDA. These



treatments may be offered for potential for therapeutic gain that are not unreasonably outweighed by the risk of such methods.

(2) Complementary medicine--the use of a combination of conventional medicine and some form of alternative medicine.

(3) Conventional medicine--methods of diagnosis, treatment, or interventions are generally considered routine treatments and medicine by the majority of licensed physicians.

(4) Off-label usage--use of an FDA approved drug, treatment, or device in a manner that has not been approved, or proven safe and effective, by the FDA or to treat a disease or medical condition for which it is being offered. Off-label use may be alternative, complementary, or conventional medicine.

§171.2. Required Consent and Disclosure.

(a) Prior to providing any complementary or alternative drug, treatment, device, or intervention, the physician and patient must review and execute the below disclosure and consent form. The fully-executed form must be included in the patient's medical records. Other than translation into another language or format for the patient, this form may not be changed, modified, or altered in any manner other than by adding additional pages with supplemental information as necessary.

(b) The physician practicing complementary and alternative medicine must follow all statutes and rules including requirements for maintaining adequate medical records. Physicians must also document and maintain within the medical record the information either as set forth in the form below or in an alternate format that contains at least the information requested in the form below:

Figure: 22 TAC §171.2(b)

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

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) proposes the repeal of current Chapter 172, concerning Temporary and Limited Licenses. This includes Subchapter A, concerning General Provisions and Definitions, §172.1 and §172.2; Subchapter B, concerning Temporary Licenses, §§172.3 - 172.11; Subchapter C, concerning Limited Licenses, §§172.12, 172.13, 172.15 - 172.19; Subchapter D, concerning Disaster Emergency Rule, §172.20 and §172.21.

The Board also proposes new Chapter 172, concerning Pain Management Clinics, §§172.1 - 172.5.

Also the Board contemporaneously proposes the repeal of current Chapter 195, concerning Pain Management Clinics, §§195.1 - 195.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 172 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §172.1, Definitions, defines the various forms of pain that implicates need of Pain Management Clinic Registration.

New §172.2, Gold Designated Practice, explains the eligibility criteria and application process for the Gold Practice designation.

New §172.3, Certification of a Pain Management Clinic, explains which clinics must register as a Pain Management Clinic and the procedures and information needed for processing certificate applications.

New §172.4, Minimum Operational Standards, explains minimum standards for any physician treating a pain patient.

New §172.5, Audits, Inspections, and Investigations, explains the board's regulatory actions of audits, inspections, and investigations. It details the information requested and the process followed by the board during these actions.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/7RY3QA7SbK>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §§172.1, §172.2

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§172.1. *Purpose.*

§172.2. *Construction and Definitions.*

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §§172.3 - 172.11

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§172.3. *Distinguished Professors Temporary License.*

§172.4. *State Health Agency Temporary License.*

§172.5. *Visiting Physician Temporary Permit.*

§172.6. *Visiting Professor Temporary License.*

§172.7. *National Health Service Corps Temporary License.*

§172.8. *Faculty Temporary License.*

§172.9. *Postgraduate Research Temporary License.*

§172.10. *Department of State Health Services Medically Underserved Area (DSHS-MUA) Temporary License.*

§172.11. *Temporary Licensure--Regular.*

The agency certifies that legal counsel has reviewed the proposal 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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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §§172.12, 172.13, 172.15 - 172.19

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with

the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§172.12. *Out-of-State Telemedicine License.*

§172.13. *Conceded Eminence.*

§172.15. *Public Health License.*

§172.16. *Provisional Licenses for Medically Underserved Areas.*

§172.17. *Limited License for Practice of Administrative Medicine.*

§172.18. *Military Limited Volunteer License.*

§172.19. *Sports Team Physician Limited License.*

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

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## SUBCHAPTER D. DISASTER EMERGENCY RULE

### 22 TAC §172.20, §172.21

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§172.20. *Physician Practice and Limited License for Disasters and Emergencies.*

§172.21. *Other Health Care Providers Practice and Limited License for Disasters and Emergencies.*

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

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## CHAPTER 172. PAIN MANAGEMENT CLINICS

### 22 TAC §§172.1 - 172.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 168 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §172.1. *Definitions.*

Pain management clinics at which a majority of patients are treated for chronic pain are subject to Chapter 168 of the Act, unless otherwise exempted. In determining if the clinic is treating a majority of patients for chronic pain, one of the primary indicators is the prescribing of opioids. The board will utilize the following definitions in making that determination:

(1) Acute pain--the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited to no later than 30 days from the date of the initial prescription for opioids during a period of treatment related to the acute condition or injury. Acute pain does not include, chronic pain, pain being treated as part of cancer care; pain being treated as part of hospice or other end-of-life care; pain being treated as part of palliative care; or post-surgical, post-procedure, or persistent non-chronic pain.

(2) Chronic pain--pain that is not relieved with acute, post-surgical, post-procedure, or persistent non-chronic pain treatment. This type of pain is associated with a chronic pathological process that causes continuous or intermittent pain for no less than 91 days from the date of the initial prescription for opioids. Medical practices treating this type of pain patient may be subject to Chapter 168 of the Act.

(3) Post-surgical, post-procedure, persistent non-chronic pain--pain that occurs due to trauma caused by the surgery or procedure; or an underlying condition, disease, or injury causing persistent non-chronic pain. These types of pain last 90 days or less, but more than 30 days, from the date of initial prescriptions for opioids during a period of treatment.

#### §172.2. *Gold Designated Practice.*

(a) A clinic may apply to be designated as a "Gold Designated Practice." In order to be eligible for a "Gold Designated Practice" status, a clinic must:

(1) complete a board-approved application form;

(2) provide a Medical Home Agreement, written collaborative, coordinated care agreement or memorandum of understanding to provide management and treatments of pain, that describes measures that it provides and may be used for reduction of pain such as, but not limited to:

(A) multimodal treatment such as surgery, injections, pain pumps, osteopathic manipulation, epidurals, trigger point injections, dry needling, and topical creams or patches;

(B) multi-disciplinary practices such as medication assisted tapering and weaning, computer-based training pain coaching, acupuncture, chiropractic, physical therapy, massage, and exercise/movement; or

(C) collaborative care or other behavioral health integration services such as evidenced-based cognitive behavioral therapy interventions for mental health and pain reduction, medication management and opioid weaning, patient-centered education, regular monitoring and assessments of clinical status using validated tools, assessment of treatment adherence, motivational interviewing, and a structured approach to improving the biopsychosocial aspects of pain management; and

(3) In addition to providing a Medical Home Agreement, written collaborative, coordinated care agreement, or memorandum of understanding to provide management and treatments of pain described above, the clinic must either:

(A) meet the standards for exemption under §168.002(7) of the Act, including the clinic being operated by a majority of physicians who currently hold or previously held ABMS or AOA board-certification or subspecialty certification in pain management; and

(i) have a majority of physicians performing or properly supervising delegates in providing other forms of treatment besides qualifying pain management prescriptions to a majority of the patients at the clinic;

(ii) utilization by the clinic's providers of a Medical Home Agreement signed by the primary prescriber and the patient; or

(iii) have a written collaborative, coordinated care agreement or a memorandum of understanding with the patient's primary physician for treating and managing the patient; or

(B) be a Certified Pain Management Clinic (PMC) that is operated by physicians who previously held an ABMS or AOA Board-certification or sub-specialty in pain management or hold an ABMS or AOA Board-certification in an area that is eligible for a pain management subspecialty; and

(i) have a Medical Home Agreement signed by the primary prescriber and the patient; or

(ii) have a written collaborative, coordinated care agreement or memorandum of understanding providing that each physician who prescribes qualifying prescriptions will consult with a pain specialist for the patient.

(b) The designation may be verified by an initial audit and is valid for five years.

(c) No further audits or inspections will be conducted during the five-year "Gold Designated Practice" period, unless:

(1) a complaint is received or initiated by the board concerning operation of the clinic or operators at the clinic;

(2) the clinic changes location; or

(3) the clinic's ownership structure changes to a majority of new owners.

(d) Practices that only treat pain patients as part of cancer care or that provide only palliative care, hospice, or other end-of-life care are exempt under the Act from certification requirements as a PMC, but do not qualify for the "Gold Designated Practice" status.

§172.3. Certification of Pain Management Clinics.

(a) Any clinic meeting the definition of a pain management clinic under §168.001 of the Act must be certified.

(b) Certification requires:

(1) a board-approved application filed by a physician owner of the clinic. If there are multiple physician owners, the application must be filed by one of the majority of owners, or if there are no majority owners, then each physician owner is responsible for designating one physician owner to file an application.

(2) submission of the following documentation:

(A) proof of ownership of the clinic, which may include filing with county clerks, the Comptroller and Secretary of State, as applicable;

(B) days and hours of operation;

(C) name of medical director;

(D) list of employees, including contract physicians and other healthcare providers, and their applicable education, qualifications, training and professional licenses;

(E) protocols and standing delegation orders issued by licensed physicians to healthcare providers; and

(F) proof of payment of the required filing fee.

(c) The Executive Director (ED) or the ED's designee reviews all applications. After reviewing the applications, the ED will send a notice of determination to the applicant which includes the ED's determination. If the application is denied, then the ED will provide the information regarding the right to appeal.

(d) Before 180 days after the expiration of the clinic's certificate, a clinic seeking renewal must submit:

(1) a board-approved application;

(2) documentation that establishes all providers at the clinic involved in any part of patient care have completed at least ten hours of continuing education related to pain management in the preceding two years; and

(3) the required renewal fees.

(e) If there is any investigation pending with the board against any owner or certificate holder at the time of renewal, a provisional renewal will be issued until the investigation is resolved.

(f) Initial applications are valid for one year from the date filed, unless expressly extended by board staff.

(g) All records relating to an application or renewal of certification are considered investigative information and are confidential under §164.007 of the Act.

(h) A request to cancel a certificate must be accompanied by proof that the clinic no longer meets the definition of a pain management clinic under §168.001 of the Act.

§172.4. Minimum Operational Standards for the Treatment of Pain Patients.

(a) Physicians treating a pain patient must:

(1) operate in compliance with provisions of all applicable federal and state laws;

(2) follow the standard of care; and

(3) maintain complete, contemporaneous, and legible medical records, in the same manner as a non-pain patient, and include documentation of:

(A) monitoring efficacy, daily functionality, description of pain relief;

(B) mandatory PMP checks;

(C) pain contracts, if applicable;

(D) support for billing; and

(E) drug testing results and other forms of monitoring for patient compliance with treatment recommendations.

(b) For pain patients transferring their care to a new treating physician at a Gold Designated Practice, the following applies:

(1) The new treating physician must:

(A) document an initial problem focused exam;

(B) document a PMP check; and

(C) request medical records from the prior treating physician(s) within 15 business days of seeing the patient.

(2) The new physician may provide only a one-time 30-day maximum non-refillable prescription of pain medication at the initial visit.

(3) If the requested medical records are not received within 15 business days after the initial request, the physician must perform the following before issuing any other prescriptions for pain treatment to the patient:

(A) a complete history and physical, including assessment of abuse or diversion potential;

(B) diagnostic testing and obtain the results to verify pain sources or etiology, if applicable;

(C) drug testing; and

(D) a PMP check.

#### §172.5. Audits, Inspections, and Investigations.

(a) Audits.

(1) Audits are non-disciplinary reviews:

(A) conducted as an off-site document review; and

(B) initiated by a board subpoena request for documents as necessary to determine or verify:

(i) exemption from application of Chapter 168 of the Act;

(ii) need to certify as a PMC; or

(iii) no certification requirement.

(2) A total of 30 patients' records will be reviewed during an audit. The relevant portions of the 30 records to be reviewed are the initial visit; last two office visits; referrals; procedures notes/logs; consultation requests; consult notes, and prior authorization records, if any. These records will be a combination of new patients seen in one of the last two calendar months and established patients seen in the previous six calendar months with a minimum of 10 records for each type.

(3) Documents requested may also include those used to verify personnel training, qualifications, and general compliance with Chapter 168 of the Act and related rules.

(4) Upon completion of the audit, the board will issue a notice of determination to the audited clinic owner. The notice of determination will specify:

(A) Deficiencies, if any; and

(B) If necessary, any corrective actions the clinic must take, including a requirement to apply for certification.

(b) Inspections.

(1) Inspections are non-disciplinary reviews:

(A) done on both certified and non-certified clinics in accordance with §168.052 of the Act; and

(B) usually conducted on-site but may also be off-site, as determined by board staff.

(2) The following patient records will be reviewed during an inspection, as determined by board staff: patients seen during two calendar months out of the previous eight months from the date of the inspection.

(3) For certified pain management clinics, inspections are conducted to verify compliance with Chapter 168 of the Act and the applicable laws and rules.

(4) For non-certified clinics, inspections are conducted to determine if the clinic is subject to be certified under Chapter 168 of the Act.

(5) In accordance with §168.052(b) of the Act, to initiate an inspection the board has determined the following grounds can be utilized, but are not limited to:

(A) PMP reports;

(B) patient population analysis, including review of patients coming from outside the immediate geographic location of the clinic;

(C) common addresses for multiple patients;

(D) notices to providers from the Pharmacy Board regarding a patient having multiple prescribing providers;

(E) complaints about the clinic and its operation; and

(F) law enforcement reports regarding providers or patients.

(6) Notice of intent to inspect will be provided at least five days in advance unless such timing would compromise the inspection.

(7) Notice of inspection results will be provided in writing to the clinic.

(8) If the inspection determines instances of non-compliance, the board will determine appropriate action to obtain compliance.

(c) Investigations may be conducted due to a complaint received or initiated by the board. An investigation will be conducted in accordance with the provisions of this Title and all applicable board rules.

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404319



## CHAPTER 173. PHYSICIAN PROFILES

The Texas Medical Board (Board) proposes the repeal of current Chapter 173, concerning Physician Profiles, §§173.1 - 173.5, and §173.7.

The Board also proposes new Chapter 173, concerning Office-Based Anesthesia Services, §§173.1 - 173.5.

Also, the Board contemporaneously proposes the repeal of current Chapter 192, concerning Office-Based Anesthesia Services, §§192.1 - 192.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 173 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §173.1, General Definitions, defines terms used in new Chapter 173.

New §173.2, Standards for Anesthesia Services, explains the standards and minimum equipment requirements when providing anesthesia services in an outpatient setting.

New §173.3, Specific Requirements Based on Level of Anesthesia Provided, explains the additional standards applicable to outpatient settings based upon the level of anesthesia being provided in Level I, Level II, Level III, and Level IV anesthesia services.

New §173.4, Registration, explains the process in which a physician providing anesthesia services or performing a procedure for anesthesia services are provided in an outpatient setting (excluding Level I services) must register with the board.

New §173.5, Inspections, explains that the board may conduct inspections for the purpose of enforcing Office-Based Anesthesia rules.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each

year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/OJHZyixFBb>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

**22 TAC §§173.1 - 173.5, 173.7**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§173.1. *Profile Contents.*

§173.2. *Profile Update and Correction Form.*

§173.3. *Physician-Initiated Updates.*

§173.4. *Updates to the Physician's Profile Due to Board Action.*

§173.5. *Updates to the Physician's Profile Due to Information Received by a Third Party.*

§173.7. *Corrections and the Dispute Process.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## CHAPTER 173. OFFICE-BASED ANESTHESIA SERVICES

### 22 TAC §§173.1 - 173.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed under the authority of §162; and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles, or codes are affected by this proposal.

§173.1. *General Definitions.*

The following words and terms when used in this chapter shall have the following meanings, unless the contents indicate otherwise:

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

(4) Analgesics--Dangerous or scheduled drugs that alleviate pain, but not including non-opioid based drugs such as acetaminophen or non-steroidal anti-inflammatory drugs (NSAIDs).

(5) Anesthesia--Use of local anesthetics (in amounts that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care), analgesics, anxiolytics, or hypnotics to create a loss of feeling or sensation by interrupting or depressing nerve function.

(6) Anesthesia Services--The use of anesthesia for the performance of Level II- IV services.

(7) Anxiolytics--Dangerous or scheduled drugs used to provide sedation or to treat episodes of anxiety.

(8) ASHI--American Safety and Health Institute.

(9) ASA--American Society of Anesthesiologists.

(10) BLS--Basic Life Support, as defined by the AHA.

(11) Certified registered nurse anesthetist (CRNA)--A person licensed by the Texas Board of Nursing (TBON) as a certified registered nurse anesthetist.

(12) Dangerous drugs--Medications defined by Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."

(13) Hypnotics--Dangerous or scheduled drugs used to induce unconsciousness. This includes inhaled anesthetics and nonvolatile anesthetic agents such as Barbiturates, Benzodiazepines, Opioids, Etomidate, Propofol, and Ketamine.

(14) Level I services.

(A) Delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory; or

(B) Delivery of nitrous oxide/oxygen inhalation sedation.

(15) Level II services.

(A) The administration of tumescent anesthesia;

(B) The delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician; or

(C) Except for the performance of Mohs micrographic surgery, the administration of local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit.

(16) Level III services--Parenteral delivery of analgesics or anxiolytics.

(17) Level IV services--Delivery of general anesthetics, including regional anesthetics and monitored anesthesia care; spinal, epidural, or caudal blocks for the purposes of providing anesthesia or monitored anesthesia care.

(18) Local anesthetics--Dangerous drugs administered topically or by injection, which interrupt nerve conduction, temporarily creating a loss of sensation to an affected area and that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care.

(19) Monitored anesthesia care--Includes all aspects of anesthesia care by an anesthesiologist or member of the anesthesia care team including the administration of sedatives, analgesics, hypnotics and other anesthesia agents or medications necessary to ensure patient safety and comfort. May include situations where a patient

undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(20) Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of the following:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting where the facility itself is accredited by either The Joint Commission relating to ambulatory surgical centers, the American Association for Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(21) PALS--Pediatric Advanced Life Support, as defined by the AHA.

(22) Peripheral nerve block--The injection of local anesthetics into an area of the body directly adjacent to a peripheral nerve, for the purpose of blocking the response to pain in the distribution of sensation of that nerve.

(23) Scheduled drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code.

(24) Tumescant anesthesia--A specialized type of subcutaneous infiltration of a dilute mixture of local anesthetic and epinephrine known as tumescant solution.

§173.2. Standards for Anesthesia Services.

(a) General Standards. When providing anesthesia services in an outpatient setting, physicians must:

(1) comply with delegation and supervision laws under Chapter 157 of the Act, including §157.058, regarding CRNAs;

(2) counsel and prepare patients for anesthesia per ASA standards;

(3) perform:

(A) a pre-anesthetic evaluation; and

(B) a pre-sedation evaluation, that includes at a minimum an airway evaluation and an ASA physical status classification;

(4) obtain informed consent in accordance with state law, which includes communicating with the patient any sharing of responsibility for a patient's care with other physicians or non-physician anesthesia providers; and

(5) provide continuous appropriate physiologic monitoring of the patient, determined by the type of anesthesia and individual patient needs, both during and post procedure until ready for discharge, with continuous monitoring of:

(A) ventilation,

(B) oxygenation; and

(C) cardiovascular status.

(b) Minimum Equipment Requirements and Standards.

(1) Minimum equipment required. The outpatient setting must have the following equipment and drugs onsite for the handling of emergencies:

(A) monitoring equipment for Level II through Level IV procedures:

(i) pulse oximetry;

(ii) continuous EKG;

(iii) non-invasive blood pressure measured at least every five minutes; and

(iv) if general anesthesia is utilized, an O2 analyzer and end-tidal CO2 analyzer;

(B) appropriate intravenous therapy equipment;

(C) a precordial stethoscope or similar device, and non-electrical blood pressure measuring device, for use in the event of an electrical outage;

(D) emergency equipment appropriate for the purpose of cardiopulmonary resuscitation;

(E) AED or other defibrillator, difficult airway equipment, as well as the drugs and equipment necessary for the treatment of malignant hyperthermia, if using triggering agents associated with malignant hyperthermia or if the patient is at risk for malignant hyperthermia; and

(F) a means to measure temperature, which shall be readily available and utilized for continuous monitoring when indicated per current ASA standards.

(2) Equipment Standards.

(A) Equipment must be appropriately sized for the patient population being served.

(B) All anesthesia-related equipment and monitors must be maintained to current operating room standards.

(C) Regular service or maintenance checks must be completed by appropriately qualified biomedical personnel, at least annually or per manufacturer recommendations.

(D) A separate equipment maintenance log must contain:

(i) service check information including date performed;

(ii) a clear description of any equipment problems and the corrective action; and

(iii) if substandard equipment was utilized without corrective action, a description of how patient safety was protected.

(E) The equipment maintenance log must be retained for seven years from the date of inspection.

(F) An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized.

(3) Emergency Supplies.



(A) All required emergency supplies must be maintained and inspected by qualified personnel for presence and proper function intervals established by protocol.

(B) All medication, drugs, and supplies must not be expired.

(C) Personnel must be trained on the use of emergency equipment and supplies.

(D) A separate emergency supply log must include dates of inspections. The log must be retained for seven years from the date of inspection.

(4) Emergency Power Supply and Communication Source.

(A) Outpatient settings must have a secondary power source as appropriate for equipment in use, in case of power failure.

(B) A two-way communication source not dependent on electrical current shall be available.

(5) Protocols.

(A) The outpatient setting must have written protocols regarding:

(i) patient selection criteria;

(ii) patients or providers with latex allergy;

(iii) pediatric drug dosage calculations, where applicable;

(iv) ACLS or PALS algorithms;

(v) infection control;

(vi) documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and

(vii) discharge criteria.

(B) The outpatient setting must have written protocols regarding emergency transfer procedures for cardiopulmonary emergencies that include:

(i) a specific plan for securing a patient's airway pending EMS transfer to the hospital; and

(ii) have appropriate ACLS measures in the office for patient stabilization until EMS arrives.

(C) For outpatient settings that are located in counties lacking 9-1-1 service entities supported by EMS providers licensed at the advanced life support level, physicians must enter into emergency transfer agreements with a local licensed EMS provider or accredited hospital-based EMS. The agreement's terms must require EMS to bring staff and equipment necessary for advanced airway management equal to or exceeding that which is in place at the outpatient setting.

(D) The written protocols, including the emergency transfer agreements, must be evaluated and reviewed at least annually.

§173.3. Specific Requirements Based on Level of Anesthesia Provided.

In addition to the general standards that apply to all outpatient settings, the following standards are required for outpatient settings, based upon the level of anesthesia being administered. If personnel and equipment meet the requirements of a higher-level, lower-level anesthesia services may also be provided.

(1) Level I Services:

(A) A physician and at least one other personnel must be present during the procedure. Both the physician and the personnel must be currently certified by AHA or ASHI, at a minimum in BLS.

(B) The following age-appropriate equipment must be present:

(i) a bag mask valve; and

(ii) oxygen.

(2) Level II services:

(A) A physician and at least one other personnel must be present during the procedure and recovery until ready for discharge. The physician must be currently certified by AHA or ASHI, at a minimum in ACLS or PALS, as appropriate. The additional personnel member(s) must be currently certified by AHA or ASHI, at a minimum in BLS.

(B) A crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to:

(i) the age-appropriate monitoring and emergency equipment required under paragraph (1)(B) of this section;

(ii) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;

(iii) benzodiazepines for intravenous or intramuscular administration;

(iv) lipid emulsion if, administering local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit (except for Mohs micrographic surgery), or if administering tumescent anesthesia, for treating local anesthetic systemic toxicity; and

(v) specific reversal agents, Flumazenil and Naloxone, if benzodiazepines or narcotics are used for sedation.

(3) Level III services:

(A) A physician and at least one other personnel must be present during the procedure and recovery until ready for discharge. The physician must be currently certified by AHA or ASHI, at a minimum in ACLS or PALS, as appropriate. The additional personnel member(s) must be currently certified by AHA or ASHI, at a minimum in BLS.

(B) A crash cart must be present containing the same drugs and equipment required for Level II, except for lipid emulsion.

(C) A working intravenous feed must be established.

(D) Providers must adhere to ASA Standards for Post Anesthesia Care.

(4) Level IV services: Level IV services do not require physicians to maintain a stock of lipid emulsion. Physicians who provide Level IV anesthesia services in outpatient settings shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following:

(A) Basic Standards for Preanesthetic Care;

(B) Standards for Basic Anesthetic Monitoring;

(C) Standards for Post Anesthesia Care;

(D) Position on Monitored Anesthesia Care;

(E) The ASA Physical Status Classification System;

(F) Guidelines for Nonoperating Room Anesthetizing

Locations;

(G) Guidelines for Ambulatory Anesthesia and Surgery; and

(H) Guidelines for Office-Based Anesthesia.

§173.4. Registration.

Each physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient setting, excluding Level I services, shall register with and pay a fee in an amount established by the board.

§173.5. Inspections.

The board may conduct inspections to enforce these rules, including inspections of an operating surgeon's office site or a mobile anesthesia provider's practice and procedures related to storage, transport, and setup of necessary equipment. The board may contract with another state agency or qualified person to conduct these inspections.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 174. TELEMEDICINE

The Texas Medical Board (Board) proposes the repeal of current Chapter 174 concerning Telemedicine. This includes Subchapter A, concerning Telemedicine, §§174.1 - 174.8; and Subchapter B, concerning Mental Health Services, §§174.9.

The Board also proposes new Chapter 174, concerning Business Organizations. This includes new Subchapter A, concerning Non-Profit Health Organizations, §§174.1 and 174.2; Subchapter B, concerning Jointly Owned Entities; §174.5; and Subchapter C, concerning Physician Call Coverage Arrangements, §174.10.

Also, the Board contemporaneously proposes the repeal of current Chapter 177, concerning Business Organizations and Agreements. This includes Subchapter A, concerning Definitions, §177.1; Subchapter B, concerning Non-Profit Health Organizations, §§177.2 - 177.13; Subchapter C, concerning Jointly Owned Entities, §§177.14 - 177.16; Subchapter D, concerning Employment of Physicians, §177.17; and Subchapter E, concerning Physician Call Coverage Medical Services, §177.18 and §177.20.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 174 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS.

New §174.1, Definitions, gives definitions for terms used in new Chapter 174.

New §174.2, Certification of a Non-Profit Health Organization, describes the process of certification of a Non-Profit Health Organization.

### SUBCHAPTER B. JOINTLY OWNED ENTITIES.

New Section 174.5. Joint Ownership, provides the requirements for the Physician and Physician Assistant's joint ownership in compliance with Chapter 301, Texas Business Organizations Code.

### SUBCHAPTER C. CALL COVERAGE AGREEMENTS.

New Section 174.10. Call Coverage Agreement Minimum Requirements, sets forth minimum requirements for a physician to follow regarding a call coverage agreement for another physician.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. (The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections *does not* require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections *does not* require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/jq6GtK5RFJ>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. TELEMEDICINE

### 22 TAC §§174.1 - 174.8

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §174.1. *Purpose.*
- §174.2. *Definitions.*
- §174.3. *Prevention of Fraud and Abuse.*
- §174.4. *Notice to Patients.*
- §174.5. *Issuance of Prescriptions.*
- §174.6. *Minimum Standards for the Provision of Telemedicine Medical Services.*
- §174.7. *Enforcement Authority.*
- §174.8. *State Licensure.*

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

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## SUBCHAPTER B. MENTAL HEALTH SERVICES

### 22 TAC §174.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.9. *Provision of Mental Health Services.*

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

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## CHAPTER 174. BUSINESS ORGANIZATIONS SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS

### 22 TAC §174.1, §174.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 162. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.1. *Definitions.*

The following word and term when used in this chapter shall have the following meaning, unless the contents clearly indicate otherwise: Actively engaged in the practice of medicine--currently licensed by the board to practice medicine and has no restrictions.

§174.2. Certification of a Non-Profit Health Organization.

(a) The board shall certify a Non-Profit Health Organization in accordance with §162.001(b) of the Act upon:

(1) submission of the required application and supporting documentation;

(2) the board's receipt of the \$2,500 non-refundable application fee; and

(3) verification by the board that the organization meets the requirements of §162.001(b) of the Act, including the requisite number of Board of Directors in accordance with Title 2, §22.204 of the Texas Business Organizations Code.

(b) The board shall certify a Non-Profit Health Organization to contract with or employ physicians in accordance with §162.001(c) or (c-4) of the Act upon:

(1) submission of the required application and supporting documentation; and

(2) verification by the board that the organization meets the requirements for certification under the Act.

(c) A certified Non-Profit Health Organization must file a biennial report with the board in accordance with §162.006 of the Act. The board shall renew the certification of a Non-Profit Health Organization upon:

(1) submission of the required biennial report, recertification application and supporting documentation;

(2) the board's receipt of the \$1,125 non-refundable biennial application fee, except those certified under §162.001(c) or (c-4) do not pay a fee; and

(3) verification by the board that the organization meets the requirements for recertification under the Act.

(d) The failure of a certified health organization to timely submit a biennial report and/or required renewal fee within 90 days of its due date may result in decertification.

(e) If a certified health organization has been decertified, it will be required to submit a new application for certification in accordance with Chapter 162 of the Act.

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

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## SUBCHAPTER B. JOINTLY OWNED ENTITIES

## 22 TAC §174.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 162. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.5. Joint Ownership.

(a) Physician and Physician Assistants may jointly own an entity in accordance with the provisions of Chapters 22, 152, and 301 of the Texas Business Organizations Code.

(b) Physicians and Physician Assistants who jointly own an entity must annually submit a Jointly-Owned Entity Annual Report form, accompanied by an \$18 fee.

(c) Restrictions on joint ownership by certain professionals, as set forth in §301.012 of the Texas Business Organizations Code, only apply to those entities formed after June 17, 2011.

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

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## SUBCHAPTER C. PHYSICIAN CALL COVERAGE AGREEMENTS

### 22 TAC §174.10

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 162. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.10. Call Coverage Agreement Minimum Requirements.

A call coverage agreement:

(1) may be oral or written;

(2) allows for and sets forth the terms in which a physician will provide medical services to established patients of another physician; and

(3) describes the timing and method by which the covering physician will provide a report to the patient's primary physician about the medical intervention or advice provided during the coverage period.

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

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## CHAPTER 175. FEES AND PENALTIES

The Texas Medical Board (Board) proposes the repeal of current Chapter 175, concerning Fees and Penalties, §§175.1 - 175.5.

The Board also proposes new Chapter 175, concerning Telemedicine, §§175.1 - 175.3.

Also, the Board contemporaneously proposes the repeal of current Chapter 174, concerning Telemedicine. This includes Subchapter A, concerning Telemedicine, §§174.1 - 174.8; and Subchapter B, concerning Mental Health Services, §174.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 175 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §175.1. License Required, explains that a physician practicing telemedicine in Texas must hold a full Texas medical license, with some limited exceptions.

New §175.2. Telemedicine Services, explains that telemedicine services must be performed in compliance with the Medical Practice Act and Chapter 111 of the Texas Occupations Code.

New §175.3. Requirements for a Valid Prescription, explains the requirements for a valid prescription using telemedicine. It also explains the requirements for prescribing for chronic pain using telemedicine.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand. It will also increase patient accessibility to properly licensed, trained, and educated medical providers.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there

will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeal and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/e6riGJaRDp>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§175.1 - 175.5

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§175.1. *Application and Administrative Fees.*

§175.2. *Registration and Renewal Fees.*

§175.3. *Penalties.*

§175.4. *Fee Exemption for Military Service Member, Military Veteran, or Military Spouse.*

§175.5. *Payment of Fees or Penalties.*

The agency certifies that legal counsel has reviewed the proposal 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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## CHAPTER 175. TELEMEDICINE

### 22 TAC §§175.1 - 175.3

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 111 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

§175.1. *License Required.*

In accordance with Chapters 155.001 and 111 of the Texas Occupations Code, a physician may not provide telemedicine medical services to patients in Texas unless they hold a full Texas medical license, except

for those who held an out-of-state telemedicine license as of September 1, 2022.

§175.2. *Telemedicine Services.*

Telemedicine medical services, including supervision, delegation, and posting of notices regarding filing a complaint with the board, must be provided in accordance with Chapter 111 of the Texas Occupations Code and the Medical Practice Act.

§175.3. *Requirements for a Valid Prescription.*

(a) In accordance with §111.006 of the Texas Occupations Code, a valid prescription requires:

(1) establishing a physician-patient relationship; and

(2) compliance with all other applicable laws before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance, including, but not limited to, the Medical Practice Act and Texas Health and Safety Code, Chapters 481 and 483.

(b) Requirements for Prescribing for Chronic Pain via Telemedicine.

(1) A physician must use audio and video two-way communication, unless the patient:

(A) is an established pain patient of the prescribing physician;

(B) receives a prescription identical to the prescription issued at the previous visit; and

(C) was seen by the prescribing physician, or their delegate, in the last 90 days either;

(i) in-person; or

(ii) by audio and video two-way communication.

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

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## CHAPTER 176. HEALTH CARE LIABILITY LAWSUITS AND SETTLEMENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 176, concerning Health Care Liability Lawsuits and Settlements, §§176.1 - 176.9.

The Board also proposes new Chapter 176, concerning Reporting Malpractice Claims, §176.1 and §176.2.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 176 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §176.1, Definitions, defines terms used in new Chapter 176.

New §176.2, Required Reporting, explains the content required and the process for reporting healthcare liability and malpractice claims to the board.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/MB7fZRdD8K>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§176.1 - 176.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§176.1. *Definitions.*

§176.2. *Reporting Responsibilities.*

§176.3. *Separate Reports Required and Identifying Information.*

§176.4. *Timeframes and Attachments.*

§176.5. *Alternate Reporting Formats.*

§176.6. *Penalty.*

§176.7. *Claims not Required to be Reported.*

§176.8. *Board Review of Health Care Liability and Settlements.*

§176.9. *Reporting Form.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404268

Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030

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## CHAPTER 176. REPORTING MALPRACTICE CLAIMS

### 22 TAC §176.1, §176.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 160 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

#### §176.1. Definitions.

(a) Claim--any claim for damages with or without a lawsuit filed, against at physician relating to a departure from accepted standards of medical or health care.

(b) Report--the information provided to the board, pursuant to §160.052 of the Act.

#### (c) Settlement:

(1) a payment made on a claim on which no lawsuit has been filed;

(2) an agreement to settle a lawsuit on a claim for a specified amount;

(3) a dismissal or non-suit of a lawsuit on a claim with no payment; or

(4) a final judgment in a lawsuit on a claim entered by the trial court.

#### §176.2. Required Reporting.

(a) Chapter 160, Subchapter B, of the Act mandates that physicians and insurers have a duty to report healthcare liability and malpractice claims to the board.

(b) The required report must be timely submitted by either the insurer or physician, in accordance with Chapters 160.052 and 160.053 of the Act.

#### (c) Content of Report.

(1) The information required to be reported by §160.053 of the Act, may be reported either on the board-approved Claims Report set out below or in an alternate format.

(2) If an alternate format is used, the information must include at least the information required by the board-approved Claims Report.

Figure: 22 TAC §176.2(c)(2)

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

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## CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 177, concerning Business Organizations and Agreements. This includes Subchapter A, concerning Definitions, §177.1, Subchapter B, concerning Non-Profit Health Organizations, §§177.2 - 177.13, Subchapter C, concerning Jointly Owned Entities, §§177.14 - 177.16, Subchapter D, concerning Employment of Physicians, §177.17, Subchapter E, concerning Physician Call Coverage Medical Services, §§177.18, 177.20.

The Board also proposes new Chapter 177, concerning Complaints and Investigations. This includes new Subchapter A, concerning Complaints, §§177.1 - 177.3; Subchapter B, concerning Investigative Process, §§177.10 - 177.13, and Subchapter C, concerning Expert Panel Review, §177.20 and §177.21.

Also, the Board contemporaneously proposes the repeal of the following current chapters:

Chapter 178, concerning Complaints, §§178.1 - 178.9;

Chapter 179, concerning Investigations, §§179.1 - 179.8; and

Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 177 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. COMPLAINTS.

New §177.1, Definitions, explains the meaning of several terms as used in new Chapter 177.

New §177.2, Mandatory Complaint Notification, requires the posting of a notice of how to file a complaint and explains to whom the requirement applies.

New §177.3, Complaint Initiation, explains how to file a complaint and what information a complaint must contain.

### SUBCHAPTER B. INVESTIGATIVE PROCESS.

New §177.10, Preliminary Investigation, explains how a preliminary investigation is to be conducted and how it is utilized by the board.

New §177.11, Official Investigation, how an official investigation is to be conducted and how it is utilized by the board.

New §177.12, Appeal of Dismissal, explains the process for a complainant to appeal the dismissal of a complaint and the possible outcomes of a complainant's appeal.

New §177.13, Probable Cause Guidelines for Requiring Mental or Physical Examination, explains the process for the board to order a mental or physical examination of a licensee if there is



cause for concern regarding the fitness of the licensee to practice the regulated profession.

#### SUBCHAPTER C. EXPERT PANEL REVIEW.

New §177.20, Qualifications, explains the general qualifications necessary to act as an expert reviewer for the board.

New §177.21, Expert Reviewer Selection and Report, explains the selection and assignment process for assigning expert reviewers and duties if assigned as an expert reviewer.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand. It also ensures qualified individuals willing be performing the required reviews.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using the following link: <https://forms.office.com/g/FLvK02KrPm>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### SUBCHAPTER A. DEFINITIONS

##### 22 TAC §177.1

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

##### §177.1. Definitions.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour  
General Counsel

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#### SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS

##### 22 TAC §§177.2 - 177.13

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§177.2. *Initial Certification of 162.001(b) Health Organizations.*

§177.3. *Qualifications for Certification as a 162.001(b) Health Organization.*

§177.4. *Applications for Certification as a 162.001(b) Health Organization.*

§177.5. *Special Requirements for 162.001(b) Health Organizations.*

§177.6. *Biennial Reports for 162.001(b) Health Organizations.*

§177.7. *Establishment of Fees.*

§177.8. *Failure to Submit Reports or Fees for 162.001(b) Health Organizations.*

§177.9. *Migrant, Community or Homeless Health Centers.*

§177.10. *Review of Applications and Reports.*

§177.11. *Denial of Certification.*

§177.12. *Revocation of Certification.*

§177.13. *Complaint Procedure Notification.*

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

Filed with the Office of the Secretary of State on September 10, 2024.

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## SUBCHAPTER C. JOINTLY OWNED ENTITIES

### 22 TAC §§177.14 - 177.16

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§177.14. *Therapeutic Optometrists.*

§177.15. *Podiatrists.*

§177.16. *Physician Assistants.*

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

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## SUBCHAPTER D. EMPLOYMENT OF PHYSICIANS

### 22 TAC §177.17

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§177.17. *Exceptions to Corporate Practice of Medicine Doctrine.*

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

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## SUBCHAPTER E. PHYSICIAN CALL COVERAGE MEDICAL SERVICES

### 22 TAC §177.18, §177.20

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§177.18. *Purpose and Scope.*

§177.20. *Call Coverage Minimum Requirements.*

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

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## CHAPTER 177. COMPLAINTS AND INVESTIGATIONS

### SUBCHAPTER A. COMPLAINTS

#### 22 TAC §§177.1 - 177.3

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of §153.012(1) and Chapter 154 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

##### §177.1. Definitions.

The following words and terms shall have the following meanings in this Chapter unless the context clearly indicates otherwise.

(1) Baseless or unfounded--not based on any evidence or fact.

(2) Board--The Medical Board, Physician Assistants Board, Texas Board of Acupuncture Examiners, Respiratory Care Practitioners Board, Medical Radiological Technologists Board, Perfusionists Advisory Committee, and Medical Physicists Advisory Committee.

##### §177.2. Mandatory Complaint Notification.

(a) Licensees must post the following public notifications on how to file complaints with the board:

Figure 1: 22 TAC §177.2

Figure 2: 22 TAC §177.2

(b) The required notice must be:

(1) displayed in a prominent location at a licensee's place of business, practice, or any location where physician supervision or delegation is required;

(2) in English and Spanish of no less than 8½ inches by 11 inches in size;

(3) no smaller than standard 24-point Times Roman print;

(4) entirely in black print on white background; and

(5) with no alterations, deletions, or additions to the language.

(c) Licensees providing telemedicine must provide the required notice:

(1) on a prominently displayed link on the provider website;

(2) in a provider app, by recording, or in a bill for services;

(3) in no less than a 10-point easily readable font; and

(4) with no alterations, deletions, or additions to the language.

##### §177.3. Complaint Initiation.

A complaint must be made in writing and include:

(1) the complainant's name and contact information;

(2) the name of the licensee against whom the complaint is made;

(3) the name and birth date of the patient or individual harmed, if applicable; and

(4) the time/date and place of the alleged violation or action.

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

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### SUBCHAPTER B. INVESTIGATIVE PROCESS

#### 22 TAC §§177.10 - 177.13

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 154 and §164.056. No other statutes, articles or codes are affected by this proposal.

##### §177.10. Preliminary Investigation.

(a) A preliminary investigation shall be conducted in accordance with §154.057 of the Act. Information gathered during a preliminary investigation may include:

(1) the history of the licensee collected and maintained by the board, including prior board complaints and investigations, if any;

(2) a National Practitioner's Data Bank report;

(3) any additional information provided by the complainant, if needed; and

(4) a response from the licensee, if requested by the board.

(b) The preliminary investigation will determine if the complaint:

(1) is jurisdictional;

(2) is sufficient to open an official investigation;

(3) should be dismissed; or

(4) should be referred to another government agency.

(c) Notwithstanding §154.051(d) and (d-1) of the Act, there is no statute of limitations to consider or act on complaints alleging non-standard of care violations or violations not covered under §22.011(b)(12) of the Texas Penal Code, including action by another state licensing entity or criminal conduct.

§177.11. Official Investigation.

(a) If the preliminary investigation shows that a complaint is jurisdictional and that there is probable cause to justify further investigation, the complaint will be filed with the board and an official investigation shall be conducted. Official investigations will be assigned a priority in accordance with §154.056(a)(1) of the Act.

(b) Board staff will:

(1) use the preliminary investigation information;

(2) obtain any additional necessary information and documents to determine if a potential violation occurred;

(3) utilize expert physician reviewers in accordance with §154.056(e) of the Act when the investigation relates to standard of care; and

(4) issue subpoenas or requests for information to obtain information and documents.

(A) Responses to these subpoenas or requests for information shall be provided to the board within fourteen calendar days from receipt of the subpoena or request for information.

(B) The board may require responses to a subpoena or request for information in less than fourteen calendar days, based on individual circumstances.

(c) Upon completion of the official investigation, the matter will be:

(1) referred to the board's litigation department as a legal case; or

(2) recommended for dismissal.

§177.12. Appeal of Dismissal.

(a) A complainant may appeal the dismissal of a complaint. The appeal must:

(1) be in writing;

(2) be made within 90 days after receipt of the notice of the dismissal;

(3) list the reason(s) for the appeal; and

(4) provide information, if any, supporting the appeal.

(b) The complainant will be given notice of the opportunity to make a statement about the appeal.

(c) Only one appeal shall be allowed for each complaint.

(d) The Disciplinary Process Review Committee shall hear the appeal and set time limits for complainants who make a statement to the committee.

(e) Decisions on an appeal may be to:

(1) deny the appeal and uphold the dismissal;

(2) grant the appeal and continue the investigation; or

(3) grant the appeal and the refer to an Informal Settlement Conference.

§177.13. Probable Cause Guidelines for Requiring Mental or Physical Examination.

(a) In accordance with §164.056 of the Act, a mental or physical examination of a licensee can be requested:

(1) if an official complaint concerns allegations under §164.051(a)(4) of the Act and during the investigation:

(A) there has been no treatment or other ongoing remedial actions to address the allegations; and

(B) there is other evidence of the same or similar continuing conduct, including arrests, reports required under Chapter 160 of the Act, or receipt of multiple complaints or statements concerning the conduct; or

(2) if, during an Informal Settlement Conference, the actions or statements of the licensee indicate probable cause that there may be a violation of §164.051(a)(4) of the Act. In such a situation, the Panel can:

(A) defer the Informal Settlement Conference;

(B) request a new complaint be opened alleging a violation of §164.051(a)(4) of the Act; or

(C) order a mental or physical examination in accordance with §164.056 of the Act.

(b) If a physical or mental examination is ordered, the Notice will include a general statement of the basis for seeking the examination.

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

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**SUBCHAPTER C. EXPERT PANEL REVIEW**

**22 TAC §177.20, §177.21**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 154. No other statutes, articles or codes are affected by this proposal.

§177.20. Qualifications.

(a) In addition to the requirements of §154.056(e) of the Act, an expert reviewer must also hold a current certification from the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery at the time of appointment as an expert reviewer.

(b) The term of service of an expert reviewer is until:

- (1) resignation; or
- (2) removal for cause.

§177.21. Expert Reviewer Selection and Report.

(a) Expert reviewers must:

- (1) be selected for review of an investigation at random;
- (2) be of the same or similar specialty for the area of practice that is the basis of the complaint;
- (3) be from a different geographic area than the physician under investigation, if possible; and
- (4) not have any conflict of interest.

(b) An expert reviewer selected must immediately report any potential conflict of interest.

(c) If no expert fully meets the selection criteria, the Medical Director, with advice from General Counsel, will determine which expert reviewer will be selected.

(d) Each expert reviewer will:

- (1) issue a report in accordance with §§154.0561 and 154.058 of the Act; and
- (2) include the expert reviewer's area of specialty.

(e) Agency staff must add the following statement to each expert reviewer report: "PURSUANT TO §164.007 OF THE MEDICAL PRACTICE ACT, THIS DOCUMENT CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND CONFIDENTIAL. THE EXPERT REVIEWER REPORTS (REPORTS) ARE STATUTORILY LIMITED FOR USE AT THE INFORMAL PROCEEDING ONLY, UNDER TEXAS OCCUPATIONS CODE, §164.003(f). THE REVIEWERS' REPORTS ARE REQUIRED TO BE PROVIDED TO THE LICENSEE UNDER §164.003(f). THE REPORTS REMAIN CONFIDENTIAL AND PRIVILEGED UNDER §§164.003(h) AND 164.007(c). THE REPORTS CANNOT BE RELEASED TO ANY PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. THE REPORTS CANNOT BE OFFERED, UTILIZED, OR SUBMITTED AS EVIDENCE OR DOCUMENTS IN A CONTESTED CASE PROCEEDING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR IN ANY LEGAL PROCEEDING."

(f) Agency staff must add the following statement in bold letters to each expert reviewer report, when applicable, below the expert reviewer's specialty: "**This review involves Complementary or Alternative Medicine.**"

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

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CHAPTER 178. COMPLAINTS

**22 TAC §§178.1 - 178.9**

The Texas Medical Board (Board) proposes the repeal of current Chapter 178, concerning Complaints, §§178.1 - 178.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 178 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§178.1. *Purpose and Scope.*

§178.2. *Definitions.*

§178.3. *Complaint Notification.*

§178.4. *Complaint Initiation.*

§178.5. *Preliminary Investigation of a Complaint.*

§178.6. *Complaint Filing.*

§178.7. *Complaint Resolution.*

§178.8. *Appeals.*

§178.9. *Statute of Limitations.*

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

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## CHAPTER 179. INVESTIGATIONS

### 22 TAC §§179.1 - 179.8

The Texas Medical Board (Board) proposes the repeal of current Chapter 179, concerning Investigations, §§179.1 - 179.8.

The Board also proposes new Chapter 179, concerning Procedural Rules. This includes new Subchapter A, concerning Definitions, §179.1; Subchapter B, concerning Reporting Requirements, §179.5; Subchapter C, concerning Pre-Settlement Conference Resolution Process, §179.10; Subchapter D, concerning Informal Settlement Conference, §§179.15 and 179.16; Subchapter E, concerning Contested Case Procedure §179.20; Subchapter F, concerning Temporary Suspension or Restriction Proceedings, §179.25 and §179.26; Subchapter G, concerning Suspension by Operation of Law, §179.30; Subchapter H, concerning Cease and Desist Orders, §179.35; and Subchapter I, concerning Out-of-Network Billing, §179.40.

Also, the Board contemporaneously proposes the repeal of current Chapter 187, concerning Procedural Rules. This includes Subchapter A, concerning General Provisions and Definitions, §§187.1 - 187.9; Subchapter B, concerning Informal Board Proceedings, §187.10, §187.11, §§187.13 - 187.16, §§187.18 - 21; Subchapter C, concerning Formal Board Proceedings at SOAH, §§187.22 - 187.31, 187.33; Subchapter D, concerning Formal Board Proceedings, §§187.35 - 187.37, 187.39, 187.42; Subchapter E, concerning Proceedings Relating to Probationers, §§187.43 - 187.45; Subchapter F, concerning Temporary Suspension and Restriction Proceedings, §§187.55 - 187.62; Subchapter G, concerning Suspension By Operation Of Law, §§187.70 - 187.72; Subchapter H, concerning Imposition of Administrative Penalty, §§187.75 - 187.82; Subchapter I, concerning Proceedings For Cease And Desist Orders, §187.83, §187.84; and Subchapter J, concerning Procedures Related To Out-Of-Network Health Benefit Claim Dispute Resolution, §§187.85 - 187.89.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 179 is more efficient than proposing multiple amendments to make the required changes.

#### SUBCHAPTER A. DEFINITIONS.

New §179.1, Definitions, explains the meaning of certain specific terms as used in new Chapter 179.

#### SUBCHAPTER B. REPORTING REQUIREMENTS.

New §179.5, Reports to Outside Entities, explains the board's mandatory reporting related to board actions.

#### SUBCHAPTER C. Pre-Settlement Conference Resolution Process.

New §179.10, Quality Assurance Panel, explains the process utilized by the board for potential disposition of certain complaints prior to the convening of an Informal Settlement Conference (ISC).

#### SUBCHAPTER D. Informal Settlement Conference.

New §179.15, Informal Settlement Conferences (ISC) Notice, explains the content of the notice of the ISC to a licensee. It also explains a licensee's ability to submit information for consideration at the ISC, request for recodation of the ISC, and a request for continuance of the ISC.

New §179.16, Conduct of the Informal Settlement Conference (ISC), explains how an ISC will generally be conducted and possible complaint resolutions that may be offered at an ISC.

#### SUBCHAPTER E. Contested Case Procedure.

New §179.20, Notice of Oral Argument, explains the opportunity for a licensee to attend and provide oral argument to the board concerning a proposal for decision after a State Office of Administrative Hearings (SOAH) contested case hearing.

#### SUBCHAPTER F. Temporary Suspension or Restriction Proceedings.

New §179.25, Temporary Suspension or Restriction Hearing Without Notice, explains the process followed by the board if the board has reason to believe a licensee is a "continuing threat." A disciplinary hearing will be held as soon as practicable in accordance with §164.059 of the Act or §164.0595 of the Act.

§179.26, Temporary Suspension or Restriction Hearing With Notice, explains the process followed by the board regarding examining witnesses, closing arguments, panel deliberation and announcement of the panel's decision. Evidence is considered under a relaxed standard described in §2001.081 of the Texas Government Code.

#### SUBCHAPTER G. Suspension by Operation of Law.

New §179.30, Automatic Suspensions Based upon Felony Conviction, explains what the board considers to be initial and final criminal convictions. It also details how initial and final convictions may be handled by the board.

#### SUBCHAPTER H. Cease and Desist Orders.

New §179.35, Cease and Desist Orders, explains the process utilized by the board to consider the unlicensed practice of a regulated profession.

#### SUBCHAPTER I. Out-of-Network Billing.

New §179.40, Out-of-Network Billing, explains how the board investigates complaints of bad faith participation and other consumer complaints in out-of-network billing cases.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/4jKFB6ZdaP>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§179.1. Purpose and Scope.

- §179.2. *Definitions.*
- §179.3. *Confidentiality.*
- §179.4. *Request for Information and Records from Physicians.*
- §179.5. *Investigation of Professional Review Actions.*
- §179.6. *Time Limits.*
- §179.7. *Past Complaints.*
- §179.8. *Alcohol and Drug Screening During Investigation for Substance Abuse.*

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

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## CHAPTER 179. PROCEDURAL RULES

### SUBCHAPTER A. DEFINITIONS

#### 22 TAC §179.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

##### §179.1. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Address of record--The last known mailing address of each licensee or applicant, as provided to the board pursuant to the Act.

(2) Appear; Appearance--An opportunity to present and be heard at an Informal Settlement Conference (ISC) via videoconference. A respondent who cannot utilize videoconference may request to appear via teleconference. Licensees are entitled to all substantive and procedural rights delineated in the Medical Practice Act.

(3) Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding, including an attorney of record.

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

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## SUBCHAPTER B. REPORTING REQUIREMENTS

#### 22 TAC §179.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

##### §179.5. Reports to Outside Entities.

The board reports all actions in accordance with applicable federal and state statutes, rules, and National Practitioner Data Bank (NPDB) guidelines.

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

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## SUBCHAPTER C. PRE-SETTLEMENT CONFERENCE RESOLUTION PROCESS

#### 22 TAC §179.10

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

##### §179.10. Quality Assurance Panel.

Prior to convening an Informal Settlement Conference, a Quality Assurance Panel (QAP) may offer resolution of certain complaints.

(1) The QAP is composed of board members or district review committee members as well as board staff members.

(2) Complaints presented to the QAP can be returned to investigations, offered a Remedial Plan, offered an Agreed Order, recommended for dismissal, or set for an Informal Settlement Conference.



(3) Recommendations for dismissal will be presented to the Disciplinary Process Review Committee for consideration.

(4) Offers of a Remedial Plan or Agreed Order by QAP will be sent to the licensee for consideration.

(A) If accepted by the licensee, the Remedial Plan or Agreed Order will be presented to the board for consideration and approval.

(B) If the offer is rejected or is not returned timely, the matter will continue to an Informal Settlement Conference.

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

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## SUBCHAPTER D. INFORMAL SETTLEMENT CONFERENCE

### 22 TAC §179.15, §179.16

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

#### §179.15. Informal Settlement Conference (ISC) Notice.

(a) The board's notice and procedural rules for ISCs hereby incorporate the requirements outlined in §164.003(b) of the Act.

(b) The notice of the ISC shall:

(1) be sent to the licensee and the complainant(s) in writing at least 45 days prior to the date of the scheduled ISC;

(2) include a statement that appearance at the ISC shall be via videoconference;

(3) include a written statement of the nature of the allegations and a copy of the information the board intends to use at the ISC; and

(4) be provided via email or other verifiable means.

(c) The licensee may file responsive information with board staff up until 15 days before the date of the ISC. Any information furnished later may, but is not required to, be considered at the time of the ISC.

(d) A licensee may request for the ISC to be recorded. Such a request must be made in writing at least 15 days prior to the date of the ISC. The recording is confidential under §164.007(c) of the Act. Independent recording of an ISC is prohibited.

(e) Requests for a continuance or rescheduling of an ISC.

(1) Requests must:

(A) be in writing;

(B) be made within five business days of the initial notice of the ISC; and

(C) explain the basis for the request including supporting documentation, if any.

(2) A request made more than five business days after the licensee received notice of the date of the ISC will be considered on a case-by-case basis for good cause.

(3) Requests shall be forwarded to General Counsel to grant or deny the request, and General Counsel shall notify the licensee of the determination.

#### §179.16. Conduct of the Informal Settlement Conference (ISC).

(a) In addition to the requirements of Chapter 164 of the Act, the following provisions apply to the conduct of ISCs:

(1) All appearances at an ISC shall be via videoconference or teleconference.

(2) The complainant shall be invited to make an oral statement at the ISC. Only the panel members and hearings counsel may address the Complainant.

(3) The board's staff attorney and the licensee and/or the licensee's representative may discuss the investigation with and present pre-filed information to the panel.

(b) After discussion with the parties, the panel may deliberate in private and then recommend resolution as allowed under Chapter 164 of the Act, including, but not limited to:

(1) dismissal;

(2) remedial plan;

(3) agreed order with terms and conditions, including allowable administrative penalties;

(4) referral to the State Office of Administrative Hearings (SOAH);

(5) deferral for further information; or

(6) other allowed actions, including consideration of a temporary suspension.

(c) If an agreed order is recommended, limited post-ISC negotiation with the panel is allowed as follows:

(1) only a single comprehensive proposal by the licensee or the licensee's representative is allowed;

(2) the licensee's proposal must be in writing and provided to the board's staff attorney assigned to the ISC; and

(3) board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

(d) All recommendations for dismissal and remedial plans or agreed orders that are accepted and signed by the licensee will be presented to the board for consideration and possible approval.

(e) A remedial plan may not be entered into to resolve an investigation of a complaint once a SOAH complaint or petition has been filed.

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

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## SUBCHAPTER E. CONTESTED CASE PROCEDURE

### 22 TAC §179.20

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code and Chapter 2001 of the Texas Government Code.

No other statutes, articles or codes are affected by this proposal.

#### §179.20. Notice of Oral Argument.

All parties shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. Notice shall be sent to the party or the party's attorney of record as set out in Texas Government Code, §2001.142(a).

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

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## SUBCHAPTER F. TEMPORARY SUSPENSION OR RESTRICTION PROCEEDINGS

### 22 TAC §179.25, §179.26

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

#### §179.25. Temporary Suspension or Restriction Hearing Without Notice.

(a) If the board has reason to believe a licensee is a "continuing threat," a disciplinary proceeding will be held as soon as practicable in accordance with §164.059 of the Act or §164.0595 of the Act, as applicable.

(b) The three-member panel must include at least one physician.

(c) In determining a continuing threat, a panel will consider:

(1) the definition of continuing threat to the public welfare, as defined by §151.002 of the Act;

(2) the actions or inaction of the licensee;

(3) whether the public harm alleged is more than abstract, hypothetical, or remote; and

(4) whether there have been prior complaints, investigations, or discipline of the same or similar nature against the licensee.

(d) A member of the General Counsel staff shall act as hearings counsel and assist the panel as follows:

(1) provision of advice on legal processes and procedural issues including evidentiary rulings;

(2) asking questions to clarify issues during the proceedings; and

(3) being present during deliberations of the panel for legal advice as needed.

#### §179.26. Temporary Suspension or Restriction Hearing With Notice.

(a) A With-Notice Hearing shall include activities such as opening statements, admission of evidence, calling and examining witnesses, closing arguments, panel deliberation, and announcement of the panel's decision. The panel has discretion over setting time limits and evidentiary determinations.

(b) Evidence will be considered under a relaxed standard described in §2001.081 of the Texas Government Code, including information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs, necessary to ascertain facts not reasonably susceptible of proof under formal rules of evidence rules, and not precluded by statute.

(c) The following applies to filing of documents by parties:

(1) All documentary evidence must be filed in electronic format;

(2) Staff's documentary evidence will accompany the Notice of Hearing;

(3) The licensee's documentary evidence must be filed at least by 9:00 a.m. on the business day before the time of the hearing; and

(4) Evidence filed by either party less than 24 hours before the hearing will be considered at panel's discretion.

(d) For purposes of suspension or restriction under §164.0595(e) of the Act, final disposition of a criminal case includes evidence of a:

(1) final, non-appealable conviction,

(2) acceptance and entry of a plea agreement;

(3) dismissal;

(4) acquittal; or

(5) successful completion of a deferred adjudication.

(e) A suspension or restriction hearing is ancillary to the ISC or other subsequent hearings described in §164.059 of the Act and may not be enjoined under §164.011(c) of the Act.

(f) Because the express statutory authority in §164.059 of the Act provides a comprehensive post-suspension hearing process, the requirements of §2001.054(c-1) of the Texas Government Code do not apply.

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

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## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §179.30

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

#### §179.30. Automatic Suspensions Based upon Felony Conviction.

(a) For the purpose of this Section, an initial conviction occurs when there has been an adjudication of guilt of the offense charged, including, but not limited to, a finding of guilt by a jury or judge. A final conviction occurs when there has been an adjudication of guilt and a judgment entered.

(b) Once a licensee has been initially convicted of an offense under §164.057 of the Act or has been incarcerated under §164.058 of the Act, or any other applicable law, the Executive Director or their designee shall:

(1) immediately suspend the physician's license; and

(2) notify the licensee or the licensee's representative of the suspension by the most appropriate method;

(c) Upon notice to the board of a licensee's final conviction under §164.057 of the Act:

(1) the licensee's license shall be revoked; and

(2) the licensee or the licensee's representative shall be notified of the revocation by the most appropriate method.

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## SUBCHAPTER H. CEASE AND DESIST ORDERS

### 22 TAC §179.35

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 165 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

#### §179.35. Cease and Desist Orders.

(a) In accordance with §165.052 of the Act, a Cease and Desist hearing regarding the unlicensed practice of medicine by an individual shall be conducted in the same manner as an Informal Settlement Conference, including notice, but with the following modifications:

(1) The hearing shall be considered an open meeting and notice of the hearing will be posted with the Texas Secretary of State as required by applicable law.

(2) A minimum of 10 days' notice prior to the date of the hearing shall be provided to the individual charged with the unlicensed practice of medicine.

(3) The hearing shall be recorded.

(4) The Executive Director has been delegated authority to issue a Cease and Desist Order signed by the Chair of the Cease and Desist hearing, if directed by the panel.

(b) An individual notice of a Cease and Desist hearing may resolve the matter prior to the hearing by entering into an agreed Cease and Desist Order. The authority to sign the authority to the Executive Director is immediately effective when signed by the Executive Director.

(c) If the unlicensed practice of medicine continues after entrance of an order, the Board may pursue further action as authorized by law and make referrals of the matter as appropriate including to law enforcement agencies.

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

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## SUBCHAPTER I. OUT-OF-NETWORK BILLING

### 22 TAC §179.40

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 1467 of the Texas Insurance Code.

No other statutes, articles or codes are affected by this proposal.

#### §179.40. Out-of-Network Billing.

(a) In accordance with §1467.003 of the Texas Insurance Code, complaints of bad faith participation shall be investigated in the same manner as all other complaints.

(b) In accordance with §1467.151 of the Texas Insurance Code, the following applies to consumer complaints other than bad faith participation:

(1) priority is given to investigations alleging delayed health care or medical care;

(2) investigations are conducted in the same manner as all other complaints; and

(3) the matter may be resolved in accordance with all applicable Board statutes and rules.

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

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## CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 22 TAC §180.5 is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 27, 2024, issue of the Texas Register.)*

The Texas Medical Board (Board) proposes the repeal of current Chapter 180, concerning Texas Physician Health Program, §§180.1 - 180.4.

Also, the Board contemporaneously proposes the repeal of current Chapter 190, concerning Disciplinary Guidelines. This includes Subchapter A, concerning General Provisions, §190.1 and §190.2; Subchapter B, concerning Violation Guidelines, §190.8; Subchapter C, concerning Sanction Guidelines, §190.14 and §190.15; and Subchapter D, concerning Administrative Penalties, §190.16.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapters 180 and 190 is more efficient than proposing multiple amendments to make the required changes.

The Board proposes new Chapter 180, concerning Disciplinary Guidelines. This includes new Subchapter A, concerning Violation Guidelines, §180.1; and Subchapter B, concerning Sanction Guidelines, §180.5.

### SUBCHAPTER A. VIOLATION GUIDELINES.

New §180.1, Violation Guidelines, outlines the acts, practices and conduct that are violations of the Medical Practice Act.

### SUBCHAPTER B. SANCTION GUIDELINES.

New §180.5, Sanction Guidelines, provide guidance on assessing remedial action or sanctions for violations of the Medical Practice Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/TFPksa6Qp2>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§180.1 - 180.4

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

*§180.1. Purpose.*

*§180.2. Definitions.*

*§180.3. Texas Physician Health Program.*

*§180.4. Operation of Program.*

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

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Scott Freshour

General Counsel

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## CHAPTER 180. DISCIPLINARY GUIDELINES SUBCHAPTER A. VIOLATION GUIDELINES

### 22 TAC §180.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

#### §180.1. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Medical Practice Act ("the Act") and are not an exhaustive or exclusive listing:

(1) Practice inconsistent with public health and welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with the standards for physicians practicing complementary and alternative medicine or that is either not approved by the Food and Drug Administration (FDA) for use in human beings

or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA, as applicable; or

(L) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; or

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(2) Unprofessional or dishonorable conduct likely to injure the public. Unprofessional or dishonorable conduct that is likely to injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexually inappropriate contact or behavior directed towards a patient, patient's family, other licensees, hospital personnel, or other medical personnel in a medical setting;

(F) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives;

(G) failing to timely respond to communications from a patient;

(H) failing to complete the required amounts of Continuing Medical Education (CME);

(I) failing to maintain the confidentiality of a patient;

(J) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law; or

(K) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members of patients or others.

(3) Unprofessional or dishonorable conduct likely to deceive or defraud the public. Unprofessional or dishonorable conduct that is likely to deceive or defraud the public, within the meaning of the Act includes, but is not limited to:

(A) becoming financially or personally involved with a patient in an inappropriate manner;

(B) referring a patient to an entity, such as a facility, laboratory, or pharmacy without disclosing the existence of the licensee's financial interest in the entity to the patient;

(C) using false, misleading, or deceptive advertising;

(D) interfering with an investigation, such as contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body regarding statements or information provided to the board for purposes of intimidation, harassment or demanding to withdraw cooperation from the board;

(E) providing medically unnecessary services to a patient; or

(F) a physician or an employee or representative of a physician submitting a billing statement to a patient or a third-party payer that is false or fraudulent, misrepresents services provided, or otherwise does not meet professional standards.

(4) Disciplinary action by peer groups. A voluntary relinquishment of privileges, agreement to not renew privileges, or a failure to renew privileges with a hospital, medical staff, or medical association or society while an investigation or disciplinary action is pending or is on appeal, constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of the Act.

(5) Repeated or recurring meritorious health care liability claims evidencing professional incompetency likely to injure the public. Repeated or recurring meritorious health care liability claims evidencing professional incompetency likely to injure the public means three or more claims made in a five-year period within the last seven years that were resolved by either a judicial decision or settlement for at least \$100,000.00 with the consent of the physician.

(6) Disciplinary action by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act and may be considered the equivalent of a revocation.

(7) Discipline based on criminal conviction.

(A) Initial conviction. An initial conviction occurs when there has been adjudication of guilt of the offense charged including, but not limited to, a finding of guilt by a jury or judge, or a plea.

(B) Final conviction. A final conviction means a non-appealable finding of guilt.

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. SANCTION GUIDELINES

### 22 TAC §180.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

§180.5. Sanction Guidelines.

(a) The standard sanctions outlined in this subsection provide a range from "Low Sanction" to "High Sanction."

(b) The board may impose more or less severe or restrictive sanctions, based on any aggravating or mitigating factors that are found to apply in a particular case.

(1) The following may be considered as aggravating factors:

(A) harm to one or more patients;

(B) the severity of patient harm;

(C) one or more violations that involve more than one patient;

(D) economic harm to any individual or entity and the severity of such harm;

(E) increased potential for harm to the public;

(F) attempted concealment of the act constituting a violation;

(G) intentional, premeditated, knowing, or grossly negligent act constituting a violation;

(H) prior similar violations;

(I) previous disciplinary action by the board, any government agency, peer review organization, or health care entity;

(J) violation of a board order; or

(K) other relevant circumstances increasing the seriousness of the misconduct.

(2) The following may be considered as mitigating factors:

(A) self-reported and voluntary admissions of violation(s);

(B) implementation of remedial measures to correct or mitigate harm from the violation(s);

(C) acknowledgment of wrongdoing and willingness to cooperate with the board, as evidenced by acceptance of an agreed order;

(D) rehabilitative potential;

(E) prior community service and present value to the community;

(F) participation in a continuing medical education course described in §161.35 of this title completed not more than two years before the start of the investigation, if the physician is being investigated by the board regarding the physician's selection of clinical care for the treatment of tick-borne diseases;

(G) other relevant circumstances reducing the seriousness of the misconduct; or

(H) other relevant circumstances lessening responsibility for the misconduct.

(c) The maximum sanction in all cases is revocation of the licensee's license.

(d) For remedial plans in which continuing medical education is recommended, a minimum of four hours in each appropriate topic addressing the violation(s) is the recommended hour requirement. For agreed orders in which continuing medical education is recommended, a minimum of eight hours in each appropriate topic addressing the violation(s) is the recommended hour requirement.

(e) Remedial plans will include a fee related to the enforcement costs, in the amount of \$500.00.

(f) Administrative penalties may be required in the amount between \$1,000.00 up to \$5,000.00 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(g) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(h) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule.  
Figure: 22 TAC §180.5

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

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Scott Freshour

General Counsel

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## CHAPTER 181. CONTACT LENS PRESCRIPTIONS

The Texas Medical Board (Board) proposes the repeal of current Chapter 181, concerning Contact Lens Prescriptions, §§181.1 - 181.7.

The Board also proposes new Chapter 181, concerning Compliance Program, §§181.1 - 181.8.

Also, the Board contemporaneously proposes the repeal of current Chapter 189, concerning Compliance Program, §§189.1 - 189.16.

The Board has determined that due to the extensive reorganization of Chapters 160 - 200, repeal of Chapter 181 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §181.1, Definitions, defines terms used in new Chapter 181.

New §181.2, General Compliance Standards, explains the general compliance requirements for licensees subject to board action.

New §181.3, Compliance Process, describes the compliance process, including the initial meeting with the compliance officer and ongoing compliance reviews.

New §181.4, Determination of Non-Compliance, describes conduct considered by the board to be non-compliant with the terms or conditions of a non-disciplinary or disciplinary action.

New §181.5, Enforcement Process for Violations, identifies non-compliance by a compliance officer. It also describes the proper timeframe of ISC notification to the licensee, as well as information the board must receive from the licensee prior to the ISC.

New §181.6, Modification and Termination Process for Disciplinary Orders, explains the process to follow for licensees under

disciplinary orders when seeking to modify or terminate the order.

New §181.7, Automatic Termination of a Disciplinary Order, explains the condition or terms that allow for an automatic termination of a licensee's disciplinary order.

New §181.8, Recommendation for Competency Assessment, explains the process followed when a third-party monitor for the board believes a licensee poses a continuing threat.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there is no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/VdXUSaASBh>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§181.1 - 181.7

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§181.1. *Purpose.*

§181.2. *Definitions.*

§181.3. *Release of Contact Lens Prescription.*

§181.4. *Delegation of Fitting of Contact Lenses.*

§181.5. *Contact Lens Dispensing Permit Not Required of Physician or Physician's Employees.*

§181.6. *Physician's Prescriptions: Delegation.*

§181.7. *Liability.*

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

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Scott Freshour

General Counsel

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## CHAPTER 181. COMPLIANCE PROGRAM

### 22 TAC §§181.1 - 181.8

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

#### §181.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise:

(1) Licensee--A person to whom the board or an advisory board or committee of the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(2) Monitoring physician--A licensed Texas physician who conducts reviews of medical/billing records and/or conducts onsite reviews and periodically reports in writing to the board on the licensee's compliance.

(3) Toll--To extend the term of an order for any period of time that:

(A) a licensee practices exclusively outside the State of Texas;

(B) a licensee's license is cancelled for nonpayment of licensure fees;

(C) the order is stayed or enjoined by court order; or

(D) is longer than 60 consecutive days that a licensee does not actively practice medicine.

#### §181.2. General Compliance Standards.

(a) All licensees who are subject to non-disciplinary or disciplinary action must submit to compliance monitoring.

(b) All terms and conditions of a non-disciplinary or disciplinary action are binding and enforceable.

(c) Licensees are solely responsible for timely providing to the board all requested or required documentation of compliance.

(d) Licensees must maintain current contact information with the board, through board approved processes, including:

(1) work address(es);

(2) home address;

(3) work and cell telephone number(s); and

(4) electronic mail address.

(e) Any change to the required contact information must be reported to the board no later than ten calendar days after the effective date of the change.

(f) A compliance file is considered investigative and is confidential and subject to the provisions of §164.007(c) of the Act.

#### §181.3. Compliance Process.

(a) The compliance officer shall provide notice to the licensee of an initial meeting to review terms and conditions of the non-disciplinary or disciplinary action and the compliance process.

(b) At the initial meeting, the compliance officer will provide the licensee with a copy of the non-disciplinary or disciplinary action and other written information, including protocols for compliance with each term and condition.

(c) The compliance officer will meet with the licensee on a periodic and random basis and provide ongoing compliance reviews. The compliance reviews may be unannounced. The meetings may be conducted at a practice location or other location to verify compliance, and the time, date, and location of all visits are to be determined by staff unless otherwise agreed to by staff.

#### §181.4. Determination of Non-Compliance.

In addition to failing to comply with a term or condition of a non-disciplinary or disciplinary action, the following are also considered violations:

(1) failure to cooperate with board representatives, including:

(A) failing to promptly respond to communications;

(B) interference with board representatives that compromises or prevents them from fulfilling duties and responsibilities; or

(C) any harassing or threatening conduct directed toward board representatives.

(2) failure to timely submit a required report, unless a licensee presents evidence of good faith efforts to ensure the timely submission of reports.

#### §181.5. Enforcement Process for Violations.

(a) If a compliance officer identifies potential non-compliance, the Informal Settlement Conference (ISC) processes under Chapter 179 of this title will apply, except:

(1) the notice of the ISC to the licensee must be provided at least ten days prior to the date of the ISC; and

(2) any information the licensee wants considered at the ISC must be received by the board at least five days prior to the date of the ISC.

(b) To resolve violations of an order or remedial plan, a licensee may waive appearance at an ISC, and accept a settlement agreement approved by the Executive Director or their designee.

#### §181.6. Modification and Termination Process for Disciplinary Orders.

(a) In order to be eligible to submit the modification or termination request, the licensee must not be subject to a pending complaint, investigation, or board proceeding.

(b) The timing of the initial modification or termination request will be specified in the disciplinary order.

(c) Requests must be in writing and explain the basis for the request.

(d) If a licensee is determined to be eligible for modification or termination, an informal meeting will be scheduled for consideration of the request by a board representative panel. The meeting, will be conducted in a manner similar to an ISC; except that the burden is on the licensee to demonstrate grounds such as:

(1) a significant change in circumstances;

(2) an unanticipated, unique, or undue hardship as a result of the board action, but not the denial of insurance coverage or an adverse action taken by a medical specialty board; or

(3) any other relevant considerations.

(e) If at any time prior to final approval of the modification or termination request, the licensee becomes ineligible for any reason, the pending action will be cancelled, including any scheduled informal meeting to consider the request or board meeting to consider the recommendation.

(f) Subsequent requests can only be made once a year after the effective date of any order granting or denying modification or termination of the original order.

(g) Remedial plans are not allowed to be modified. Termination is automatic upon successful completion of the terms and conditions of the remedial plan.

§181.7. Automatic Termination of a Disciplinary Order.

(a) An order may be automatically terminated if specified in an order or upon successful completion.

(b) Successful completion of an order means:

(1) the compliance officer has verified timely completion of all terms and conditions of the order;

(2) there is no board complaint, investigation, or action pending related to violation of the order; and

(3) the order is not in tolled status, including partial tolling.

(c) When successful completion is verified, a written Notice of Termination of the Order will be issued.

§181.8. Recommendation for Competency Assessment.

(a) A third-party monitor may recommend that the licensee complete a competency evaluation if they have a good faith belief the individual poses a continuing threat.

(b) A recommendation must be reviewed and approved by the Chair of the Disciplinary Process and Review Committee (DPRC).

(c) If approved, the following procedure applies:

(1) the compliance officer will notify the licensee of the evaluation;

(2) the approved program must send a written report regarding the performance and results of evaluation directly to the compliance officer;

(3) upon completion of the competency evaluation, the licensee may be required to appear before a panel of board representatives;

(A) Informal Settlement Conference (ISC) processes under Chapter 179 of this title will apply to these appearances, except:

(i) the notice of the ISC to review the competency assessment must be provided to the licensee at least ten days prior to the date of the ISC; and

(ii) any information the licensee wants considered at the ISC must be received at least five days prior to the date of the ISC.

(4) Nothing in this paragraph limits the board's authority to conduct a temporary restriction or suspension proceeding under §164.059 of the Act.

(5) The panel may make recommendations for appropriate action, including but not limited to:

(A) a requirement to follow all the program recommendations,

(B) necessary re-training;

(C) re-education measures;

(D) practice restrictions; or

(E) a recommendation to convene temporary restriction or suspension proceedings if a continuing threat is identified.

The agency certifies that legal counsel has reviewed the proposal 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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## CHAPTER 182. USE OF EXPERTS

### 22 TAC §§182.1, 182.3, 182.5, 182.8

The Texas Medical Board (Board) proposes the repeal of current Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8.

The Board also proposes new Chapter 182, concerning Texas Physician Health Program, §§182.1 - 182.4.

Also, the Board contemporaneously proposes the repeal of current Chapter 180, concerning Texas Physician Health Program, §§180.1 - 180.4.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 182 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §182.1, Definitions, defines terms used in new Chapter 182.

New §182.2, Governing Board and Physician Health and Rehabilitation Advisory Committee Standards, explains the process of appointment of the Governing Board and Physician Health and Rehabilitation Advisory Committee. It also details the grounds for removal of members and conflicts of interest for members.

New §182.3, Operation of the Program, details how the Texas Physician Health Program (PHP) operates, including referrals to the program, agreements with participants, and drug and alcohol testing of participants. It also explains the Case Advisory Panel of the PHP.

New §182.4, Authority for the Program to Accept Gifts, Grants, and Donations, describes the process for acceptance of gifts, grants, and donations to the Governing Board.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there

will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeals existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/63DZ1ji8iq>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§182.1. *Purpose.*

§182.3. *Definitions.*

§182.5. *Expert Reviewer Qualifications.*

§182.8. *Expert Physician Reviewers.*

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

Filed with the Office of the Secretary of State on September 13, 2024.

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Scott Freshour

General Counsel

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## CHAPTER 182. TEXAS PHYSICIAN HEALTH PROGRAM

### 22 TAC §§182.1 - 182.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of Texas Occupations Code, Chapter 167. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§182.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--the Texas Medical Board and its advisory boards and committees.

(2) Agreement--a contract entered into between a participant and the TXPHP, detailing the terms of participant monitoring by TXPHP.

(3) Program or TXPHP--the Texas Physician Health Program.

§182.2. Governing Board and Physician Health and Rehabilitation Advisory Committee Standards.

(a) Appointment of Governing Board. The president of the Medical Board shall appoint a Governing Board of:

(1) 11 qualified individuals with appropriate experience as follows:

(A) six doctors of medicine (M.D.) licensed in Texas;

(B) two doctors of osteopathic medicine (D.O.) licensed in Texas;

(C) one physician assistant licensed in Texas for at least five years;

(D) one mental health professional licensed in Texas; and

(E) one public member who meets the requirements of §152.003 of the Act.

(2) The president of the Medical Board shall appoint the president of the Governing Board

(3) Members shall serve staggered six-year terms and may be reappointed.

(4) Any vacancies that occur are filled by the president of the Medical Board.

(b) Appointment of the Physician Health and Rehabilitation Advisory Committee ("Advisory Committee"). In accordance with §167.004 of the Act, the Governing Board appoints an Advisory Committee.

(1) The Advisory Committee shall be composed of a minimum of three physicians licensed in Texas with appropriate experience.

(2) The members serve staggered six-year terms at the pleasure of the Governing Board.

(3) Any vacancies that occur shall be filled by the Governing Board.

(c) Grounds for Removal. A member may be removed from the Governing Board or Advisory Committee if:

(1) grounds for removal exist under §152.006 of the Act; or

(2) the member fails to meet standards of professional conduct described in §160.2 of this title (relating to Functions and Duties).

(d) Conflicts of Interest.

(1) Governing Board and Advisory Committee members should avoid conflicts of interest and recuse themselves from participating in matters or decisions that represent such conflicts.

(2) Members must recuse themselves in any matter or decision relating to a participant that the member has treated or is currently treating.

§182.3. Operation of the Program.

(a) A Memorandum of Understanding (MOU) with the Medical Board shall be adopted by the Governing Board. The MOU is required to be reviewed as part of the program's internal audit in accordance with Chapter 167 of the Act.

(b) Referrals.

(1) Referrals to the program shall be accomplished in accordance with Chapter 167 of the Act.

(2) The program may accept a self-referral from an individual with credentials acceptable to the program, applicant for licensure with the Agency, or licensee of the Agency, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, an education program, a hospital or hospital system licensed in this state, a residency program, or the Agency.

(3) Agency referrals to the program may be public or private.

(4) Notwithstanding §167.0015 of the Act, the program may accept a referral from the board following a TMB investigation related to impairment resulting in a violation of the standard of care or the commission of a boundary violation. The referral to the program is solely for any impairment issue, and TMB will address disciplinary issues, if any, related to the standard of care violation or the commission of a boundary violation. A self-referral by an individual accused of a standard of care or boundary violation does not prohibit investigation by TMB for the standard of care or boundary violation.

(c) Eligibility Determinations.

(1) The Medical Director, designee of the Medical Director, or Governing Board president shall meet with a referred individual to determine eligibility for the program. The eligibility determination may be delegated to another qualified medical professional as necessary. This meeting with the referred individual may be waived if the Medical Director determines that good cause exists.

(2) A referred individual may be requested to undergo a clinically appropriate evaluation as either a condition for eligibility or as a term of an agreement. Refusal to undergo an evaluation may be referred to the Agency.

(d) Case Advisory Panel.

(1) The Case Advisory Panel is appointed by the president of the Governing Board to assist and advise the Medical Director, as needed, in eligibility determinations or monitoring recommendations. The Case Advisory Panel consists of the president, secretary, and one other Governing Board member.

(2) The Governing Board member is appointed on a four-month rotating basis.

(3) Cases reviewed by the Case Advisory Panel shall be reported on at the next scheduled meeting of the Governing Board.

(e) Agreements.

(1) Agreements are effective upon signature by the program participant and are subject to review by the Governing Board.

(2) Agreements between participants and the program may include, but are not limited to, the following terms and conditions:

(A) abstinence from prohibited substances and drug testing;

(B) agreement to not treat one's own self, family, or friends;

(C) agreement to not receive treatment from family or friends;

(D) participation in mutual support groups, such as Alcoholics Anonymous;

(E) participation in support groups for recovering professionals, such as Caduceus and International Doctors in Alcoholics Anonymous (IDAA);

(F) worksite monitoring;

(G) practice restrictions; or

(H) treatment by an appropriate health care provider.

(f) Drug and alcohol testing of participants shall be provided by a vendor using protocols approved by the Medical Board.

§182.4. Authority for the Program to Accept Gifts, Grants, and Donations.

(a) This subsection is set forth pursuant to §167.013 of the Act, which allows the Governing Board to receive a donation for the program.

(b) Texas Government Code, Chapter 572, governs the standards of conduct between the Governing Board, program, and donors.

(c) The Governing Board may not accept donations from individual applicants for a license or licensees under the Texas Medical Board's jurisdiction.

(d) In order for donations to be considered by the Governing Board:

(1) the donor must complete a form required by the Governing Board providing information including a description of the donation, the purpose, and any restrictions;

(2) the donation's purpose may not be for the funding of employee positions or services; and

(3) the donation must be considered in an open meeting by a majority of the members of the Governing Board and, if accepted, reported in the minutes including the name of the donor, and the purpose and a description of the donation.

(e) Following acceptance of the donation by the Governing Board, the donor and the program shall execute a donation agreement, which includes:

(1) a description of the donation, including a statement of the value;

(2) a statement by the donor attesting to the donor's ownership rights in the donation and the donor's authority to make the donation;

(3) a signature of the donor or designee;

(4) a signature of the program designee;

(5) restrictions on the use of the donations, if any;

(6) the mailing address of the donor and principal place of business if the donor is a business entity;

(7) a statement identifying any official relationship between the donor and the program; and

(8) a statement advising the donor the lack of tax-deductible status and to seek legal and/or tax advice from its own legal counsel.

(f) Monetary donations will be deposited and disbursed in accordance with the General Appropriations Act and for the purpose

specified by the donor, and in accordance with any local, state, and federal laws. In no event will donations be used for purposes not within the program's statutory authority.

(g) Conflict of Laws. These rules shall not conflict with a requirement of a statute regulating the conduct of an officer or employee of the program or the procedures of the program. In the event there appears to be a conflict between these rules and a state statute, the state statute controls.

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## CHAPTER 183. ACUPUNCTURE

### 22 TAC §§183.1 - 183.27

The Texas Medical Board (Board) proposes the repeal of current Chapter 183, concerning Acupuncture, §§183.1 - 183.27.

The Board also proposes new Chapter 183, concerning Physician Assistants. This includes new Subchapter A, concerning Physician Assistant Board, §§183.1 - 5; Subchapter B, concerning Licensing and Registration, §§183.10 - 183.17; Subchapter C, concerning Practice Requirements, §183.20, and §183.21; and Subchapter D, concerning Board Processes and Procedures, §183.25.

Also, the Board contemporaneously proposes the repeal of current Chapter 185, concerning Physician Assistants, §§185.1 - 185.33.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 183 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

#### SUBCHAPTER A. PHYSICIAN ASSISTANT BOARD.

New §183.1, Definitions, defines terms used in new Chapter 183.

New §183.2, Functions and Duties, explains the functions and duties of the Physician Assistant Board and its members.

New §183.3, Meetings, explains how often the board meets, how board and committee meetings are conducted, and the voting process at meetings.

New §183.4, Standing Committees, explains the function of the two Standing Committees, Disciplinary Committee and Licensure Committee of the board.

New §183.5, Officers of the Board, explains the duties of the presiding officer and secretary of the board, as well as appointment and succession of officers.

#### SUBCHAPTER B. LICENSING AND REGISTRATION.

New §183.10, General Requirements for Licensure, outlines the general standards for licensure for a Physicians Assistants license cited in §§204.152 and 204.153 of the Act and submission of relevant documentation.

New §183.11, Current Clinical Practice, outlines the requirements of a physician assistant relating to professional or work history evaluations and demonstration that the physician assistant has worked as a physician assistant in the preceding five years from the date of application. Alternatively, the section describes several options if an applicant cannot demonstrate current clinical practice as a physician assistant within the last three years from the date of application.

New §183.12, Temporary Licenses, explains the requirements and process for an applicant to obtain a temporary physician assistants license as cited in §205.155 of the Act.

New §183.13, Procedural Rules for Licensure Applicants, outlines the general requirements and processing of the application to obtain a physician assistants license. This section also describes the options offered by the Executive Director to the applicant if there is an issue with the application.

New §183.14, Relicensure, explains the requirements for a license holder who retired or surrendered their license and seek to be re-licensed.

New §183.15, License Registration and Renewal, outlines the general requirements for license registration and renewal for a Texas physician assistants license.

New §183.16, Biennial Continuing Medical Education (CME) Requirements, explains the registration renewal requirements regarding the Physicians Assistants biennial continuing medical education.

New §183.17, Inactive License, explains the number of years that the license is automatically canceled after being placed on inactive status for 3 years. This section also describes the process for relicensure, which is required for activation of a canceled license.

#### SUBCHAPTER C. PRACTICE REQUIREMENTS.

New §183.20, On-Going Reporting Requirements, states that a license holder must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §183.21, Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures, outlines specific requirements for physician assistants in performing radiologic procedures when delegated in compliance with requirements of §157.001 of the Medical Practice Act.

#### SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES.

New §183.25, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §204.312 of the Act for physician assistants.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there

will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/KPT623ehXQ>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§183.1. *Purpose.*

§183.2. *Definitions.*

§183.3. *Meetings.*

§183.4. *Licensure.*

§183.5. *Biennial Renewal of License.*

§183.6. *Denial of License; Discipline of Licensee.*

§183.7. *Scope of Practice.*

§183.8. *Investigations.*

§183.9. *Impaired Acupuncturists.*

§183.10. *Patient Records.*

§183.11. *Complaint Procedure Notification.*

§183.12. *Medical Board Review and Approval.*

§183.13. *Construction.*

§183.14. *Acudetox Specialist.*

§183.15. *Use of Professional Titles.*

§183.16. *Texas Acupuncture Schools.*

§183.17. *Compliance.*

§183.18. *Administrative Penalties.*

§183.19. *Acupuncture Advertising.*

§183.20. *Continuing Acupuncture Education.*

§183.21. *Continuing Auricular Acupuncture Education for Acudetox Specialists.*

§183.22. *Language Requirements.*

§183.23. *Voluntary Surrender of Acupuncture License.*

§183.24. *Procedure.*

§183.25. *Inactive Status License.*

§183.26. *Retired License.*

§183.27. *Exemption from Licensure for Certain Military Spouses.*

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

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General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030

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CHAPTER 183. PHYSICIAN ASSISTANTS  
SUBCHAPTER A. PHYSICIAN ASSISTANT  
BOARD

22 TAC §§183.1 - 183.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, 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; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§183.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--The Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204.

(2) Board or the "Physician Assistant Board"--The Texas Physician Assistant Board.

(3) Medical Practice Act--Texas Occupations Code, Title 3, Subtitle B, as amended.

§183.2. *Functions and Duties.*

(a) In accordance with §204.101 of the Act, board duties and functions include:

(1) establishing standards for the practice of physician assistants;

(2) regulating physician assistants through licensure and discipline;

(3) receiving complaints and investigating possible violations of the Act and the board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy as necessary; and

(6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or

disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or, unless the board has given the board member such authority; and

(4) A board member shall immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

#### §183.3. Meetings.

(a) The board may meet up to four times a year, with a minimum of two times a year, to carry out the mandates of the Act.

(b) Board and Committee meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(c) Special meetings may be called by the presiding officer of the board or by resolution of the board.

(d) The board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

#### §183.4. Standing Committees.

The Standing Committees of the board are as follows:

##### (1) Disciplinary Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

##### (2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria for licensure of physician assistants;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas physician assistant programs.

#### §183.5. Officers of the Board.

(a) In accordance with §204.055 of the Act, the officers of the board consist of a presiding officer and a secretary.

(b) The secretary of the board shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(c) The board, at a regular meeting or special meeting, upon majority vote of the members present, may remove the secretary from office.

(d) In the event of the absence or temporary incapacity of the presiding officer and the secretary, the members of the board may elect

another physician assistant member to act as the presiding officer of a board meeting or as an interim acting presiding officer for the duration of the absences or incapacity or until another presiding officer is appointed by the governor.

(e) Upon the death, resignation, removal, or permanent incapacity of the presiding officer or the secretary, the board shall elect a secretary from its membership to fill the vacant position. The board may elect an interim acting presiding officer until another presiding officer is appointed by the governor. Such an election shall be conducted as soon as practicable at a regular or special meeting of the board.

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

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## SUBCHAPTER B. LICENSING AND REGISTRATION

### 22 TAC §§183.10 - 183.17

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, 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; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §183.10. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §§204.152 and 204.153 of the Act and submit:

(1) the board required application form;

(2) payment of the required fee of \$220.00, and additional fees and surcharges as applicable; and

(3) required documentation including, but not limited to:

(A) a Dean's Certification of Graduation form;

(B) evidence of passage of the national licensing examination required for NCCPA certification with no more than six attempts;

(C) a current NCCPA verification;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice as a physician assistant for the preceding five years from the date of the application;



(F) the National Practitioner Data Bank and Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) a physician assistant school transcript, if requested;

(J) arrest records, if applicable;

(K) malpractice records, if applicable;

(L) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(M) military orders or DD214, if applicable;

(N) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(O) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

#### §183.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as a physician assistant in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing as a physician assistant involving treatment of persons;

(2) enrollment as a student in an acceptable approved physician assistant program; or

(3) appointment as an active teaching faculty member in an acceptable approved physician assistant program.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as a physician assistant within the last three years from the date of application:

(1) a Supervised Temporary License as set forth in §183.12 of this subchapter (relating to Temporary Licenses);

(2) remedial clinical education including, but not limited to, enrollment as a student at an acceptable physician assistant program approved by the board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

#### §183.12. Temporary Licenses.

(a) Applicants for a temporary license must meet the requirements in §204.155 of the Act.

(b) Temporary licenses may be issued to:

(1) an applicant who is qualified for a full license, subject to the terms and conditions that require board approval; or

(2) remedy current clinical practice issues set forth in §183.11 of this subchapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary license to remedy a current clinical practice issue under §183.11 of this subchapter, an applicant must be supervised by a licensed physician who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the board.

(d) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee of \$107.00.

(e) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

#### §183.13. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §204.152 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

#### §183.14. Relicensure.

(a) For a license holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$220.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §183.10 of this subchapter (relating to General Requirements for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) In accordance with §204.315 of the Act, applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§183.15. License Registration and Renewal.

(a) Within 90 days of a license being issued, it must be registered by:

(1) completing a board registration form;

(2) submitting payment of the initial registration fee of \$541.00, and additional fees and surcharges, as applicable;

(3) providing requested information related to their online verification; and

(4) providing other relevant information requested by the board staff.

(b) Subsequent registration will be biennially by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$537.00, and additional fees and surcharges, as applicable;

(3) verifying and updating information related to their online verification;

(4) completing biennial continuing medical education (CME) required under §183.16 of this subchapter (relating to Biennial Continuing Medical Education (CME) Requirements); and

(5) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(d) Failure to renew within one year after the expiration date of the license will result in cancellation of the license.

§183.16. Biennial Continuing Medical Education (CME) Requirements.

(a) As part of registration renewal, a license holder must complete 40 hours of continuing medical education (CME) during the biennial renewal period.

(1) At least 20 hours must be from formal courses:

(A) designated for Category I credit by a CME sponsor approved by the American Academy of Physician Assistants; or

(B) approved by the board for course credit, including a human trafficking prevention course approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(2) The remaining hours may be designated for Category II credit, composed of informal self-study, attendance at hospital lectures, grand rounds, case conferences, or by providing volunteer medical services at a site serving a medically underserved population.

(b) Formal CME credit is allowed at the rate of 1 credit for each hour of time acting on behalf of the physician assistant board for evaluation of a physician assistant's competency or practice monitoring, up to a maximum of 6 hours per year, as part of the required formal hours.

(c) Military service members are subject to the same CME requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(d) Carry forward of CME credit is allowed as follows:

(1) A maximum of 80 total excess credit hours may be carried forward and shall be reported according to whether the hours are Category I and/or Category II.

(2) Excess CME credit hours may not be carried forward or applied to a report of CME more than two years beyond the date of the biennial registration following the period during which the hours were earned. No hours may be carried forward past a single renewal period.

(e) Exemptions for CME requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§183.17. Inactive License.

(a) In accordance with §204.157 of the Act, a license may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the license will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §204.157(c) of the Act and §183.10 of this subchapter (General Requirements for Licensure).

(d) After a license has been cancelled, an applicant must meet all requirements under §183.14 of this subchapter (relating to Procedural Rules for Licensure Applicants) to obtain relicensure.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour  
General Counsel  
Texas Medical Board  
Earliest possible date of adoption: October 27, 2024  
For further information, please call: (512) 305-7030



## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §183.20, §183.21

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, 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; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §183.20. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) - (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

#### §183.21. Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures.

In accordance with §601.254 of the Texas Occupations Code, a physician assistant may perform a radiologic procedure, including a dangerous or hazardous procedure, when delegated in compliance with requirements of §157.001 of the Medical Practice Act.

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

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §183.25

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, 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; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a);

and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §183.25. Procedural Rules.

(a) In accordance with §204.312 of the Act, the Procedural Rules in Chapter 179 of this title (relating to Procedural Rules) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Complaints and Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Disciplinary Guidelines) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 (relating to Compliance Program) of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

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## CHAPTER 184. SURGICAL ASSISTANTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 184, concerning Surgical Assistants §§184.1 - 184.9 and §§184.12 - 184.26.

The Board also proposes new Chapter 184, concerning Acupuncture. This includes new Subchapter A, concerning Acupuncture Board, §§184.1 - 184.4, Subchapter B, concerning Licensing and Registration, §§184.10 - 184.19, Subchapter C, concerning Practice Requirements, §§184.25 - 184.27, Subchapter D, concerning Board Processes and Procedures, §184.30; and Subchapter E, concerning Acudetox Specialists, §§184.35 - 184.37.

Also, the Board contemporaneously proposes the repeal of current Chapter 183, concerning Acupuncture, §§183.1 - 183.27.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 184 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

#### SUBCHAPTER A. ACUPUNCTURE BOARD.

New §184.1, Definitions, defines terms used in new Chapter 184.

New §184.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §184.3, Meetings, explains how Board and Committee meetings are conducted.

New §184.4, Standing Committees, explains the function of the three Standing Committees of the Board.

#### Subchapter B. Licensing and Registration.

New §184.10, General Requirements for Licensure, outlines the general standards for licensure for a Texas acupuncture license.

New §184.11, Current Clinical Practice, outlines the professional or work history information applicants must provide for review when seeking a license.

New §184.12, Temporary Licenses, explains the standards required when a temporary license may be issued and the purpose of the license.

New §184.13, Examinations and Attempt Limits, outlines the applicants' requirements to take and pass the examination for licensure eligibility.

New §184.14, Procedural Rules for Licensure Applicants, explains the procedural rules for Applicants in accordance with §205.202 of the Act.

New §184.15, Relicensure, explains the requirements for a license holder who retired or surrendered their license and is seeking to be re-licensed.

New §184.16, License Registration and Renewal, explains the registration and renewal process of an acupuncture license.

New §184.17, Biennial Continuing Acupuncture Education (CAE) Requirements, explains the requirements of a license holder, as part of registration renewal with regard to biennial continuing acupuncture education.

New §184.18, Approval of Continuing Education Courses and Providers, explains the purpose, requirements, and process for approval of continuing education courses and providers.

New §184.19, Inactive License, explains the number of years that the license is automatically canceled after being placed on inactive status for 3 years. The process for relicensure is required for activation of a canceled license.

#### Subchapter C. Practice Requirements.

New §184.25, Patient Records, outlines the general requirements for keeping and maintaining adequate patient records, including retention periods.

New §184.26, On-Going Reporting Requirements, states that a license holder must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §184.27, Acupuncture Advertising, describes what type of acupuncture advertising is or is not considered to be permissible or prohibited.

Subchapter D. board processes and procedures.

New §184.30, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §205.351 of the Act.

#### Subchapter E, Acudetox Specialists.

New §184.35, Definitions, defines the term, Auricular Acudetox.

New §184.36, Acudetox Certification, outlines the general requirements and process for certification to perform acudetox, including acupuncture certificate renewal.

New §184.37, Other Requirements Related to Acudetox Practice, states that Certificate-holders must keep a current mailing and practice address on file with the board and that a change of address must be reported to the board within 10 days. Also, this section states that Certificate-holders use of titles is restricted to "Certified Acudetox Specialist" or "C.A.S." and that failure to comply with Acudetox rules may result in loss of certification.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/Ts2WwLfkzB>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### **22 TAC §§184.1 - 184.9, 184.12 - 184.26**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of Acupuncture; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

- §184.1. *Purpose.*
- §184.2. *Definitions.*
- §184.3. *Meetings.*
- §184.4. *Qualifications for Licensure.*
- §184.5. *Procedural Rules for Licensure Applicants.*
- §184.6. *Licensure Documentation.*
- §184.7. *Temporary Licensure.*
- §184.8. *License Renewal.*
- §184.9. *Relicensure.*
- §184.12. *Surgical Assistant Scope of Practice.*
- §184.13. *Physician Supervision.*
- §184.14. *Supervising Physician.*
- §184.15. *Grounds for Denial of Licensure and for Disciplinary Action.*

- §184.16. *Discipline of Surgical Assistants.*
- §184.17. *Disciplinary Guidelines.*
- §184.18. *Administrative Penalties.*
- §184.19. *Complaint Procedure Notification.*
- §184.20. *Investigations.*
- §184.21. *Impaired Surgical Assistants.*
- §184.22. *Procedure.*
- §184.23. *Compliance.*
- §184.24. *Construction.*
- §184.25. *Continuing Education.*
- §183.26. *Voluntary Relinquishment or Surrender of a License.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## **CHAPTER 184. ACUPUNCTURE SUBCHAPTER A. ACUPUNCTURE BOARD**

### **22 TAC §§184.1 - 184.4**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, 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 and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §184.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acupuncture Act or "the Act"--Texas Occupations Code, Chapter 205.

(2) Acupuncture Board or "board"--The Texas State Board of Acupuncture Examiners.

(3) Acceptable approved acupuncture school--Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Act:

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) or another accrediting body recognized by the Texas Higher Education Coordinating Board, provides certification that the curriculum at the time of the applicant's graduation was equivalent to the curriculum upon which accreditation granted, offered a master's degree or a professional certificate or diploma upon

graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAHM or another accrediting body recognized by the Texas Higher Education Coordinating Board, offered a master's degree or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a Texas acupuncture school or a school defined in subparagraph (B) of this paragraph. An evaluation by the Foreign Credentials Service of America (FCSA) or an evaluation requested by the board may be utilized when making a determination of substantial equivalence.

(4) Medical Practice Act--Texas Occupations Code Annotated, Title 3, Subtitle B, as amended.

#### §184.2. Functions and Duties.

(a) In accordance with §205.101 of the Act, board duties and functions include:

(1) establishing standards for the practice of acupuncture;  
(2) regulating acupuncturists through licensure and discipline;

(3) receiving complaints and investigating possible violations of the Act and the board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy as necessary; and

(6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member shall refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority; and

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

#### §184.3. Meetings.

(a) Board and Committee meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer of the board or by resolution of the board.

(c) The board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

#### §184.4. Standing Committees.

The Standing Committees of the board are as follows:

(1) Discipline and Ethics Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for licensure of acupuncturists;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas acupuncture programs.

(3) Education Committee:

(A) reviews and makes recommendations concerning educational requirements for licensure in Texas;

(B) reviews and makes recommendations for continuing education requirements and providers used for renewal of a Texas license; and

(C) reviews information regarding foreign acupuncture schools and adequacy of education for licensure.

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

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## SUBCHAPTER B. LICENSING AND REGISTRATION

### 22 TAC §§184.10 - 184.19

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, 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 and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §184.10. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §205.203 of the Act and submit:

- (1) the board required application form;
- (2) payment of the required fee of \$320.00, and additional fees and surcharges as applicable; and
- (3) required documentation including, but not limited to:
  - (A) a Dean's Certification of Graduation form verifying completion of an acceptable approved acupuncture school;
  - (B) an Acupuncture School Transcript, including proof of completion of 1,800 instructional hours, with at least 450 hours of herbal studies;
  - (C) certified transcript of NCCAOM Examination Scores;
  - (D) evidence of passage of the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination;
  - (E) proof of ability to communicate in English as described in §184.13 of this chapter (relating to Examinations and Attempt Limits);
  - (F) a birth certificate or other similar proof of age;

(G) Professional or Work History Evaluation forms demonstrating or relating to the practice of acupuncture for the preceding five years from the date of the application;

(H) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(I) FBI/DPS Fingerprint Report;  
(J) documentation of alternate name or name change, if applicable;

(K) arrest records, if applicable;

(L) malpractice records, if applicable;

(M) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(N) military orders or DD214, if applicable;

(O) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(P) any other documentation deemed necessary by the board to process an application, including certified translation of any document in a language other than the English language along with the original document or a certified copy of the translated document.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

- (1) delay in processing an application;
- (2) referral to the Licensure Committee;
- (3) unanticipated military assignments, medical reasons, or catastrophic events; or
- (4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

#### §184.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as an acupuncturist in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing acupuncture involving treatment of persons;

(2) enrollment as a student at an acceptable approved acupuncture school; or

(3) appointment as an active teaching faculty member at an acceptable approved acupuncture school.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as an acupuncturist within the last three years from date of application:

(1) a Supervised Temporary License as set forth in §184.12 of this chapter;

(2) remedial education including, but not limited to, enrollment as a student and successful completion of 240 hours of clinical

practice at an acceptable approved acupuncture school or other structured program approved by the board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

§184.12. Temporary Licenses.

(a) Applicants for a temporary license must meet the requirements in §205.208 of the Act.

(b) Temporary licenses may be issued to:

(1) an applicant who is qualified for a full license, subject to terms and conditions that require board approval; or

(2) remedy current clinical practice issues set forth in §184.11 of this chapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary license to remedy a current clinical practice issue under §184.11 of this chapter, an applicant must be supervised by a licensed acupuncturist who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the board.

(d) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee of \$107.00.

(e) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

§184.13. Examinations and Attempt Limits.

(a) An applicant must provide proof of passage of the following:

(1) The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination, consisting of the following:

(A) if taken before June 1, 2004: the Comprehensive Written Exam (CWE), the Clean Needle Technique Portion (CNTP), the Practical Examination of Point Location Skills (PEPLS), and the Chinese Herbology Exam; or

(B) if taken on or after June 1, 2004: the NCCAOM Foundation of Oriental Medicine Module, Acupuncture Module, Point Location Module, the Chinese Herbology Module, and the Biomedicine Module; and

(2) CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination.

(b) All applicants must take and pass, within six attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination.

(c) English proficiency is demonstrated by:

(1) graduation from an of approved school of acupuncture located in the United States or Canada; or

(2) passage of any of the following recognized tests:

(A) English language version of NCCAOM examination; or

(B) Passing score of 70% or better on each section of any of the following tests:

(i) Test of English as a Foreign Language (TOEFL);

(ii) Test of English for International Communication (TOEIC);

(iii) Occupational English Test (OET); or

(iv) other examination of English competency considered acceptable to the board.

§184.14. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §205.202 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§184.15. Relicensure.

(a) For a license holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$320.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §184.10 of this chapter (relating to General Requirement for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) In accordance with §205.3522 of the Act, applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§184.16. License Registration and Renewal.



(a) Within 90 days of a license being issued, it must be registered by:

- (1) completing a board registration form;
- (2) submitting payment of the initial registration fee of \$671.00, and additional fees and surcharges, as applicable;
- (3) providing requested information related to their online verification; and
- (4) providing other relevant information requested by the board staff.

(b) Subsequent registration will be biennially by:

- (1) completing a board renewal form;
- (2) submitting payment of a biennial registration fee of \$667.00, and additional fees and surcharges, as applicable;
- (3) verifying and updating information related to their on-line verification;
- (4) completing biennial continuing acupuncture education (CAE) required under §184.17 of this chapter (relating to Biennial Continuing Acupuncture Education (CAE) Requirements); and
- (5) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

- (1) 1-90 days late -- renewal fee plus one half of the renewal fee; and
- (2) 91 days-1 year late -- double the renewal fee.

(d) Failure to renew within one year after the license's expiration date will result in cancellation of the license.

§184.17. Biennial Continuing Acupuncture Education (CAE) Requirements.

(a) As part of registration renewal, a license holder must complete 34 hours of CAE during the biennial renewal period as follows:

- (1) Minimum core hours include:
  - (A) eight hours in general acupuncture therapies;
  - (B) two hours in ethics and safety;
  - (C) six hours in herbology; and
  - (D) four hours of biomedicine.

(2) Completion of a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission. This course may satisfy the required two core hours in ethics and safety.

(3) The remaining CAE hours may be from other approved courses. No more than four hours in business practice or office administration is allowed.

(b) Approved courses are:

- (1) courses approved by the board;
- (2) courses offered by board approved CAE providers;
- (3) NCCAOM professional development activity credits;

and

(4) CAE providers who are formally approved by another state for a minimum of three years.

(c) Carry forward of CAE credit is allowed as follows:

- (1) no more than 34 excess hours earned in a biennium may be applied to the following biennial requirements; and
- (2) no hours can be carried forward past a single renewal period.

(d) Instructors of board-approved CAE courses may receive three hours of CAE credit for each hour of lecture with a maximum of six hours of continuing education credit per year. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.

(e) Exemptions for CAE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

- (A) catastrophic illness
- (B) military service of longer than one year's duration outside the state;
- (C) licensee's residence of longer than one year's duration outside the United States; or
- (D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§184.18. Approval of Continuing Education Courses and Providers.

(a) Pursuant to §205.255 of the Act, the following must be approved by the board:

(1) CAE courses and providers that are not NCCAOM approved; and

(2) acceptable approved acupuncture schools and colleges seeking to be approved providers.

(b) Requests for approval of CAE courses must include:

- (1) a form approved by the board;
- (2) payment of required fee of \$25.00; and
- (3) other requested documentation including, but not limited to:

(A) Course description related to acupuncture or oriental medicine, including techniques, skills, and patient care;

(B) method of instruction or teaching;

(C) the name, credentials, competency and training of the instructor(s);

(D) verification of attendance/participation;

(E) each credit hour is equal to no less than 50 minutes of actual instruction or training;

(F) name and location of school, state, or professional organization; and

(G) provide written evaluations available to the board upon request.

(c) Requests for approval of a CAE provider must include:

(1) a form approved by the board;

(2) payment of required fee of \$50.00;

(3) other requested documentation including, but not limited to, evidence that the provider has three continuous years of previ-

ous experience providing at least one different CAE course in Texas in each of those years that were approved by the board; and

(4) only one provider number is issued to an organization, and it is not transferable.

(d) Provider Responsibilities and Duties. The provider must:

(1) keep course records for four years demonstrating the following:

(A) course outlines of each course given;

(B) record of time and places of each course given;

(C) course instructor and their qualifications;

(D) the attendance record showing the name, signature and license number of licensed attendees; and

(E) copy of a certificate of completion.

(2) provide notice of any changes in person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(e) After board review, notice of the decision will be provided to the requestor.

(f) Approval, if granted, is valid for three years.

(g) Approval may be withdrawn based on information received concerning a course or provider. If the board is considering withdrawing approval, notice will be provided prior to taking any action.

#### §184.19. Inactive License.

(a) A license may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the license will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §184.10 of this chapter (relating to General Requirements for Licensure).

(d) After a license has been cancelled, an applicant must meet all requirements under §184.15 of this chapter (relating to Relicensure) to obtain relicensure.

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## SUBCHAPTER C. PRACTICE REQUIREMENTS

22 TAC §§184.25 - 184.27

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, 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 and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §184.25. Patient Records.

(a) Acupuncturists must keep and maintain adequate patient records in English that include, but are not limited to:

(1) the patient's name and address;

(2) vital signs;

(3) the chief complaint;

(4) a patient history;

(5) documented patient consent, including written patient consent for treatment in sensitive areas;

(6) a treatment plan, including amounts and forms of herbal medications and other modalities, including acupuncture terms, including herbs, may use the Chinese or Pinyin translation if commonly known by such translation;

(7) adequate billing records to support charges and billing codes used; and

(8) copies of referrals to and from other providers done in accordance with §205.301 of the Act, including the below form for documentation required by §205.301(b) of the Act: Figure: 22 TAC §184.25(a)(8)

(b) Retention of Patient and Billing Records. An acupuncturist must retain patient records as follows:

(1) for a minimum of five years from the date of last treatment by the acupuncturist.

(2) For patients younger than 18 years of age, until the patient reaches age 21, or for five years from the date of last treatment, whichever is longer.

(c) For purposes of releasing or providing copies of patient records:

(1) §159.005 of the Medical Practice Act applies, along with other applicable state and federal laws including HIPAA; and

(2) allowable charges are those listed in §163.3(c) of this title (relating to Requests for Medical Records).

#### §184.26. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) through (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

#### §184.27. Acupuncture Advertising.

(a) Acupuncturists shall not authorize or use false, misleading, or deceptive advertising.

(b) Acupuncturists also shall not:

(1) hold themselves out as a physician or surgeon or any combination or derivative of those terms as defined under §151.002(a)(13) of the Medical Practice Act;

(2) use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification and is currently certified.

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

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §184.30

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §205.101, 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 and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §184.30. Procedural Rules.

(a) For purposes of this subchapter and in accordance with §205.351 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

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## SUBCHAPTER E. ACUDETOX SPECIALIST

### 22 TAC §§184.35 - 184.37

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, 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 and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §184.35. Definitions.

Auricular Acudetox means an acupuncture treatment limited to the insertion of needles into five acupuncture points in the ear. These points are the liver, kidney, lung, sympathetic and shen men.

#### §184.36. Acudetox Certification.

(a) An Acudetox certificate may be issued in accordance with §205.303 of the Act, and the applicant must submit:

- (1) a board required application form;
- (2) the required fee of \$52.00, and additional fees and surcharges as applicable;
- (3) proof of completion of auricular acupuncture at least 70 hours in length that includes a clean needle technique course or equivalent universal infection control precaution procedures course; and
- (4) other documentation deemed necessary to process an application.

(b) In accordance with §205.303(d) of the Act, a certificate may be renewed by submitting:

- (1) a board required renewal form;
- (2) payment of the renewal fee of \$87.50, and additional fees and surcharges as applicable;
- (3) completing at least three hours of Continuing Auricular Acupuncture Education for Acudetox Specialists and other courses are designated or otherwise approved for credit by the board; and
- (4) other documentation deemed necessary to process a renewal.

(c) Failure to renew certificate before expiration date but less than a year will be a \$25.00 fee plus the required renewal fee.

(d) Certificates expired for a year are automatically canceled.

§184.37. Other Requirements Related to Acudetox Practice.

(a) Certificate-holders must keep a current mailing and practice address on file with the Texas Medical Board and provide notice of any address change within ten days of such change.

(b) Certificate holders may only use the titles "Certified Acudetox Specialist" or "C.A.S."

(c) Failure to comply with laws and rules related to Acudetox may result in loss of certification.

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

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## CHAPTER 185. PHYSICIAN ASSISTANTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 185, concerning Physician Assistants, §§185.1 - 185.33.

The Board also proposes new Chapter 185, concerning Surgical Assistants, §§185.1 - 185.11.

Also, the Board contemporaneously proposes the repeal of current Chapter 184, concerning Surgical Assistants, §§184.1 - 184.9, and §§184.12 - 184.26.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 185 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §185.1, Definitions, defines terms used in new Chapter 185.

New §185.2, Meetings, explains how Advisory Committee meetings are conducted in compliance with §206.058 of the Act.

New §185.3, General Requirements for Licensure, outlines the general requirements for licensure for a Surgical Assistants license in accordance with §§206.202 and 206.203 of the Act including but not limited to, application form, and specific documentation.

New §185.4, Education Requirements, outlines the applicant's completion of specific education requirements for Surgical Assistants for licensure.

New §185.5, Examinations, describe the organizations that will accept a passing score for the purpose of obtaining a Surgical Assistants license.

New §185.6, Procedural Rules for Licensure Applicants, outlines the process of review of the licensee's application by the Executive Director and the options that may be offered in accordance with §206.209 of the Act.

New §185.7, Temporary Licenses, explains the requirements and process to obtain a temporary Surgical Assistants license in accordance with §206.206 of the Act.

New §185.8, License Registration and Renewal, outlines the general requirements for license registration and renewal of a Texas Surgical Assistants license.

New §185.9, Biennial Continuing Education (CE) Requirements, explains the requirements of a license holder, including their completion of formal course hours by an accredited organization or school and exemptions for CE requirements regarding the Surgical Assistants biennial continuing medical education.

New §185.10, Relicensure, describes the requirements by which a licensee who has retired or surrendered their license and seeks to be re-licensed.

New §185.11, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §206.313 of the Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/xy7qvcnp08>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§185.1 - 185.33

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §185.1. *Purpose.*
- §185.2. *Definitions.*
- §185.3. *Meetings and Committees.*
- §185.4. *Procedural Rules for Licensure Applicants.*
- §185.5. *Relicensure.*
- §185.6. *Biennial Renewal of License.*
- §185.7. *Temporary License.*
- §185.8. *Inactive License.*
- §185.9. *Reissuance of License Following Revocation.*
- §185.10. *Physician Assistant Scope of Practice.*
- §185.11. *Tasks Not Permitted to be Delegated to a Physician Assistant.*
- §185.12. *Identification Requirements.*

- §185.13. *Notification of Intent to Practice and Supervise.*
- §185.14. *Physician Supervision.*
- §185.15. *Supervising Physician.*
- §185.16. *Employment Guidelines.*
- §185.17. *Grounds for Denial of Licensure and for Disciplinary Action.*
- §185.18. *Discipline of Physician Assistants.*
- §185.19. *Administrative Penalties.*
- §185.20. *Complaints.*
- §185.21. *Investigations.*
- §185.22. *Impaired Physician Assistants.*
- §185.23. *Third Party Reports to the Board.*
- §185.24. *Procedure.*
- §185.25. *Compliance.*
- §185.26. *Voluntary Relinquishment or Surrender of Physician Assistant License.*
- §185.27. *Duty to Report Certain Conduct to the Board.*
- §185.28. *Retired License.*
- §185.29. *Report of Impairment on Registration Form.*
- §185.30. *Prescriptive Authority Agreements Generally.*
- §185.31. *Prescriptive Authority Agreements: Minimum Requirements.*
- §185.32. *Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures.*
- §185.33. *Exemption from Licensure for Certain Military Spouses.*

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

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General Counsel

Texas Medical Board

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## CHAPTER 185. SURGICAL ASSISTANTS

### 22 TAC §§185.1 - 185.11

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §206.101, 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; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of Texas Occupations Code §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §185.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--Texas Occupations Code, Chapter 206.

(2) Advisory Committee--the Surgical Assistant Advisory Committee to the Texas Medical Board.

(3) Medical Practice Act--Texas Occupations Code, Title 3, Subtitle B, as amended.

§185.2. Meetings.

Meetings of the Advisory Committee shall be conducted in compliance with §206.058 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

§185.3. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §§206.202 and 206.203 of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$351.00, and additional fees and surcharges as applicable; and

(3) required documentation, including, but not limited to:

(A) certified transcript verifying at least an Associate's degree at a two or four year institution of higher education;

(B) certified transcript verifying completion of an education program set forth in §185.4 of this chapter (relating to Education Requirements);

(C) Professional or Work History Evaluation forms verifying practice as a Surgical Assistant for at least 2000 hours within the last three years from the date of the application;

(D) current certification by a national certifying board approved by the board;

(E) certified transcript of a surgical or first assistant examination set forth in §185.5 of this chapter (relating to Examinations);

(F) birth certificate or other similar proof of age;

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable;

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable; and

(M) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of an application fee.

§185.4. Education Requirements.

In addition to the education recognized in §206.203 of the Act, an applicant for licensure must complete:

(1) a Surgical Assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAA-HEP);

(2) basic and clinical sciences coursework at a medical school;

(3) a registered nurse first assistant program that is approved or recognized by the Texas Board of Nursing; or

(4) a post graduate clinical Physician Assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that Committee's predecessor or successor.

§185.5. Examinations.

The following examinations with a passing score are acceptable:

(1) American Board of Surgical Assistants;

(2) National Board of Surgical Technology and Surgical Assisting (NBSTSA) formerly known as Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) the National Surgical Assistant Association provided that the exam was administered on or after March 29, 2003.

§185.6. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §206.209 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission, or other errors and re-submitting a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may within 20 days of notice of non-approval request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§185.7. Temporary Licenses.

(a) Temporary licenses will be issued in accordance with §206.206 of the Act.

(b) Applicants must submit:

- (1) a board required application form; and
- (2) the required fee of \$50.00.

§185.8. License Registration and Renewal.

(a) Within 90 days of a license being issued, it must be registered by:

- (1) completing a board registration form; and
- (2) submitting payment of the initial registration fee of \$561.00, and additional fees and surcharges as applicable.

(b) Subsequent registration will be biennially by:

- (1) completing the renewal form;
- (2) submitting payment of a biennial registration fee of \$557.00, and additional fees and surcharges as applicable; and
- (3) completing biennial continuing education (CE) required under §185.9 of this chapter (relating to Biennial Continuing Education (CE) Requirements).

(c) Failure to renew before the expiration date will result in increased charges as follows:

- (1) 1-90 days late -- renewal fee plus one half of the renewal fee; and
- (2) 91 days-1 year late -- double the renewal fee.

(d) Failure to renew within one year after the expiration date of the license will result in cancellation of the license.

§185.9. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete 36 hours of continuing education (CE) in surgical assisting or in courses that enhance the practice of surgical assisting as follows:

(b) 18 hours of formal courses that are:

- (1) AMA/PRA Category I credited by an Accreditation Council for Continuing Medical Education;
- (2) Association of Surgical Technologists/ Association of Surgical Assistants, the American Board of Surgical Assistants, or the National Surgical Assistants Association approved;
- (3) AOA Category 1-A credit approved by the American Osteopathic Association; or
- (4) Texas Medical Association approved.

(c) The formal hours of CE must:

- (1) include 2 hours of medical ethics and/or professional responsibility; and
- (2) a course in human trafficking prevention approved by the Texas Health and Human Services Commission must be completed. The course will be credited toward the required medical ethics or professional responsibility.

(d) The remaining hours may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CE, or case conferences and must be recorded in a manner that can be easily transmitted to the board upon request.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to the expiration of the biennial renewal period for the following reasons:

- (A) catastrophic illness;
- (B) military service of longer than one year's duration outside the United States;
- (C) licensee's residence of longer than one year's duration outside the United States; or
- (D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§185.10. Relicensure.

(a) For a licensee who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be reissued a license, the following is required:

- (1) all statutory requirements for licensure must be met;
- (2) application must be submitted and the required fee of \$351.00, and additional fees and surcharges, as applicable, must be paid;
- (3) the requirements of §185.3 of this chapter (relating to General Requirements for Licensure) must be met;
- (4) competency to resume practice must be demonstrated; and
- (5) other remediation required by the board must be completed.

(b) Applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§185.11. Procedural Rules.

(a) In accordance with §206.313 of the Act, the Procedural Rules in Chapter 179 of this title (relating to Procedural Rules) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Complaints and Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Disciplinary Guidelines) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title (relating to Compliance Program) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

The Texas Medical Board (Board) proposes the repeal of current Chapter 186, concerning Respiratory Care Practitioners §§186.1 - 186.14, §§186.16 - 186.30.

The Board also proposes new Chapter 186, concerning Medical Radiologic Technology. This includes new Subchapter A, concerning Texas Board of Medical Radiologic Technology, §§186.1 - 186.4; Subchapter B, concerning Medical Radiologic Technologist Certification, Registration, and Practice Requirements, §§186.10 - 186.21; Subchapter C, concerning Non-Certified Technician Registration and Practice Requirements, §§186.25 - 186.32; Subchapter D, concerning Hardship Exemptions §186.40 and §186.41; Subchapter E, concerning Education Programs and Instructor Requirements, §186.45; and Subchapter F, concerning Procedural Rules, §186.50 and §186.51.

Also, the Board contemporaneously proposes the repeal of current Chapter 194, concerning Medical Radiologic Technology. This includes Subchapter A, concerning Certificate Holders, Non-Certified Technicians, and Other Authorized Individuals Or Entities, §§194.1 - 194.13, §§194.15 - 194.34.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 186 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY.

New §186.1, Definitions, defines words and terms used in new Chapter 186.

New §186.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §186.3, Meetings, explains how Board meetings are conducted.

New §186.4, Standing Committees, identifies and describes the function of the 3 Standing Committees of the board, the Disciplinary Committee, Licensure Committee, and Education Committee.

### SUBCHAPTER B. MEDICAL RADIOLOGIC TECHNOLOGIST CERTIFICATION, REGISTRATION, AND PRACTICE REQUIREMENTS.

New §186.10, General Requirements for Certification, outlines the general requirements for an MRT certification.

New §186.11, Requirements for a Radiologist Assistant Certificate, outlines the requirements for certification as a Radiologist Assistant.

New §186.12, Requirements for a General Medical Radiologic Technologist Certificate, outlines the general requirements for certification as a Medical Radiologic Technologist.

New §186.13, Requirements for a Limited Medical Radiologic Technologist Certificate, outlines the limited requirements for certification as a Medical Radiologic Technologist.

New §186.14, Current Clinical Practice, outlines the submission of an applicant's professional or work history information for board review when seeking certification.

New §186.15, Temporary Certificates, explains the requirements and process to obtain a temporary Medical Radiologic Technology Certificate.

New §186.16, Procedural Rules for Certificate Applicants, outlines the general requirements for Applicants to obtain a Medical Radiologic Technology certification.

New §186.17, Recertification, outlines the requirements for a certificate holder who has retired or who has surrendered their certificate and is seeking reissuance of a certificate.

New §186.18, Certificate Registration and Renewal, outlines the general requirements of certificate registration and renewal.

New §186.19, Biennial Continuing Education (CE) Requirements, explains the requirements regarding the Medical Radiologic Technology biennial continuing medical education.

New §186.20, Scope of Practice, describes the dangerous and hazardous procedures that may be performed as are specified in §601.056 of the Act.

New §186.21, Professional Identification, explains the type of certification which must be displayed at all times when performing procedures.

### SUBCHAPTER C. NON-CERTIFIED TECHNICIAN REGISTRATION AND PRACTICE REQUIREMENTS.

New §186.25, Non-Certified Technicians (NCTs), outlines specific documentation and payment of fee requirements that an NCT must provide in order to qualify for a NCT certification.

New §186.26, Education Standards for Non-Certified Technician (NCT), outlines specific educational standards as an applicant for NCT licensure.

New §186.27, Procedural Rules for Non-Certified Technician (NCT) Applicants, outlines the general requirements for an applicant to obtain an NCT certification.

New §186.28, Renewal of Non-Certified Technician (NCT) Registration, outlines the general requirements for NCT registration renewal.

New §186.29, Biennial Non-Certified Technician (NCT) Continuing Education (CE) Requirements, explains the requirements regarding the NCT's biennial continuing education.

New §186.30, Reissuance of Registration for Non-Certified Technicians (NCTs), outlines the requirements for an NCT who has retired or who has surrendered their registration and is seeking to be reissued registration.

New §186.31, Limited Practice of Non-Certified Technicians (NCTs), explains the parameters an NCT may not perform



regarding a dangerous or hazardous procedure as defined by §186.12 of this subtitle.

New §186.32, Professional Identification, states the requirement that an NCT must display identification certification at all times when performing procedures.

#### SUBCHAPTER D. HARDSHIP EXEMPTIONS.

New §186.40, Hardship Exemptions, explains the hardship exemption qualifications that a practitioner or hospital may qualify for if it meets specific outlined criteria.

New §186.41, Bone Densitometry Exemption, describes the specific performance criteria for the practitioner, registered nurse, physician assistant, certificate holder, or a certified densitometry technologist regarding bone density using x-radiation.

#### SUBCHAPTER E. EDUCATION PROGRAMS AND INSTRUCTOR REQUIREMENTS.

New §186.45, Education Programs and Instructor Requirements, outlines the requirements of education programs and instructors to be accredited for LMRT and NCT certification.

#### SUBCHAPTER F. PROCEDURAL RULES.

New §186.50, Procedural Rules, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §601.311 of the Act.

New §186.51, On-Going Reporting Requirements, explains that a certificate holder or NCT must report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeal and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeal and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/LXqDi1pYME>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication

### **22 TAC §§186.1 - 186.14, 186.16 - 186.30**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§186.1. *Purpose.*

§186.2. *Definitions.*

§186.3. *Meetings and Committees.*

§186.4. *Procedural Rules and Qualifications for Certificate Applicants.*  
 §186.5. *Recertification.*  
 §186.6. *Biennial Renewal of Certificate.*  
 §186.7. *Temporary Permit.*  
 §186.8. *Inactive Certificate.*  
 §186.9. *Reissuance of Certificate Following Revocation.*  
 §186.10. *Continuing Education Requirements.*  
 §186.11. *Respiratory Care Practitioner Scope of Practice.*  
 §186.12. *Tasks Not Permitted to be Delegated to a Respiratory Care Practitioner.*  
 §186.13. *Identification Requirements.*  
 §186.14. *Physician Direction.*  
 §186.16. *Employment Guidelines.*  
 §186.17. *Grounds for Denial of Certification and for Disciplinary Action.*  
 §186.18. *Discipline of Respiratory Care Practitioners.*  
 §186.19. *Administrative Penalties.*  
 §186.20. *Complaints.*  
 §186.21. *Investigations.*  
 §186.22. *Impaired Respiratory Care Practitioners.*  
 §186.23. *Third Party Reports to the Advisory Board.*  
 §186.24. *Procedure.*  
 §186.25. *Compliance.*  
 §186.26. *Voluntary Relinquishment or Surrender of Respiratory Care Practitioner Certificate.*  
 §186.27. *Duty to Report Certain Conduct to the Advisory Board.*  
 §186.28. *Retired Certificate.*  
 §186.29. *Report of Impairment on Registration Form.*  
 §186.30. *Exemption from Licensure for Certain Military Spouses.*  
 The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 186. MEDICAL RADIOLOGIC TECHNOLOGY

### SUBCHAPTER A. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY

#### 22 TAC §§186.1 - 186.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

No other statutes, articles or codes are affected by this proposal.

§186.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) ABHES--Accrediting Bureau of Health Education Schools.

(2) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(3) Advisory Board--Texas Board of Medical Radiologic Technology

(4) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(5) ASRT--The American Society of Radiologic Technologists and its predecessor or successor organizations.

(6) CBRPA--Certification Board for Radiology Practitioner Assistants.

(7) JRCCVT--The Joint Review Committee on Education in Cardiovascular Technology.

(8) JRCERT--The Joint Review Committee on Education in Radiologic Technology.

(9) JRCNMT--The Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(10) Limited Medical Radiologic Technologist (LMRT)--A certificate holder who is limited to administer radiation to only specific body areas. The areas are skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular.

(11) NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(12) Non-certified Technician (NCT)--A person who has completed a training program approved by the Advisory Board and who is registered with the Advisory Board under this chapter.

(13) SACS--The Southern Association of Colleges and Schools, Commission on Colleges.

(14) Sponsoring Institution--A hospital, educational, other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

§186.2. *Functions and Duties.*

(a) In accordance with §601.052 of the Act, Advisory Board duties and functions include:

(1) establishing standards for the practice of Medical Radiologic Technology;

(2) regulating medical radiologic technologists and non-certified technicians through certification and discipline;

(3) receiving complaints and investigating possible violations of the Act and the Advisory Board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy and changes as necessary; and

(6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual Advisory Board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party; and

(C) A board member shall refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority; and

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

*§186.3. Meetings.*

(a) Advisory Board meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer or resolution of the Advisory Board.

(c) The Advisory Board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

*§186.4. Standing Committees.*

The Standing Committees of the Advisory Board are as follows:

(1) Disciplinary Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for certification of medical radiologic technologists and non-certified technicians;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with medical radiologic technologist programs.

(3) Education Committee:

(A) reviews and makes recommendations concerning educational and training requirements for certification as a medical

radiologic technologist or registration as a non-certified technician in Texas; and

(B) reviews and makes recommendations for approval or rescinding approval of medical radiologic technologist or non-certified technician education program curricula and instructors.

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## SUBCHAPTER B. MEDICAL RADIOLOGIC TECHNOLOGIST CERTIFICATION, REGISTRATION, AND PRACTICE REQUIREMENTS

### 22 TAC §§186.10 - 186.21

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

No other statutes, articles or codes are affected by this proposal.

*§186.10. General Requirements for Certification.*

(a) All applicants for certification must meet the requirements in §601.105 of the Act and submit:

(1) the board required application form;

(2) payment of the required fee and additional fees and surcharges as applicable:

(A) Radiologist Assistant fee of \$140.00;

(B) General or Limited Medical Radiologic Technologist fee of \$80.00;

(C) Temporary General or Temporary Limited Medical Radiologic Technologist fee of \$30.00;

(D) Non-Certified Radiologic Technician fee of \$60.00;

and

(3) required documentation including, but not limited to:

(A) an educational transcript;

(B) a current national certification;

(C) a certified transcript of specialty examination scores;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of radiologic technology for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB), if applicable;

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable;

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board-approved form and all additional documentation as required, with the exception of the application fee.

§186.11. Requirements for a Radiologist Assistant Certificate.

Applicants for a Radiologist Assistant Certificate must meet the requirements listed in §186.10 of this chapter (relating to General Requirements for Certification) and the requirements listed in §601.002(b-10) of the Act.

§186.12. Requirements for a General Medical Radiologic Technologist Certificate.

(a) Applicants for a General Medical Radiologic Technologist certificate must meet the requirements listed in §186.10 of this chapter (relating to General Requirements for Certification) and the requirements listed in §601.105 of the Act.

(b) To qualify for a general certificate, an applicant must meet at least one of the following requirements:

(1) current ARRT certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist; or

(2) current NMTCB certification as a nuclear medicine technologist.

§186.13. Requirements for a Limited Medical Radiologic Technologist Certificate.

(a) Applicants for a Limited Medical Radiologic Technologist Certificate must meet the requirements listed in §186.10 of this chapter

(relating to General Requirements for Certification) and the requirements listed in §601.105 of the Act.

(b) To qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(1) the successful completion of a limited program and successful completion of exam as set out in subsections (c) and (d) of this section; or

(2) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America.

(c) Acceptable limited certificate programs training individuals to perform limited radiologic procedures must:

(1) be accredited by JRCERT, ABHES, or SACS (or other regional accrediting entities) to offer a limited curriculum in radiologic technology; or

(2) be accredited by JRCVT to offer a curriculum in invasive cardiovascular technology.

(d) Limited certificate examinations.

(1) Accepted examinations for limited certificates are:

(A) ARRT limited scope of practice in radiography examinations for:

(i) skull;

(ii) chest;

(iii) spine;

(iv) extremities;

(v) chiropractic (spine and extremities); and

(vi) podiatric (podiatry); or

(B) Cardiovascular Credentialing International invasive registry examination for cardiovascular; or

(C) a limited radiography examination accepted for licensure in another state

(2) Eligibility for an ARRT limited scope of practice in radiography examination requires the applicant to:

(A) request and obtain Advisory board authorization; and

(B) provide the Advisory Board with documents showing completion of either:

(i) an approved limited program; or

(ii) education components necessary for the appropriate limited scope of practice in radiography examination signed by the program director or registrar.

(3) Authorization by the Advisory Board allows for three attempts to successfully pass the ARRT limited scope of practice in radiography examination with a score of 75.

(4) The minimum acceptable score for a cardiovascular limited certificate is 70.

(5) If an ARRT examinee does not successfully meet the requirements of paragraph (3) of this section, they must:

(A) complete a board-approved continuing education course of at least 60 hours from an approved limited program; and

(B) seek authorization from the Advisory Board to be allowed one more attempt to pass with a score of 75 within one year. If they do not pass the extra attempt, they are ineligible for that particular limited certificate.

§186.14. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as a medical radiologic technologist in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing medical radiologic technology involving treatment of persons;

(2) enrollment as a student at an acceptable approved medical radiologic technology school; or

(3) appointment as an active teaching faculty member at an acceptable approved medical radiologic technology school.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as a medical radiologic technologist within the last three years from the date of application:

(1) a supervised temporary certificate as set forth in §186.15 of this chapter (relating to Temporary Certificates);

(2) remedial clinical education including, but not limited to, enrollment as a student at an acceptable approved medical radiologic technology school or other structured program approved by the Advisory Board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

§186.15. Temporary Certificates.

(a) Applicants for a Temporary Medical Radiologic Technology (TMRT) Certificate or a Temporary Limited Medical Radiologic Technology (TLMRT) Certificate must meet the requirements in §601.102 of the Act.

(b) A TMRT or TLMRT certificate may be issued to an applicant:

(1) who is qualified for a certificate, subject to terms and conditions that require board approval;

(2) who has satisfied the requirements of §186.10 of this chapter (relating to General Requirements for Certification), with the exception of completion of the national certification or specialty examination; or

(3) who must remedy current clinical practice issues set forth in §186.13 of this chapter (relating to Requirements for a Limited Medical Radiologic Technologist Certificate).

(c) In order to be determined eligible for a temporary certificate to remedy a current clinical practice issue under §186.13 of this chapter, an applicant must be supervised by a general certificate holder or licensed practitioner, as defined by §601.002 of the Act, who:

(1) has an unrestricted license or certificate in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license or certificate revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the Advisory Board.

(d) Duration of Temporary Certificates is as follows:

(1) TMRT - one year, with no renewal or reapplication; and

(2) TLMRT - six months, with no renewal or reapplication.

(e) Temporary certificates shall terminate upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary certificate.

§186.16. Procedural Rules for Certificate Applicants.

(a) Applications will be processed in accordance with §601.105 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for certification by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for certification shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§186.17. Recertification.

(a) For a certificate holder who retired or surrendered their certificate (including cancellation for non-payment) and who is seeking to be reissued a certificate, the following is required:

(1) all statutory requirements for certification must be met;

(2) application must be submitted and the required fee and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §186.10 of this chapter (relating to General Requirements for Certification) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation prescribed by the Advisory Board must be completed.

(b) In accordance with §601.305, applicants seeking recertification under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§186.18. Certificate Registration and Renewal.

(a) Certificate holders must renew the registration of their certificate on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of the applicable biennial registration fee;

(A) if Radiologist Assistant, fee of \$100.00, and additional fees and surcharges as applicable;

(B) if General or Limited Medical Radiologic Technician, fee of \$66.00, and additional fees and surcharges as applicable;

(3) verifying and updating information related to their on-line verification;

(4) completing biennial Continuing Education (CE) required under §186.19 of this chapter (relating to Biennial Continuing Education (CE) Requirements); and

(5) providing other relevant information requested by board staff.

(b) Failure to renew before a certificate's expiration date will result in increased charges as follows:

(1) 1-90 days late--renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late--double the renewal fee.

(3) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§186.19. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a certificate holder must complete Continuing Education (CE) each biennium as follows:

(1) For a radiologist assistant:

(A) a minimum of 23 hours in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+; and

(B) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(2) For a General Medical Radiologic Technologist (GMRT):

(A) a minimum of 24 hours, at least 12 hours of which must be in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+, and any remaining credits may be composed of self-study or courses that are recorded and verifiable upon request by the board; and

(B) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(3) For a Limited Medical Radiologic Technologist (LMRT):

(A) a minimum of 18 hours, at least nine of which must be in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+, and any remaining credits may be composed of self-study or courses that are recorded and verifiable upon request by the board; and

(B) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(b) Other CE that may be counted are:

(1) For an RA or MRT who renewed an ARRT certificate during the current biennial renewal period may use those CE credits, except for human trafficking prevention credit.

(2) For an RA, MRT, or LMRT who holds another health profession Texas license, registration, or certification may use the CE hours for the other license, registration, or certification, if the hours meet the requirements of this subsection, including human trafficking prevention, if applicable:

(A) no more than three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course;

(B) no more than six hours credit during a renewal period for an advanced cardiac life support course;

(C) no more than six hours credit for attendance in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals; and

(D) no more than six hours for teaching in a program accredited by a board recognized accrediting organization.

(c) Military service members have the same CE requirements but are allowed extensions in accordance with Chapter 55.003 of the Texas Occupations Code, as applicable.

(d) CE Carry Forward:

(1) For RAs or MRTs, a maximum of 48 credit hours may be carried forward.

(2) For LMRTs, a maximum of 24 hours may be carried forward.

(3) The human trafficking prevention credit cannot be carried forward.

(4) Credits cannot be carried forward or applied more than two years following the period in which they are earned.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§186.20. cccc.

(a) Dangerous and hazardous procedures may only be performed by those individuals specified in §601.056 of the Act, unless otherwise indicated below.

(b) Dangerous procedures are:

(1) nuclear medicine studies to include positron emission tomography (PET);

(2) administration of radio-pharmaceuticals, not including preparation or dispensing except as regulated under the authority of the Texas State Board of Pharmacy;

(3) radiation therapy, including simulation, brachytherapy, and all external radiation therapy beams including Grenz rays;

(4) Computed Tomography (CT) or any variation thereof;

(5) interventional radiographic procedures, including angiography; in addition to individuals specified in §601.056 of the Act an LMRT with a cardiovascular category certificate may perform these;

(6) fluoroscopy; in addition to individuals specified in §601.056 of the Act, an LMRT with a cardiovascular category certificate may perform these; and

(7) cineradiography (including digital acquisition techniques); in addition to individuals specified in §601.056 of the Act, an LMRT with a cardiovascular category certificate may perform these.

(c) Hazardous procedures are:

(1) conventional tomography;

(2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell, and Waters views;

(3) portable x-ray equipment;

(4) spine radiography, excluding AP/PA, lateral and lateral flexion/extension views;

(5) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle, and AP scapula;

(6) pelvic girdle radiographs, excluding AP or PA views;

(7) sternum radiographs;

(8) radiographic procedures which utilize contrast media;

and

(9) pediatric radiography, excluding extremities; in addition to the individuals specified under §601.056 of the Act an LMRT with the appropriate category certification may perform these. Pediatric studies must be performed with radioprotection so that proper collimation and shielding is utilized during all exposure sequences.

(d) Mammography may only be performed in compliance with federal and state law specific to mammography, including Mammography Quality Safety Act and Texas Radiation Control Program.

(e) LMRTs may perform hazardous procedures if within the scope of their certification.

(f) Only an LMRT who holds a limited certificate in the cardiovascular category may perform procedures using contrast media and/or ionizing radiation for imaging a disease or condition of the cardiovascular system.

§186.21. Professional Identification.

Identification indicating certification type must be displayed at all times when performing procedures.

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

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## SUBCHAPTER C. NON-CERTIFIED TECHNICIAN REGISTRATION AND PRACTICE REQUIREMENTS

### 22 TAC §§186.25 - 186.32

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

No other statutes, articles or codes are affected by this proposal.

#### §186.25. Non-Certified Technicians (NCTs).

(a) A person who is not legally authorized under §601.101 of the Act or is exempt from certification under §§601.151 through 601.157 of the Act may intentionally use radiologic technology only if they submit the following to the Advisory Board:

(1) the board-required application form;

(2) payment of the required fee of \$60.00, and additional fees and surcharges as applicable; and

(3) required documentation, including but not limited to:

(A) evidence of completion of a board approved NCT program;

(B) birth certificate or other similar proof of age;

(C) Professional or Work History Evaluation forms demonstrating or relating to the practice of radiologic technology for the preceding five years from the date of the application;

(D) FBI/DPS Fingerprint Report;

(E) documentation of alternate name or name change, if applicable;

(F) training program transcript, if requested;

(G) arrest records, if applicable;

(H) malpractice records, if applicable;

(I) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability practice, if applicable;

(J) military orders or DD214, if applicable;

(K) evidence of passage of Texas Jurisprudence examination with at least a score of 75; and

(L) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board-approved form and all additional documentation as required, with the exception of the application fee.

§186.26. Education Standards for Non-Certified Technician (NCT).

(a) Placement on the Non-Certified Technician (NCT) registry requires successful completion of an approved program of 120 total classroom hours with the following minimum requirements:

(1) radiation safety and protection for the patient, self and others--22 classroom hours;

(2) image production and evaluation--24 classroom hours; and

(3) radiographic equipment maintenance and operation--16 classroom hours including at least 6 hours of quality control, darkroom, processing, and Texas Regulations for Control of Radiation; and

(4) anatomy and radiologic procedures of the:

(A) skull (5 views: Caldwell, Townes, Waters, AP/PA, and lateral)--10 classroom hours;

(B) chest--8 classroom hours;

(C) spine--8 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media--4 classroom hours;

(E) upper extremities--14 classroom hours;

(F) lower extremities--14 classroom hours.

(b) The training program hours must be live, in-person, and directed by an approved instructor.

§186.27. Procedural Rules for Non-Certified Technician (NCT) Applicants.

(a) Applications will be processed in accordance with §601.105 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for registration by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for registration shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§186.28. Renewal of Non-Certified Technician (NCT) Registration.

(a) Non-Certified Technicians (NCTs) must renew the registration of their registration on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$56.00, and additional fees and surcharges, as applicable;

(3) verifying and updating information related to their on-line verification;

(4) completing biennial Continuing Education (CE) required under §186.29 of this chapter (relating to Biennial Non-Certified Technician (NCT) Continuing Education (CE) Requirements); and

(5) providing other relevant information requested by board staff.

(b) Failure to renew before a registration's expiration date will result in increased charges as follows: 1 day-1 year late--\$50.00.

(c) Failure to renew within one year after the expiration date of the registration will result in cancellation of the NCT registration.

§186.29. Biennial Non-Certified Technician (NCT) Continuing Education (CE) Requirements.

(a) A Non-Certified Technician (NCT) must complete 12 hours of continuing education each biennium as follows:

(1) a minimum of 6 hours in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+;

(2) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission; and

(3) the remaining credits may be composed of self-study or courses and made available upon board request.

(b) A maximum of 12 hours may be carried forward, except the human trafficking prevention credit cannot be carried forward. The credits cannot be carried forward or applied more than two years following the period in which they are earned.

(c) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§186.30. Reissuance of Registration for Non-Certified Technicians (NCTs).

(a) For a Non-Certified Technician (NCT) who retired or surrendered their registration (including non-payment) and who is seeking to be reissued registration, the following is required:

(1) all statutory requirements for certification must be met;

(2) an application must be submitted and the required fee and additional fees and surcharges, as applicable, must be paid;



- (3) the requirements of §186.10 of this chapter must be met;
- (4) competency to resume practice must be demonstrated;
- and
- (5) other remediation prescribed by the Advisory Board must be completed.

(b) Applicants seeking reissuance of registration under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§186.31. Limited Practice of Non-Certified Technicians (NCTs).

A Non-Certified Technician (NCT) may not perform a radiologic procedure identified as dangerous or hazardous, as defined by §186.20 of this chapter (relating to Scope of Practice).

§186.32. Professional Identification.

Identification indicating NCT status must be displayed at all times when performing procedures.

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

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## SUBCHAPTER D. HARDSHIP EXEMPTIONS

### 22 TAC §186.40, §186.41

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

No other statutes, articles or codes are affected by this proposal.

§186.40. Hardship Exemptions.

(a) A hospital, federally qualified health center (FQHC) as defined by 42 U.S.C. §1396d, or practitioner may qualify for a hardship exemption from employing an MRT, LMRT, or NCT for the following reason(s):

- (1) inability to attract or retain a MRT, LMRT, or NCT when the practitioner's practice, FQHC, or hospital is located in a county with a population of less than 50,000;
- (2) the practitioner's practice, FQHC, or hospital is more than 200 highway miles from the nearest approved school of medical radiologic technology;
- (3) the approved school(s) of medical radiologic technology has a waiting list of school applicants due to a lack of faculty or space for a training program;

(4) the practitioner's, FQHC's, or hospital's need exceeds the number of graduates from the nearest approved school(s) of medical radiologic technology; or

(5) emergency conditions have occurred during the 90 days immediately prior to making application for the hardship exemption.

(b) To obtain a hardship exemption, the hospital, FQHC, or practitioner must submit the following, in addition to meeting the requirements of §601.203 of the Act:

- (1) completed board approved application form notating the basis for the hardship;
- (2) payment of the required \$30.00 fee and additional fees and surcharges as applicable;
- (3) DPS/FBI fingerprint report for individuals who will perform the radiologic procedures; and
- (4) any other information deemed necessary to process an application.

(c) If granted, a hardship exemption is valid for one year and must be reapplied for annually.

(d) No more than seven individuals will be allowed to perform radiologic procedures under the hardship exemption, if granted.

§186.41. Bone Densitometry Exemption.

Bone densitometry using x-radiation may be performed by:

- (1) a practitioner;
- (2) a registered nurse or physician assistant;
- (3) a certificate holder; or
- (4) a certified densitometry technologist who meets the following:

(A) in good standing with the International Society for Clinical Densitometry (ISCD);

(B) has successfully completed the ARRT bone density exam; or

(C) has at least 20 hours of documented training as follows:

- (i) 16 hours using bone densitometry equipment utilizing x-radiation; and
- (ii) 4 hours of radiation safety and protection training.

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

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## SUBCHAPTER E. EDUCATION PROGRAMS AND INSTRUCTOR REQUIREMENTS

### 22 TAC §186.45

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

No other statutes, articles or codes are affected by this proposal.

#### §186.45. Education Programs and Instructor Requirements.

(a) General certificate education programs must be accredited by an accrediting body recognized by:

(1) the Council for Higher Education Accreditation, including but not limited to the JRCNMT; or

(2) the United States Secretary of Education, including but not limited to JRCERT, ABHES, or SACS.

(b) General requirements for LMRT and NCT education program approval includes submission of the following by the program director:

(1) completed board-approved application form;

(2) required fee of \$500.00 and additional fees and surcharges as applicable;

(3) other documentation deemed necessary to process an application.

(c) Program directors of LMRT education programs must submit evidence of current accreditation by:

(1) JRCERT, ABHES, or SACS to offer a limited curriculum in radiologic technology; or

(2) JRCVVT to offer a curriculum in invasive cardiovascular technology.

(d) Program directors of NCT education programs must submit documentation of the following board forms with any required supporting documentation:

(1) Program General Information;

(2) Program Outline and Curriculum;

(3) Program Equipment and Safety Compliance;

(4) Program Director and Instructors;

(5) Program Student Education File;

(6) Texas Workforce Commission form, and if approval has not been granted by the Texas Higher Education Coordinating Board, a letter or documentation from the Texas Workforce Commission, Career Schools and Colleges Section, indicating that the proposed training program has complied with or has been granted exempt status under Texas Education Code, Chapter 132; and

(7) Program Attestation.

(e) Requirements for NCT Instructors.

(1) In accordance with §601.052 of the Act, an individual may apply to be approved as a NCT instructor by submitting the following:

(A) a board approved application form;

(B) required fee of \$50.00 and additional fees and surcharges as applicable;

(C) documents regarding qualifications, including:

(i) current MRT certification;

(ii) current LMRT certification (not a temporary certificate) in the same area as the proposed area of instruction; or

(iii) current licensure for practitioners; and

(D) other information deemed necessary to process an application.

(2) Approval as an NCT instructor must be obtained at least 30 days before providing any instructional services in a board-approved NCT training program.

(f) Other standards for programs and instructors are:

(1) Approval must be obtained before beginning a program or acting as an instructor.

(2) Approval of a training program or as an NCT instructor is valid for three years. The program or instructor may reapply for approval.

(3) A program director must report the following to the board within 30 days after the event:

(A) any change of address of the program;

(B) any change in status of approved instructors or program director(s); and

(C) any change in accreditation status.

(4) Programs must retain copies of program records for five years.

(5) Applications for approval are considered by the Executive Director. If a program or instructor is not approved, they may appeal for reconsideration by the Education Committee of the board.

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

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## SUBCHAPTER F. PROCEDURAL RULES

### 22 TAC §186.50, §186.51

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed

under the authority of the Texas Occupations Code Annotated §601.0522.

No other statutes, articles or codes are affected by this proposal.

§186.50. Procedural Rules.

(a) In accordance with §601.311 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

§186.51. On-Going Reporting Requirements.

A certificate holder or NCT must report any event listed in §162.2(b)(1) through (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

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For further information, please call: (512) 305-7030



## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes the repeal of current Chapter 187, concerning Procedural Rules. This includes Subchapter A, concerning General Provisions and Definitions, §§187.1 - 187.9; Subchapter B, concerning Informal Board Proceedings, §§187.10, 187.11, 187.13 - 187.16, 187.18 - 187.21; Subchapter C, concerning Formal Board Proceedings at SOAH, §§187.22 - 187.31, and §187.33; Subchapter D, concerning Formal Board Proceedings, §§187.35 - 187.37, 187.39 and §187.42; Subchapter E, concerning Proceedings Relating to Probationers, §§187.43 - 187.45; Subchapter F, concerning Temporary Suspension and Restriction Proceedings, §§187.55 - 187.62; Subchapter G, concerning Suspension by Operation of Law, §§187.70 - 187.72; Subchapter H, concerning Imposition

of Administrative Penalty, §§187.75 - 187.82; Subchapter I, concerning Proceedings for Cease and Desist Orders, §187.83 and §187.84; and Subchapter J, concerning Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution, §§187.85 - 187.89.

The Board also proposes new Chapter 187, concerning Respiratory Care Practitioners. This includes Subchapter A, concerning Texas Board of Respiratory Care, §§187.1 - 187.4; Subchapter B, concerning Certification and Registration, §§187.10 - 187.17; Subchapter C, concerning Practice Requirements, §187.20; Subchapter D, concerning Board Processes and Procedures, §187.25 and §187.26.

Also, the Board contemporaneously proposes the repeal of current Chapter 186, concerning Respiratory Care Practitioners, §§186.1 - 186.14 and §§186.16 - 186.30.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 187 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. TEXAS BOARD OF RESPIRATORY CARE.

New §187.1, Definitions, defines terms used in new Chapter 187.

New §187.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §187.3, Meetings, explains how Board meetings are conducted.

New §187.4, Standing Committees, identifies and describes the function of the 2 Standing Committees of the Advisory Board, the Discipline and Ethics Committee and Licensure Committee.

### SUBCHAPTER B. CERTIFICATION AND REGISTRATION.

New §187.10, General Requirements for Certification, outlines the general requirements for licensure for a Respiratory Care Practitioners certification.

New §187.11, Current Clinical Practice, outlines the submission of an applicant's professional or work history information for board review when seeking certification.

New §187.12, Temporary Permits, explains the requirements and process for a temporary Respiratory Care Practitioners permit.

New §187.13, Procedural Rules for Certificate Applicants, outlines the general requirements for applicants to obtain a Respiratory Care Practitioners certification.

New §187.14, Recertification, outlines the requirements for a certificate holder who has retired or who has surrendered their certificate and is seeking reissuance of a certificate.

New §187.15, Certificate Registration and Renewal, outlines the general requirements of certificate registration and renewal.

New §187.16, Biennial Continuing Education (CE) Requirements, explains the requirements regarding the Respiratory Care Practitioners biennial continuing education.

New §187.17, Inactive Certificate, describes the status of being placed on inactive status in accordance with §604.156 of the Act and the requirements to obtain recertification under §187.14 of this subchapter.

## SUBCHAPTER C. PRACTICE REQUIREMENTS.

New §187.20, On-Going Reporting Requirements, explains the requirements related to a Respiratory Care Practitioner licensed by the Advisory Board to report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES.

New §187.25, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §604.209 of the Act.

New §187.26, Consequences of Criminal Conviction, states that licensing and disciplinary matters or arrest and criminal history will be evaluated consistent with Chapter 53 of the Texas Occupations Code.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/cqenXh72VF>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §§187.1 - 187.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.1. *Purpose and Scope.*

§187.2. *Definitions.*

§187.3. *Computation of Time.*

§187.4. *Agreement to be in Writing.*

§187.5. *National Practitioner Data Bank (NPDB).*

§187.6. *Appearances.*

§187.7. *Conduct and Decorum.*

§187.8. *Subpoenas.*

§187.9. *Board Actions.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §§187.10, 187.11, 187.13 - 187.16, 187.18 - 187.21

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.10. *Purpose.*

§187.11. *Transfer to Legal Division.*

§187.13. *Informal Board Proceedings Relating to Licensure Eligibility.*

§187.14. *Informal Resolution of Disciplinary Issues Against a Licensee*

§187.15. *Investigation and Collection of Information.*

§187.16. *Informal Show Compliance (ISC) Information and Notices.*

§187.18. *ISC Scheduling, Process and Procedures.*

§187.19. *Resolution by Agreed Order.*

§187.20. *Board Action on Agreed Orders.*

§187.21. *Board and District Review Committee Members Participation.*

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

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## SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

### 22 TAC §§187.22 - 187.31, 187.33

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides

authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.22. *Purpose.*

§187.23. *General Provisions.*

§187.24. *Pleadings.*

§187.25. *Notice of Adjudicative Hearing.*

§187.26. *Service in SOAH Proceedings.*

§187.27. *Written Answers in SOAH Proceedings and Default Orders.*

§187.28. *Discovery.*

§187.29. *Mediated Settlement Conferences.*

§187.30. *Reporter and Transcripts.*

§187.31. *Evidence.*

§187.33. *Proposals for Decision.*

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

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## SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

### 22 TAC §§187.35 - 187.37, 187.39, 187.42

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.35. *Presentation of Proposal for Decision.*

§187.36. *Interlocutory Appeals for Certification of Questions.*

§187.37. *Board Action on Proposal for Decision.*

§187.39. *Costs of Administrative Hearings.*

§187.42. *Recusals.*

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

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## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §§187.43 - 187.45

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.43. *Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders.*

§187.44. *Probationer Show Compliance Proceedings.*

§187.45. *Probationer Appearances.*

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

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## SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

### 22 TAC §§187.55 - 187.62

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.55. *Purpose.*

§187.56. *Convening a Disciplinary Panel.*

§187.57. *Charge of the Disciplinary Panel.*

§187.58. *Procedures before the Disciplinary Panel.*

§187.59. *Evidence.*

§187.60. *Temporary Suspension or Restriction Without Notice or Hearing.*

§187.61. *Ancillary Proceeding.*

§187.62. *Continuing Threat Constitutes A Danger to the Public.*

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

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## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §§187.70 - 187.72

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.70. *Purposes and Construction.*

§187.71. *Hearing before a Panel of Board Representatives.*

§187.72. *Decision of the Panel.*

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

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## SUBCHAPTER H. IMPOSITION OF ADMINISTRATIVE PENALTY

### 22 TAC §§187.75 - 187.82

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its

duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.75. *Purposes and Construction.*

§187.76. *Notice of Intention to Impose Administrative Penalty; Response.*

§187.77. *Payment of the Administrative Penalty.*

§187.78. *Written Response.*

§187.79. *Personal Appearance at an ISC.*

§187.80. *Imposition of Administrative Penalty.*

§187.81. *Reports of Imposition of Administrative Penalty.*

§187.82. *Unpaid Administrative Penalties.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

### 22 TAC §187.83, §187.84

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.83. *Proceedings for Cease and Desist Orders.*

§187.84. *Violation of Cease and Desist Orders.*

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

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Scott Freshour

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## SUBCHAPTER J. PROCEDURES RELATED TO OUT-OF-NETWORK HEALTH BENEFIT CLAIM DISPUTE RESOLUTION

### 22 TAC §§187.85 - 187.89

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§187.85. *Purpose and Construction.*

§187.86. *Scope.*

§187.87. *Definitions.*

§187.88. *Complaint Process and Resolution.*

§187.89. *Notice of Availability of Mandatory Mediation.*

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

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General Counsel

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## CHAPTER 187. RESPIRATORY CARE PRACTITIONERS SUBCHAPTER A. TEXAS BOARD OF RESPIRATORY CARE

### 22 TAC §§187.1 - 187.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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, and establish rules related to licensure. The new rules are also proposed in accordance with the requirements §604.0522 and §604.052(a).

No other statutes, articles or codes are affected by this proposal.

§187.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) AARC--The American Association for Respiratory Care.

(2) Act--The Respiratory Care Practitioners Act, Texas Occupations Code, Chapter 604.

(3) Advisory Board--Texas Board of Respiratory Care.

(4) Directing physician--A physician including a qualified medical director licensed by the Medical Board that directs a Texas state-certified respiratory care practitioner in the practice of respiratory care.

(5) Educational accrediting body--Commission on Accreditation for Respiratory Care (CoARC), or other such organization approved by the Advisory Board in accordance with §604.054 of the Act.

(6) Formal training--Completion of an organized educational activity in respiratory care procedures recognized by the Advisory Board.

(7) Medical Practice Act--Texas Occupations Code, Title 3, Subtitle B, as amended.

(8) NBRC--National Board for Respiratory Care, Inc.

(9) Respiratory care--The treatment, management, control, diagnostic evaluation, and or care of patients who have deficiencies and abnormalities associated with the cardiorespiratory system, in conjunction with the provisions of §604.003 of the Act. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

§187.2. Functions and Duties.

(a) In accordance with §604.052 of the Act, Advisory Board duties and functions include:

(1) establishing standards for the practice of respiratory care;

(2) regulating respiratory care practitioners through certification and discipline;

(3) receiving complaints and investigating possible violations of the Act and the Advisory Board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy and changes as necessary; and

(6) acting as resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual Advisory Board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with in carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

§187.3. Meetings.

(a) Advisory Board meetings are conducted in accordance with the Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer or resolution of the Advisory Board.

(c) The Advisory Board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

§187.4. Standing Committees.

The Standing Committees of the Advisory Board are as follows:

(1) Discipline and Ethics Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for certification of respiratory care practitioners;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas respiratory care programs.

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

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Scott Freshour

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SUBCHAPTER B. CERTIFICATION AND REGISTRATION



## 22 TAC §§187.10 - 187.17

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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, and establish rules related to licensure. The new rules are also proposed in accordance with the requirements §604.0522 and §604.052(a).

No other statutes, articles or codes are affected by this proposal.

### §187.10. General Requirements for Certification.

(a) All applicants for a certificate must meet the requirements in §604.104 of the Act, and submit:

- (1) the board required application form;
- (2) payment of the required fee, and additional fees and surcharges, as applicable:

- (A) Respiratory care practitioner fee of \$125.00; and
- (B) Temporary respiratory care practitioner fee of \$55.00;

(3) required documentation including, but not limited to:

- (A) Certification of Graduation form;
- (B) certified transcript of examination scores;
- (C) birth certificate or other similar proof of age;
- (D) current NBRC verification;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of respiratory care for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

- (1) delay in processing an application;
- (2) referral to the Licensure Committee;
- (3) unanticipated military assignments, medical reasons, or catastrophic events; or
- (4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

### §187.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as a respiratory care practitioner in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing as a respiratory care practitioner involving treatment of persons;

(2) enrollment as a student in an acceptable approved respiratory care program; or

(3) appointment as an active teaching faculty member in an acceptable approved respiratory care program.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as a respiratory care practitioner within the last three years from date of application:

(1) a supervised temporary permit as set forth in §187.12 of this subchapter (relating to Temporary Permits);

(2) remedial clinical education including, but not limited to, enrollment as a student at an acceptable respiratory care program approved by the Advisory Board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

### §187.12. Temporary Permits.

(a) Applicants for a temporary permit must meet the requirements in §§604.107 and 604.108 of the Act.

(b) Temporary permits may be issued to an applicant:

(1) who is qualified for a full certificate, subject to the terms and conditions that require Advisory Board approval;

(2) who has completed the requirements of §187.10 of this subchapter (relating to General Requirements for Certification), with the exception of the national certification examination; or

(3) who must remedy current clinical practice issues set forth in §187.11 of this subchapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary permit to remedy a current clinical practice issue under §187.11 of this subchapter, an applicant must be supervised by a licensed physician or respiratory care practitioner who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the Advisory Board.

(d) The duration of a temporary permit is no longer than 12 months from the date of issuance.

(e) Temporary permits will be terminated upon:

- (1) issuance of a certificate; or
- (2) violation of conditions of a temporary permit.

§187.13 Procedural Rules for Certificate Applicants.

(a) Applications will be processed in accordance with §604.105 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for certification by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for certification shall be deemed withdrawn regardless of the Advisory Board's action.

(2) The applicant shall be notified of the Advisory Board's final determination.

(3) An applicant has 20 days from the date of the notice of the Advisory Board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§187.14 Recertification.

(a) For a certificate holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be recertified, the following is required:

(1) all statutory requirements for licensure must be met;

(2) the application must be submitted and the required fee of \$125.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §187.10 of this subchapter (relating to General Requirements for Certification) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the Advisory Board must be completed.

(b) In accordance with §604.2011 of the Act, applicants seeking recertification under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§187.15 Certificate Registration and Renewal.

(a) Certificate holders must renew the registration of their certificate on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$106.00, and additional fees and surcharges, as applicable;

(3) verifying and updating information related to their on-line verification;

(4) completing biennial Continuing Education (CE) required under §187.16 of this subchapter (relating to Biennial Continuing Education (CE) Requirements); and

(5) providing other relevant information requested by board staff.

(b) Failure to renew before a certificate's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§187.16 Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a certificate holder must complete 24 contact hours of Continuing Education (CE) during the biennial renewal period.

(1) Of the 24 hours, at least 12 contact hours of traditional courses must be completed. For purposes of this rule:

(A) "Traditional CE" is defined in accordance with the AARC and must be approved, recognized, accepted, or assigned as CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(B) "Non-traditional CE" is defined in accordance with the AARC and must be approved, recognized, accepted, or assigned as CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(2) Of the required contact hours, a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission must be completed. The course may satisfy the required two contact hours on the topic of ethics.

(3) Passage of NBRC, BRPT, NAECB or ACLS credentialing or proctored examination can be used as CE but only once every three renewal periods.

(4) At least two contact hours must be on the topic of ethics. The ethics hours may be completed via traditional courses or non-traditional courses.

(5) All CE courses must be relevant to the practice of respiratory care and be approved, recognized, or assigned credit by a professional organization or governmental entity.

(6) A respiratory care practitioner who teaches or instructs a CE course or a course in a respiratory care educational program accredited by COARC or another accrediting body approved by the Advisory Board shall be credited one contact hour in non-traditional CE for each contact hour actually taught. CE credit will be given only once for teaching a particular course.

(b) Military service members have the same CE requirements but are allowed extensions in accordance with Chapter 55.003 of the Texas Occupations Code, as applicable.

(c) Exemptions for CME requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§187.17. Inactive Certificate.

(a) In accordance with §604.156 of the Act, a certificate may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the certificate will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §604.156(b) of the Act and §187.10 of this subchapter (relating to General Requirements for Certification).

(d) After a certificate has been cancelled, an applicant must meet all requirements under §187.14 of this subchapter (relating to Recertification) to obtain recertification.

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §187.20

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §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, and establish rules related to licensure. The new rule is also proposed in accordance with the requirements §604.0522 and §604.052(a).

No other statutes, articles or codes are affected by this proposal.

§187.20. On-Going Reporting Requirements.

A certificate holder must report any event listed in §162.2(b)(1) through (7) of this title (relating to Physician Supervision of a Student Physician Assistant) to the Advisory Board within 10 days after the event.

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

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §187.25, §187.26

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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, and establish rules related to licensure. The new rules are also proposed in accordance with the requirements §604.0522 and §604.052(a).

No other statutes, articles or codes are affected by this proposal.

§187.25. Procedural Rules.

(a) In accordance with §604.209 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

§187.26. Consequences of Criminal Conviction.

In accordance with §604.058 of the Act, licensing and disciplinary matters or arrest and criminal history will be evaluated consistent with Chapter 53 of the Texas Occupations Code.

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

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Scott Freshour

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## CHAPTER 188. PERFUSIONISTS

### 22 TAC §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 - 188.30

The Texas Medical Board (Board) proposes the repeal of current Chapter 188, concerning Perfusionists, §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 - 188.30.

The Board also proposes new Chapter 188, concerning Perfusionists, §§188.1 - 188.14.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 188 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §188.1, Definitions, defines terms used in new Chapter 188.

New §188.2, Meetings, explains how Advisory Committee meetings are conducted.

New §188.3, General Requirements for Licensure, outlines the general licensure requirements for a Texas Perfusionist license.

New §188.4, Educational Requirements, explains the educational requirements recognized in §603.254 of the Act, and completion of an educational program accepted by the American Board of Cardiovascular Perfusion (ABCP) for examination purposes.

New §188.5, Competency Examinations, explains the perfusion examination and credentialing requirements for licensure.

New §188.6, Procedural Rules for Licensure Applicants, explains the procedure by which the Executive Director may offer an applicant in order for the applicant to obtain licensure.

New §188.7, Provisional Licenses, explains the requirements and process for provisional licensure.

New §188.8, Supervision Standards, describes the requirements of a supervising licensee.

New §188.9, License Registration and Renewal, outlines the general requirements of licensure registration and renewal.

New §188.10, Biennial Continuing Education (CE) Requirements, explains the license holder's course requirements regarding completion of CE and exemptions.

New §188.11, Relicensure, describes the requirements for a licensee who has retired or surrendered their license and seeks to be re-licensed.

New §188.12, Code of Ethics, explains the requirements that a Perfusionist must conform to regarding all state and federal laws, rules, and professional standards.

New §188.13, On-Going Reporting Requirements, states that perfusionists must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §188.14, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §603.401 of the Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will

be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/eEuTm0fpCg>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §603.151, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §188.1. *Purpose.*
- §188.2. *Definitions.*
- §188.3. *Meetings.*
- §188.4. *Qualifications for Licensure.*
- §188.5. *Procedural Rules for Licensure Applicants.*
- §188.6. *Licensure Documentation.*
- §188.7. *Provisional Licensed Perfusionists.*
- §188.8. *Temporary Licensure.*
- §188.9. *License Renewal.*
- §188.10. *Code of Ethics.*
- §188.11. *Perfusionist Scope of Practice.*
- §188.12. *Supervision.*
- §188.13. *Grounds for Denial of Licensure and for Disciplinary Action.*
- §188.14. *Discipline of Perfusionists.*
- §188.15. *Disciplinary Guidelines.*
- §188.17. *Complaint Procedure Notification.*
- §188.18. *Investigations.*
- §188.19. *Third Party Reports to the Board.*
- §188.20. *Impaired Perfusionists.*
- §188.21. *Procedure.*
- §188.22. *Compliance.*
- §188.23. *Construction.*
- §188.24. *Continuing Education.*
- §188.26. *Exemption from Registration Fee for Retired Perfusionists Providing Voluntary Charity Care.*
- §188.28. *Exemption from Registration Fee for Retired Perfusionists.*
- §188.29. *Voluntary Relinquishment or Surrender of a License.*
- §188.30. *Exemption from Licensure for Certain Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## 22 TAC §§188.1 - 188.14

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §603.151, 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; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

### §188.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act -- Texas Occupations Code, Chapter 603.

(2) Medical Practice Act -- Texas Occupations Code, Title 3, Subtitle B, as amended.

### §188.2. Meetings.

Advisory Committee meetings shall be conducted in compliance with §603.057 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

### §188.3. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in Chapter 603, Subchapter F, of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$180.00, and applicable fees and surcharges, as applicable;

(3) required documentation including, but not limited to:

(A) an educational transcript;

(B) a certified transcript of examination scores;

(C) a current national certification;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of perfusion for the preceding 5 years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

#### §188.4. Educational Requirements.

In addition to the education requirements recognized in §603.254 of the Act, completion of an educational program accepted by the American Board of Cardiovascular Perfusion (ABCP) for examination purposes is also acceptable.

#### §188.5. Competency Examinations.

(a) A perfusion examination administered by the American Board of Cardiovascular Perfusion (ABCP) with a passing score is acceptable.

(b) An applicant must demonstrate a credential as a Certified Clinical Perfusionist (CCP) within 3 years immediately preceding the date of application.

#### §188.6. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with Chapter 603 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

#### §188.7. Provisional Licenses.

(a) A provisional license applicant must meet general standards in §603.257 of the Act.

(b) Applications for a provisional license will be processed in accordance with §§603.259 and 603.302 of the Act.

(c) Applicants must:

(1) submit board required application form;

(2) pay the required fee of \$180.00, and additional fees and surcharges, as applicable;

(3) meet the general requirements as set forth in this §188.3 of this chapter (relating to General Requirements for Licensure), with the exception of exam scores and national certification; and

(4) submit any other required documentation deemed necessary to process an application, including proof of a qualified supervisor.

(d) An applicant who fails the ABCP examination may retake the examination no more than four times.

#### §188.8. Supervision Standards.

In addition to the requirements in §603.259 of the Act, the supervising licensee must:

(1) have an unrestricted license in Texas;

(2) have no pending investigation;

(3) not be a relative or family member;

(4) have never had a licensed revoked, suspended, restricted or cancelled for cause; and

(5) meet any other eligibility criteria established by the board.

#### §188.9. License Registration and Renewal.

(a) Licensees must renew the registration of their license on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$362.00, and additional fees and surcharges, as applicable; and

(3) completing biennial continuing education (CE) required under §188.10 of this chapter (relating to Biennial Continuing Education (CE) Requirements); and

(4) providing other relevant information requested by board staff.

(b) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one quarter of the renewal fee; and

(2) 91 days-1 year late -- renewal fee plus one half of the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§188.10. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete Continuing Education (CE) as follows:

(1) completion of a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission; and

(2) completion of the annual ABCP certification CE requirements; or

(3) complete 30 hours of CE as follows:

(A) fifteen hours designated as ABCP approved;

(B) completion of 40 cases as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(b) Documentation of CEs claimed must be maintained and produced upon request by the board.

(c) Military service members are subject to the same CE requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(d) Carry forward of CE credit is allowed as follows:

(1) excess hours earned in a biennium can only be applied to the immediately following biennial requirements; and

(2) no hours can be carried forward past a single renewal period.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the state;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§188.11. Relicensure.

(a) For a licensee who retired or surrendered their license (including cancellation for non-payment) and is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$180.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §188.3 of this chapter (relating to General Requirements for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) Applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Texas Occupations Code.

§188.12. Code of Ethics.

In accordance with §603.151 of the Act, perfusionists must conform to all state and federal laws, rules, and professional standards.

§188.13. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) through (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

§188.14. Procedural Rules.

(a) In accordance with §603.401 of the Act, the Procedural Rules in Chapter 179 of this title (relating to Procedural Rules) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Complaints and Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Disciplinary Guidelines) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls, including, but not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title (relating to Compliance Program) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

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Scott Freshour

General Counsel

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## CHAPTER 189. COMPLIANCE PROGRAM

The Texas Medical Board (Board) proposes the repeal of current Chapter 189, concerning Compliance Program, §§189.1 - 189.16.

The Board also proposes new Chapter 189, concerning Medical Physicists, §§189.1 - 189.13.

Also, the Board contemporaneously proposes the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 - 160.5, §§160.7 - 160.31.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 189 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §189.1, Definitions, defines terms used in new Chapter 189.

New §189.2, Meetings, explains how Advisory Committee meetings are conducted.

New §189.3, General Requirements for Licensure, outlines the general requirements and specific documentation necessary for an applicant to obtain a Medical Physicist license.

New §189.4, Required References, explains the requirement for an applicant to submit three professional references to obtain a license.

New §189.5, Acceptable Education for Licensure, outlines the applicant's eligibility requirements including specific educational programs and degrees, as well as specified credit hours necessary to apply for Medical Physicist licensure.

New §189.6, Specialty Examinations, details the specific examination in each specialty that the applicant must pass to obtain a Medical Physicist license.

New §189.7, Current Clinical Practice, outlines the process of submission of an applicant's professional or work history information, demonstrating fulfillment of the minimum practice requirements to apply for licensure as set forth under §602.207 of the Act.

New §189.8, Temporary License, explains the requirements and process of the applicant to obtain a temporary Medical Physicist license.

New §189.9, Procedural Rules for Licensure Applicants, states that applications will be processed in accordance with Chapter 602 of the Act. The section also describes the Executive Director's review of the licensure applications and the several options which may be offered to the applicant.

New §189.10, Registration and Renewal of Certificate, details the process of renewal of the registration of the licensee's license on a biennial basis and the basis for cancellation of the certificate.

New §189.11, Biennial Continuing Education (CE) Requirements, describes the CE courses that the license holder is required to complete biennially and the specified number of hours. Exemptions for CE requirements are also detailed.

New §189.12, Reporting Requirements, states that a Medical Physicist must report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

New §189.13, Procedural Rules, describes the applicability of Chapter 179, regarding Procedural Rules; Chapter 177, regarding Complaints and Investigation; Chapter 180, regarding Disciplinary Guidelines and Sanctions; and Chapter 181, regarding Compliance.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.



(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/VNDveErjnx>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§189.1 - 189.13

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§189.1. *Purpose and Scope.*

§189.2. *Definitions.*

§189.3. *Responsibilities of Probationers.*

§189.4. *Limitations on Physician Probationer's Practice.*

§189.5. *Compliance Visits and Communications.*

§189.6. *Probation Appearances.*

§189.7. *Modification/Termination Hearings.*

§189.8. *Procedures Concerning Non-compliance.*

§189.9. *Grounds for Temporary Suspension or Automatic Suspension of Probationers.*

§189.10. *Drug Screens.*

§189.11. *Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.*

§189.12. *Suspended licenses.*

§189.13. *Investigative Reports.*

§189.14. *Receipt of Probationer's Address of Record and Contact Information.*

§189.15. *Determination of Successful Completion of an Order.*

§189.16. *Monitoring, Proctoring, or Supervising Physician/Professional's Recommendation for Competency Assessment.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## CHAPTER 189. MEDICAL PHYSICISTS

### 22 TAC §§189.1 - 189.16

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated, Chapter 602. No other statutes, articles or codes are affected by this proposal.

#### §189.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Occupations Code, Chapter 602.

(2) Board--The Texas Medical Board.

#### §189.2. Meetings.

Advisory Committee meetings shall be conducted in compliance with §602.058 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

#### §189.3. General Requirements for Licensure.

(a) All applicants for a license must meet the requirements in §§602.203 and 602.207 of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$130.00 for a single specialty, \$50.00 for each additional specialty, and additional fees and surcharges as applicable; and

(3) required documentation, including but not limited to:

(A) an educational transcript;

(B) a current Board Certification;

(C) Professional Reference forms;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of medical physics for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS fingerprint report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence Examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a); and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

§189.4. Required References.

In accordance with §602.203(b)(4) of the Act, an applicant must submit three professional references as follows:

(1) If applying for a single specialty, an applicant must submit references from at least two medical physicists and one licensed physician practicing in the same specialty.

(2) If applying for two or more specialties, an applicant must submit references from at least two medical physicists and a licensed physician practicing in the same specialty area(s). One of the medical physicists must be practicing in at least one of the specialty areas, and the other medical physicist must practice in the other specialty area(s).

(3) If applying for a license in medical health physics, the physician providing a reference must practice in diagnostic radiology, radiation oncology, or nuclear medicine.

§189.5. Acceptable Education for Licensure.

(a) To be eligible for a license, an applicant must have earned a master's or doctoral degree from:

(1) a medical physics program accredited by the Commission on Accreditation of Medical Physics Education Programs (CAMPEP);

(2) an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses; or

(3) an accredited university in physical science (including chemistry), applied mathematics or engineering with 20 hours upper division or graduate level physics courses. For the purpose of this clause, upper division semester hour credits are defined as third-level or above (junior, senior, or graduate) course work completed from a regionally accredited college or university.

(b) Degrees received at international universities shall be acceptable only if such course work could be counted as transfer credit by regionally accredited universities. An applicant with an international degree must provide:

(1) an International Credential Evaluation from the Foreign Credential Service of America (FCSA);

(2) a credential evaluation from an American Board of Radiology (ABR) approved Credentials Evaluation organization; or

(3) another similar entity as approved by the board.

§189.6. Specialty Examinations.

(a) An applicant under this section must successfully pass one of the following examinations in each specialty for which an application is submitted:

(1) Therapeutic Radiological Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in therapeutic radiological physics, radiological physics or therapeutic medical physics;

(B) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in radiation oncology physics;

(2) Medical Nuclear Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in medical nuclear physics radiological physics or nuclear medical physics;

(B) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(C) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation or in molecular imaging science; or

(D) the Canadian College of Physicists in Medicine or its successor organization in nuclear medicine physics;

(3) Diagnostic Radiological Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in diagnostic radiological physics, radiological physics or diagnostic medical physics;

(B) the American Board of Medical Physics or its successor organization in diagnostic imaging physics or diagnostic radiology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in diagnostic radiology health physics;

(4) Medical Health Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in radiological physics;

(B) the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(C) the American Board of Medical Physics or its successor organization in medical health physics; or

(D) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection.

§189.7. Current Clinical Practice.

Applicants must submit professional or work history evaluations demonstrating fulfillment of the minimum practice requirements set forth under §602.207 of the Act. "Current clinical practice" may be demonstrated by:

(1) currently practicing as a medical physicist;

(2) enrollment as a student at an acceptable approved school; or

(3) appointment as an active teaching faculty member at an approved school.

§189.8. Temporary License.

(a) Applicants for a temporary license must meet the educational requirements under §189.5 of this chapter (relating to Acceptable Education for Licensure).

(b) A temporary license shall be issued for each specialty for a one-year period.

(c) The holder of a temporary license may apply for up to twelve temporary licenses.

(d) Upon application for the seventh temporary license, the Board shall perform an evaluation of an applicant's progress toward certification in a medical physicist area of specialty. This evaluation will include, but is not limited to:

(1) information on the applicant's current participation in any medical physicist training program;

(2) identification of the medical physicist specialty/specialties an applicant is working toward;

(3) the number of certification examinations taken during the previous six years and the results of said examinations;

(4) any medical physicist certification(s) successfully completed during the previous six years. If this evaluation determines that satisfactory progress has not been made toward completion of a medical physicist certification, an application for an additional temporary license may be denied.

(e) The board may, in its discretion, allow the holder of a temporary license to apply for more than twelve licenses.

(f) The application for a temporary license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(g) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area. The work experience must be completed in accordance with a supervision plan approved by the board, signed by both the supervisor and the temporary license holder. In order to be approved as a supervisor, the licensed medical physicist must:

(1) have an unrestricted license or certificate in Texas;

(2) have no pending investigation;

(3) not be a relative or family member;

(4) have never had a license or certificate revoked, suspended, restricted, or cancelled for cause; and

(5) meet any other eligibility criteria established by the board.

(h) A supervisor shall supervise no more than two temporary license holders or their full-time equivalents, unless in a CAMPEP approved medical physics training.

(i) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee.

(j) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

§189.9. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with Chapter 602 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may within 20 days of notice of non-approval request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of receipt of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§189.10. Registration and Renewal of Certificate.

(a) Licensees must renew the registration of their license on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee and additional fees and surcharges, as applicable;

(A) \$260.00 for the first specialty;

(B) \$50.00 for each additional specialty, if applicable;

and

(3) completing biennial Continuing Education (CE) required under §189.11 of this chapter (relating to Biennial Continuing Education (CE) Requirements); and

(4) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§189.11. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete Continuing Education (CE) as follows:

(1) A licensee must complete 24 contact hours of CE recognized by the board. A contact hour shall be defined as 50 minutes of attendance and participation.

(2) Recognized CE includes:

(A) programs sponsored by American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), Health Physics Society (HPS), Society of Nuclear Medicine and Molecular Imaging (SN-

MMI), Radiological Society of North America (RSNA), American Society for Therapeutic Radiology and Oncology (ASTRO), or other professional organizations acceptable to the board;

(B) a program of study in medical physics that is accredited by the American Association of Physicists in Medicine Commission on Accreditation of Medical Physicist Education Programs;

(C) participation in medical physics related courses, refresher courses, conferences, and seminars sponsored by state and private universities that have an accredited graduate medical physics program;

(D) a course of study from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering; and

(E) other courses that enhance the practice of medical physics and are acceptable to the board.

(3) A medical physicist shall be presumed to have complied with this section if in the preceding 24 months, they obtain board certification or recertification by the American Board of Radiology (ABR), American Board of Medical Physics (ABMP), American Board of Science in Nuclear Medicine (ABSNM), or American Board of Health Physics (ABHP).

(b) Military service members are subject to the same CE requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(c) Exemptions for CE requirements.

(1) Requests for exemptions from completing the CE requirements must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the state;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§189.12. On-Going Reporting Requirements.

A medical physicist must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

§189.13. Procedural Rules.

(a) The Procedural Rules in Chapter 179 of this title (relating to Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Business Organizations and Agreements) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Texas Physician Health Program) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls, including, but not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title (relating to Contact Lens Prescriptions) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) proposes the repeal of current Chapter 190, concerning Disciplinary Guidelines. This includes Subchapter A, concerning General Provisions, §190.1 and §190.2; Subchapter B, concerning Violation Guidelines, §190.8; Subchapter C, concerning Sanction Guidelines, §190.14 and §190.15; and Subchapter D, concerning Administrative Penalties, §190.16.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 190 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeal do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §190.1, §190.2

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§190.1. *Purpose.*

§190.2. *Board's Role.*

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§190.8. *Violation Guidelines.*

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

Filed with the Office of the Secretary of State on September 16, 2024.

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Scott Freshour

General Counsel

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## SUBCHAPTER C. SANCTION GUIDELINES

### 22 TAC §190.14, §190.15

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§190.14. *Disciplinary Sanction Guidelines.*

§190.15. *Aggravating and Mitigating Factors.*

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

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## SUBCHAPTER D. ADMINISTRATIVE PENALTIES

### 22 TAC §190.16

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

#### §190.16. *Administrative Penalties*

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

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## CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

### 22 TAC §§192.1 - 192.6

The Texas Medical Board (Board) proposes the repeal of current Chapter 192, concerning Office-Based Anesthesia Services, §§192.1 - 192.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 192 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a

result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§192.1. *Definitions.*

§192.2. *Provision of Anesthesia Services in Outpatient Settings.*

§192.3. *Compliance with Office-Based Anesthesia Rules.*

§192.4. *Registration.*

§192.5. *Inspections.*

§192.6. *Requests for Inspection and Advisory Opinion.*

The agency certifies that legal counsel has reviewed the proposal 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

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §§193.1 - 193.13

The Texas Medical Board (Board) proposes the repeal of current Chapter 193, concerning Standing Delegation Orders, §§193.1 - 193.13.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 193 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

- §193.1. *Purpose.*
- §193.2. *Definitions.*
- §193.3. *Exclusion from the Provisions of this Chapter.*
- §193.4. *Scope of Standing Delegation Orders.*
- §193.5. *Physician Liability for Delegated Acts and Enforcement.*
- §193.6. *Delegation of Prescribing and Ordering Drugs and Devices.*
- §193.7. *Prescriptive Authority Agreements Generally.*
- §193.9. *Delegation of Prescriptive Authority at a Facility-Based Practice Site.*
- §193.10. *Registration of Delegation and Prescriptive Authority Agreements.*
- §193.11. *Prescription Forms.*
- §193.12. *Prescriptive Authority Agreement Inspections.*
- §193.13. *Delegation to Certified Registered Nurse Anesthetists.*
- §193.14. *Delegation Related to Obstetrical Services.*
- §193.15. *Delegated Drug Therapy Management.*
- §193.16. *Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.*
- §193.17. *Nonsurgical Medical Cosmetic Procedures.*
- §193.18. *Pronouncement of Death.*
- §193.19. *Collaborative Management of Glaucoma.*
- §193.20. *Immunization of Persons Over 65 by Physicians' Offices.*

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

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Scott Freshour

General Counsel

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CHAPTER 194. MEDICAL RADIOLOGIC  
TECHNOLOGY  
SUBCHAPTER A. CERTIFICATE HOLDERS,  
NON-CERTIFIED TECHNICIANS, AND OTHER  
AUTHORIZED INDIVIDUALS OR ENTITIES  
22 TAC §§194.1 - 194.13, 194.15 - 194.34

The Texas Medical Board (Board) proposes the repeal of current Chapter 194, concerning Medical Radiologic Technology. This includes Subchapter A, concerning Certificate Holders, Non-Certified Technicians, and Other Authorized Individuals or Entities, §§194.1 - 194.13, §§194.15 - 194.34.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 194 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.



(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§194.1. *Purpose.*

§194.2. *Definitions.*

§194.3. *Meetings and Committees.*

§194.4. *Guidelines for Early Involvement in Rulemaking Process.*

§194.5. *Applicability of Chapter; Exemptions.*

§194.6. *Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician Registry.*

§194.7. *Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry.*

§194.8. *Renewal of Certificate by Out-of-State Person.*

§194.9. *Change of Name and Address.*

§194.10. *Retired Certificate or NCT Registration.*

§194.11. *Exemption from Registration Fee for Retired Certificate or NCT General Registration Permit Holders Providing Voluntary Charity Care.*

§194.12. *Standards for the Approval of Certificate Program Curricula and Instructors.*

§194.13. *Mandatory Training Programs for Non-Certified Technicians.*

§194.15. *Bone Densitometry Training.*

§194.16. *Hardship Exemptions.*

§194.17. *Dangerous or Hazardous Procedures.*

§194.18. *Advertising or Competitive Bidding.*

§194.19. *Direct Supervision of a Student Required.*

§194.20. *Identification Requirements.*

§194.21. *Scope of Practice.*

§194.22. *Grounds for Denial of Certificate, Registration, or Other Approval, and for Disciplinary Action.*

§194.23. *Criminal Backgrounds.*

§194.24. *Administrative Penalties.*

§194.25. *Procedure.*

§194.26. *Compliance.*

§194.27. *Reissuance of Certificate or Permit Following Revocation.*

§194.28. *Complaints.*

§194.29. *Investigations.*

§194.30. *Impaired Individuals.*

§194.31. *Third Party Reports to the Board.*

§194.32. *Duty to Report Certain Conduct to the Board.*

§194.33. *Voluntary Relinquishment or Surrender of Certificate or Permit.*

§194.34. *Exemption from Licensure for Certain Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal 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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## CHAPTER 195. PAIN MANAGEMENT CLINICS

### 22 TAC §§195.1 - 195.5

The Texas Medical Board (Board) proposes the repeal of current Chapter 195, concerning Pain Management Clinics, §§195.1 - 195.5.

The Board has determined that due to the extensive reorganization of Chapters 160 - 200 as part of the Board's rule review, repeal of Chapter 195 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency

has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which

requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§195.1. *Definitions.*

§195.2. *Gold Designated Practice.*

§195.3. *Certification of Pain Management Clinics.*

§195.4. *Minimum Operational Standards for the Treatment of Pain Patients.*

§195.5. *Audits, Inspections and Investigations.*

The agency certifies that legal counsel has reviewed the proposal 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) 305-7030



## CHAPTER 197. EMERGENCY MEDICAL SERVICE

### 22 TAC §§197.1 - 197.7

The Texas Medical Board (Board) proposes the repeal of current Chapter 197, concerning Emergency Medical Services, §§197.1 - 197.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 197 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§197.1. *Purpose.*

§197.2. *Definitions.*

§197.3. *Off-line Medical Director.*

§197.4. *On-Line Medical Direction.*

§197.5. *Authority for Control of Medical Services at the Scene of a Medical Emergency.*

§197.6. *Authority to Conduct Research and/or Educational Studies.*

§197.7. *Physician Supervision of Emergency Medical Technician-Paramedic or Licensed Paramedic Care Provided in a Health Care Facility Setting.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 198, concerning Standards for Use of Investigational Agents. This includes Subchapter A, concerning Standards for Use of Investigational Drugs, Biological Products, Or Devices, §§198.1 - 198.4; and Subchapter B, concerning Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, §198.5 and §198.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 198 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed repeals.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed repeals.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The

agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed repeals do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES

### 22 TAC §§198.1 - 198.4

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides

authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§198.1. *Purpose.*

§198.2. *Definitions.*

§198.3. *Practice Guidelines for the Use of Investigational Agents.*

§198.4. *Use of Investigational Drugs, Biological Products, or Devices for Patients with Terminal Illnesses.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404356

Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

### 22 TAC §§198.5, §198.6

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§198.5. *Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.*

§198.6. *Process and Procedures for IRBs Engaged in the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404448



## CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

### 22 TAC §§200.1 - 200.3

The Texas Medical Board (Board) proposes the repeal of current Chapter 200, concerning Standards for Physicians Practicing Complementary and Alternative Medicine, §§200.1 - 200.3.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 200 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed repeals will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed repeals.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed repeals.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§200.1. *Purpose.*

§200.2. *Definitions.*

§200.3. *Practice Guidelines for the Provision of Complementary and Alternative Medicine.*

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

Filed with the Office of the Secretary of State on September 16, 2024.

TRD-202404437

Scott Freshour  
General Counsel  
Texas Medical Board

Earliest possible date of adoption: October 27, 2024  
For further information, please call: (512) 305-7030

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER RR. VALUATION MANUAL

###### 28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendment to §3.9901 implements Insurance Code §425.073.

**EXPLANATION.** An amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the National Association of Insurance Commissioners (NAIC) Valuation Manual.

Under Insurance Code §425.073, the commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to its valuation manual, the commissioner must adopt substantially similar changes. This subsection also requires the commissioner to determine that NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 15, 2024, the NAIC voted to adopt changes to the valuation manual. Fifty jurisdictions, representing jurisdictions totaling 97.81% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC Valuation Manual meets the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt the NAIC's changes. In addition, under Insurance Code §36.007, the commissioner cannot adopt or enforce a rule implementing an interstate, national, or international agreement that infringes on the authority of this state to regulate the business of insurance in this state, unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit this proposal because Insurance Code §425.073 requires the Texas insurance commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC, and §425.073(c) expressly requires the commissioner to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2025 NAIC Valuation Manual includes changes that:

- require qualified actuaries for principle-based reserving to meet the American Academy of Actuaries' Specific Qualification Standard with respect to their opining areas;
- for credit disability, remove the 12% increase to claim incidence rates for credit disability, based on more recent experience;
- authorize the valuation rate for non-jumbo contracts (contracts of less than \$250 million) to be determined daily rather than quarterly;
- allow that the valuation rate for funding agreements to be determined monthly rather than annually;
- add explicit requirements for international mortality to principle-based reserving for life products; and
- allow for variable annuity principle-based reserving prescribed assumption updates, as ongoing maintenance.

The NAIC's adopted changes to the valuation manual can be viewed at [https://content.naic.org/sites/default/files/pbr\\_data\\_valuation\\_manual\\_future\\_edition\\_red-line.pdf](https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_red-line.pdf).

**Section 3.9901.** The amendment to §3.9901 strikes the date on which the NAIC adopted its previous valuation manual and inserts the date on which the NAIC adopted its current valuation manual, adopting by reference the new valuation manual dated August 15, 2024. An additional change lowercases the word "commissioner," for consistency with current agency style preferences.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by statute. Ms. Walker made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in statute. Insurance Code §425.073 requires that changes to the valuation manual be adopted by rule and be substantially similar to changes adopted by the NAIC. As a result, any cost associated with adopting the changes to the valuation manual is a direct result of Insurance Code §425.073 and not the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because

the amendment does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. In addition, no other rule amendments are required under Government Code §2001.0045 because the proposed amendment is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by Senate Bill 1654, 84th Legislature, 2015.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 28, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on October 28, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes the amendment to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to, by rule, adopt changes to the valuation manual previously adopted by the commissioner that are substantially similar to any changes adopted by NAIC to its valuation manual. Section 425.073 also requires that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 3.9901 implements Insurance Code §425.073.

§3.9901. *Valuation Manual.*

(a) The commissioner [Commissioner] adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 15, 2024, [46, 2023,] as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

Filed with the Office of the Secretary of State on September 16, 2024.

TRD-202404447

Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

#### 28 TAC §131.5

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new 28 TAC §131.5, concerning verification by the Subsequent Injury Fund (SIF). Section 131.5 implements Labor Code §§408.081, 408.161, and 408.162.

House Bill (HB) 2468, 88th Legislature, Regular Session (2023) made changes to Labor Code §408.161 that define traumatic brain injury and make other combinations of third-degree burns eligible for lifetime income benefits (LIBs). Although this proposed rule does not directly implement HB 2468, the proposed new section will impact LIBs recipients paid by the SIF, including injured employees that are eligible for LIBs under the changes made by HB 2468.

**EXPLANATION.** The new section requires the SIF to verify that the LIBs recipient is living, receiving LIBs payments, and their contact information has not changed. The new section also requires the LIBs recipient to certify the information with the SIF each month over a telephone call, video call, or other online verification system to receive the LIBs payment from the SIF. New §131.5 is necessary to implement Labor Code §§408.081, 408.161, and 408.162. Labor Code §§408.081 and 408.161 pertain to when and how injured employees receive LIBs and re-

quire that LIBs are payable only while the injured employee is alive. New §131.5 is necessary to implement those sections effectively by ensuring that DWC is notified of the injured employee's death before the SIF issues a LIBs payment to that injured employee. Labor Code §408.162 applies when an injury combines with a subsequent injury to qualify an injured employee for LIBs. In these situations, the insurance carrier for the subsequent injury pays benefits for the subsequent injury as if the previous injury did not happen, and the SIF pays the difference between the LIBs and the amount the insurance carrier pays for the subsequent injury. New §131.5 is necessary for DWC to verify that the injured employee is still alive, preventing the waste of public funds when the SIF makes these payments to the injured employee.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed new section is in effect, there will be no or minimal measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed new section does not add to or decrease state revenues or expenditures, and because local and state government entities are only involved in enforcing or complying with the proposed new section when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed new section.

Deputy Commissioner De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new section is in effect, Deputy Commissioner De La Cruz expects that enforcing and administering the proposed new section will have the public benefits of increasing efficiency and transparency, and preventing the waste of public funds, as well as ensuring that DWC's rules conform to Labor Code §§408.081(d), 408.161, and 408.162 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner De La Cruz expects that the proposed new section will not increase the cost to comply with Labor Code §§408.081(d), 408.161, and 408.162 because it does not impose requirements beyond those actions that are required to comply with the statute. Labor Code §408.081(d) requires that an employee's entitlement to LIBs end on the death of the employee. Labor Code §408.161(a) requires that LIBs are paid until the death of the employee. Together, the statutes require DWC to determine if the employee is living at the time the SIF makes the LIBs payment. As a result, the cost associated with verification by the SIF and certification by the employee does not result from the enforcement or administration of the proposed new section.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed new section makes changes required to conform DWC rules to Labor Code §§408.081, 408.161, and 408.162. The proposed new section does not change the people the rule affects or impose additional costs beyond what is required by the statutes. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed rule enhances efficiency and transparency, and is necessary to prevent the waste of public funds. The proposed rule does not change the people the law affects or impose additional costs.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on October 28, 2024. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** DWC proposes §131.5 under Labor Code §§402.00111, 402.00116, 402.00128, 402.021, 402.061, 408.081, 408.161, and 408.162.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.



Labor Code §402.00128(b)(12) provides that the commissioner may exercise other powers and perform other duties as necessary to implement and enforce the Workers' Compensation Act.

Labor Code §402.021(b)(3) provides that the workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §408.081(d) provides that an employee's entitlement to LIBs ends on the death of the employee.

Labor Code §408.161(a) provides that LIBs are paid until the death of the employee.

Labor Code §408.162(a) provides that, when an injury combines with a subsequent injury to qualify an injured employee for LIBs, the insurance carrier for the subsequent injury pays benefits for the subsequent injury as if the previous injury did not happen. Section 408.162(b) requires the SIF to pay the difference between the amount of LIBs and the amount the insurance carrier pays for the subsequent injury.

CROSS-REFERENCE TO STATUTE. Section 131.5 implements Labor Code §§408.081, 408.161, and 408.162, enacted by HB 752, 73rd Legislature, Regular Session (1993).

§131.5. Verification by the Subsequent Injury Fund.

(a) The Subsequent Injury Fund must confirm the following information before making a payment to the lifetime income benefit recipient:

(1) the recipient is living;

(2) lifetime income benefits are being received; and

(3) the recipient's contact information is correct.

(b) The lifetime income benefits recipient must provide the information required by subsection (a)(1) - (3) to the Subsequent Injury Fund each month over a telephone call, video call, or other online verification system to receive the lifetime income benefit payment from the Subsequent Injury Fund.

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

Filed with the Office of the Secretary of State on September 13, 2024.

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Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703

