

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

##### 1 TAC §§40.2, 40.3, 40.9, 40.11, 40.13, 40.15

The Texas Ethics Commission (the TEC) adopts amendments to Texas Ethics Commission Rules in Chapter 40 regarding Financial Disclosure for Public Officers. Sections §§40.2, 40.3, 40.9, 40.11, 40.13, and 40.15 are adopted without changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8629). Proposed new rule §40.5 regarding Assets and Liabilities of Business Associations was not adopted. The adopted rules will not be republished.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.* The TEC is authorized to adopt rules to administer Chapter 572 of the Government Code. Tex. Gov't Code §§ 571.061, .062.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding financial disclosures, which are codified in Title 1, Chapter 40 of the Administrative Code. The TEC adopts new rules and amends existing rules to clarify state officers' obligations related to submitting personal financial statements.

The rules and amendments are designed to more closely track statutory language and to provide more clarity and notice of the TEC's interpretations of the statutory requirements of Chapter 572 of the Government Code.

Specifically, the TEC adopts amendments to rules §40.2 regarding Disclosure of Financial Activity and §40.11 regarding Publicly Traded Corporation as Source of Income. The TEC also adopts new rules §40.3 regarding PFS Required for Each Year of Service, §40.9 regarding Exchange Traded Funds and Real Estate Investment Trusts, §40.13 regarding Beneficial Interest in Real Property Includes Real Property Held in a Trust, and §40.15 regarding Identification of the Source of Rents Derived From Rental Property. The following is a description of each rule amendment or new rule.

##### §40.2. Disclosure of Financial Activity [of Spouse and Dependent Children].

The existing rule (§40.2) implies that a filer must report the activity of a spouse or dependent child over which the filer "held the

right to exercise" control. The statute requires a filer to report the financial activity of a spouse or dependent child if the filer has "actual control" over the activity. The proposed amendment strikes the reference to right to control to conform the rule to the statute.

##### §40.3. PFS Required for Each Year of Service

The next rule clarifies that a state officer must file a PFS covering each year the filer served the state.

The law relevant law states: "Not later than April 30 each year, a state officer or a state party chair shall file the financial statement as required by this subchapter." Tex. Gov't Code § 572.026(a). A PFS includes "an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year." *Id.* § 572.023.

A PFS is owed each year by a state officer that covers the state officer's financial activity from the previous calendar year. The statute is ambiguous as to whether a state officer that ceases service in, for example, 2024 would be required to file a PFS in 2025 that covers financial activity that took place in 2024.

The most natural construction is that a state officer needs to file a PFS accounting for the financial activity for each year the state officer served, and that PFS is due April 30. So, in the example of a state officer who ceases service in 2024, the state officer is required by law to file a PFS in 2025 covering the financial activity in the filer's last year of service.

The proposed rule attempts to make that clear with two exceptions: 1) if a state officer ceases state service before the end of a calendar year, the PFS the state officer files need only cover through the end of their state service and 2) a retiring member of the legislature does not need to file a PFS covering the few days they serve in January before their successor is sworn into office.

##### §40.13. Beneficial Interest in Real Property Includes Real Property Held in a Trust

The law requires a filer to disclose "all beneficial interests in real property." *Id.*

§ 572.023(b)(6). The dictionary definition of a beneficial interest in real property is a property held in a trust for the benefit of an individual. The proposed rule amendment would clarify that a filer is required to disclose properties held in a trust for the filer's benefit.

Subsection (b) of the proposed rule harmonizes two statutory provisions regarding the disclosure of assets held in a blind trust. Income producing assets held in a trust generally need to be disclosed on a PFS. However, there is an express provisions that exempts an income producing assets from disclosure if is held in a blind trust. *Id.* § 572.023(b)(6). There is no similar

exclusion for disclosing beneficial interests in real property held in a blind trust.

Based on the definition of a blind trust in Chapter 572, a filer may know what assets are in a blind trust. *Id.* § 572.023(c). However, the trustee of a blind trust is required to file a sworn statement that includes a statement that the "the trustee has not revealed any information to the individual, except information that may be disclosed under [a provision related to trust income]. *Id.* § 572.023(b)(14)(D).

Reading the law as a cohesive whole, a filer may or may not know the assets of a blind trust. But trustee cannot tell the filer what is in the trust. So, if the filer is unaware of the contents of the trust the filer should have no way of knowing. In the case whether a filer is not actually aware of a beneficial interest in real property held in a blind trust, the filer is excused of his duty to disclose it. However, if a filer actually knows of a beneficial interest in real property the filer must disclose it even if it is in a blind trust.

#### §40.15. Identification of the Source of Rents Derived from Rental Property

The proposed rule clarifies that the "identification of each source" of rents includes the name of the lessee and the address of the rental property.

The agency did not receive any public comments on these new and amended rules.

The amended and new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 572 of the Government Code.

The adopted amended and new rules affect Chapter 572 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## PART 8. TEXAS JUDICIAL COUNCIL

### CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

#### SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

#### DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

##### 1 TAC §174.28

The Texas Indigent Defense Commission (TIDC) is a permanent Standing Committee of the Texas Judicial Council. TIDC adopts amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter C, Division 2, §174.28, concerning On-Site Monitoring Process. The amended sections are adopted without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8007) and will not be republished. No comments were received.

#### EXPLANATION OF AMENDMENTS

The amendment to §174.28(c)(4) requires the policy monitor to make a finding if the monitor finds the court did not explain the procedures for requesting counsel or identifies cases in which a defendant entered an uncounseled plea while having a pending counsel request.

The amendment to §174.28(c)(5) provides that in counties with a public defender's office, the monitor will determine if appointments to the office are made in accordance with Article 26.04(f), Code of Criminal Procedure, the priority appointment of public defender's statute.

The amendments to §174.28(c)(5) add requirements related to attorney appointments in capital felony cases. In a county with a public defender's office that accepts capital appointments, the monitor will verify that the office is appointed in each capital case. If the office was not appointed in each case, the policy monitor shall determine whether the court or its designee made a finding of good cause on the record for appointing other counsel in accordance with Article 26.04(f)(1).

The amendments to §174.28(c)(5) also require that in capital felony cases where a public defender's office was not appointed, the policy monitor shall determine if two attorneys were appointed and whether at least one attorney was qualified to serve as lead counsel under Article 26.052(e), Code of Criminal Procedure. If one attorney was appointed, the policy monitor shall determine whether the State filed written notice that it is not seeking the death penalty and the date the notice was filed.

The amendments to §174.28(d)(1) provide that staff shall submit draft policy monitoring reports to the Policies and Standards Committee, rather than to the county, for review within 60 days after the date staff receives all required data for the review, rather than within 60 days of a site visit. The first part of the amendment is proposed since the Committee review process can sometimes take a few weeks to complete, especially when changes to a report are needed. The second part of the amendment is proposed because some monitoring reviews are now fully remote and because delays in receiving needed data from counties often leads to staff not meeting the timeline in the current version of the rule.

The amendments to §174.28(d)(3) provide that in the case of a follow-up review report, a county may receive an extension beyond the two 30-day periods provided for in the current rule if the county demonstrates it has extenuating circumstances that are approved by the Executive Director.

The amendments to §174.28(d)(4) require only formula grant payments, rather than all grant payments, be withheld if a county does not respond to a policy monitoring report within 10 days of receipt of a certified letter notifying the local officials. This would assure that improvement grant-funded programs such as public defender offices are not immediately jeopardized.

The amendments to §174.28(d)(5) specify TIDC may require regular reporting of data to determine if process changes are being implemented and their impact on compliance when counties

fail to come into compliance after multiple reviews. Currently, the only processes specified are to impose a remedy for non-compliance under §173.307, Texas Administrative Code, such as withholding grant funds.

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Government Code §79.037(a) and (b), which requires TIDC to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

No other statutes, articles, or codes are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 160. MEDICAL PHYSICISTS

The Texas Medical Board (Board) adopts the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 - 160.5, 160.7 - 160.31. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7704). The repeals will not be republished.

The Board also adopts new Chapter 160, concerning General Provisions. This includes new Subchapter A, concerning General §§160.1 - 160.7, and Subchapter B, concerning Rulemaking, §§160.10, 160.11. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7704). The rules will be republished.

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 adopted new sections are as follows:

##### SUBCHAPTER A. GENERAL PROVISIONS

New §160.1, Definitions, defines terms used throughout the Board's 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.

##### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 160.

The Board received one comment from the Texas Medical Association (TMA) regarding the new rules. A summary of the comment and the Board responses is as follows:

##### §160.2

TMA asked the rationale for changes to the Board's enumerated functions and duties that differ from the rule being repealed. The language included functions/duties related to interpretation of the Medical Practice Act and oversight of advisory boards and committees.

Board Response - The Board oversight of advisory boards and committees is delineated in the respective Acts, therefore a rule is unnecessary and redundant.

##### §160.3

TMA asserts that the proposed rule text makes it look like the Board President is nominated and elected following the same process as other board officers

Board Response - The Board agrees and has added the phrase "other than the Board President" to subsection (a) to make clear which officers are selected through the nomination process. This change is clarifying and non-substantive.

##### §160.5

TMA asked the rationale for eliminating the language in current rule that requires each committee to include at least one physician member who is a DO and at least one public member.

Board Response - There is no need to include language regarding committee membership requirements because it is set out in statute.

TMA sought clarification on who will ensure records are maintained of all committee actions, as this responsibility in current rule belongs to the Executive Committee.

Board Response - A rule requiring records to be maintained is unnecessary because statute, including the Public Information Act and Open Meetings Act, requires that the agency and its staff maintain records.

Finally, TMA asked why the current rule language for the Disciplinary Process and Review Committee (DPRC) approving dismissals of complaints and closure of investigations has been removed.

Board Response - The new rule provides that the DPRC reviews and makes recommendations to resolve complaints, investigations, and cases, and to hear complainant appeals. The use of "resolve" clearly includes dismissals and closures.

#### §160.7

TMA asserts that the current rule's language regarding the MOU with TXPHP provided transparency as to the interaction between the TMB and TXPHP. They query what the rationale is for the change and whether any operational changes will be made based on the less detailed proposed language.

Board Response - The Board declines to make any changes in response to this comment. The terms of the relationship between the TMB and TXPHP are clearly laid out in the MOU, which is a public document. No changes to the operations or relationship between the TMB and TXPHP are being made through this rule review.

#### §160.10

TMA did not recommend any changes to this section, but instead queried what is intended by the language in subsection (c)(4) requiring a petition to contain 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.

Board Response - The Board declines to make any change in response to this comment. The language is clear on the petition for rulemaking requirements. The petition should state whether the rule being requested in the petition for rulemaking is in conflict with any other rule, ruling, order, or opinion of the board or any other rules or statutes. If so, the petition should contain legal references to the conflicting rule, statute, etc.

Finally, TMA asks why in subsection (d) a petition for rulemaking that is denied by a committee does not have to go to the full board for a decision.

Board Response - The Board has changed subsections (d)(3) and (d)(4) to allow a committee to recommend denial of a petition for rulemaking to the full board for decision. This change is clarifying and non-substantive.

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

#### STATUTORY AUTHORITY:

The repeal of Chapter 160 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 160. GENERAL PROVISIONS

### SUBCHAPTER A. GENERAL

#### 22 TAC §§160.1 - 160.7

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted 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 adoption.

#### §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 other than the Board President 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) serving 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) serving 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;

(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, Collingsworth, Comanche, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, 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, Bosque, Bee, Bell, Bexar, Blanco, Brooks, Burlison, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal, Coryell, DeWitt, Dimmit, Duval, Edwards, Falls, Fayette, Fort Bend, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hamilton, Hays, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleberg, Lampasas, La Salle, Lavaca, Lee, Live Oak, Llano, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Nueces, Real, Refugio, San Patricio, Starr, Travis, Uvalde, Val Verde, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted 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 adoption.

§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 recommend to the full board at its next meeting to deny the petition or to publish the requested rule in the *Texas Register* for comment. A committee's recommendation to the full board to deny the petition or 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 deny the petition or 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 161. GENERAL PROVISIONS

The Texas Medical Board (Board) adopts the repeal of current Chapter 161, concerning General Provisions, §§161.1 - 161.7, §161.10 and §161.11. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7710). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7710). The rules will be republished.

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 adopted 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 chapter 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 §161.48, Provisional License, explains the requirements for a provisional license.

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.

#### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 161.

The Board received two comments regarding the proposed new rules. A summary of the comments and the Board responses is as follows:

Commenter No. 1: Garanflo & Meyer Consulting

#### Section 161.5

The commenter suggested the board should add language regarding the Committee on Accreditation of Canadian Medical Schools (CACMS).

Board Response - The Board agrees and adopts the non-substantive change to the section as requested.

#### Section 161.6

The commenter suggested that the board should add standard language allowing for substitute documents where exhaustive efforts on the PIT applicant's part to secure the required documents.

Board Response - The Board agrees and adopts the non-substantive change to the section as requested.

#### §161.7

The commenter inquired about the impact of this rule on applicants for licensure.

Board Response - The rule allows certain out of state applicants who are licensed for a specified period of time and ultimately passed the required examination to be considered eligible to be licensed in Texas.

#### Section 161.15

The commenter inquired about the impact of this rule on applicants for licensure.

Board Response - The rule allows certain foreign applicants to be considered eligible to be licensed based on postgraduate training or alternatively if they are eligible for obtaining specialty board certification, board eligibility is allowed with recognized acceptable post graduate training.

#### Section 161.16

The commenter inquired about the impact of this rule on applicants for licensure.

Board Response - The rule allows more flexibility for certain foreign applicants to be considered eligible to be licensed based on proof of alternate showing of medical competence and knowledge. This includes more focus on post-medical school experience, including the post graduate advanced training and competency development, rather than overemphasizing the underlying medical school attended. The rule allows certain foreign applicants to be considered eligible to be licensed based on proof of appropriate postgraduate training; being eligible for specialty



board certification, which is verified by having recognized acceptable post graduate training; or showing licensure and training by significant practice time in another state.

#### Section 161.17

The commenter inquired about the impact of this rule on applicants for licensure.

Board Response - The rule allows more flexibility for certain foreign applicants to be considered eligible to be licensed based on proof of alternate showing of medical competence and knowledge. This includes more focus on post medical school experience, including post graduate advanced training and competency development rather than overemphasizing the underlying medical school attended.

#### Section 161.45

The commenter made an inquiry about the wording in the statute and rule.

Board Response - The rule clarifies an examination must be taken; this avoids a potential applicant from seeking licensure without ever attempting an examination and then claiming they have not failed an examination. Although the rule is a restatement of the statute, it is in the affirmative form, so that to clarify "to have not failed an examination" indicates or implies the passage of an examination. The rule as written uses affirmative language while the statute is stated in the negative, but there is no conflict.

Commenter No. 2: Texas Medical Association (TMA)

#### Section 161.1

The TMA recommended the Board amend the rule by adding a provision that ensures the board will respond to an individual who provides all requested information within one year.

Board Response - The Board declines to make this change as the rule as written provides that the board will notify the requestor of the determination.

#### Section 161.7

The TMA requested that the Board provide the procedural requirements it will enforce, related to licensure requirements, in the rule.

Board Response - The Board declines to implement this request as the rule references the relevant statutes related to licensing. The language in the statute is unambiguous and repeating statutory language in a rule is unnecessary.

The TMA expressed concerns over exam attempts and asked the Board to clarify proposed Section 161.7 by adding language regarding examination attempts.

Board Response - The Board agrees and adopts the non-substantive change to the section as requested.

The TMA requested clarification regarding the elimination of specific references to the Clinical Skills (CS) component of the USMLE Step 2 exam and the osteopathic version, the COMLEX Level 2 Performance Evaluation (PE), and inquired if TMB will no longer require applicants to report the outcomes for this test component.

Board Response - The Board declines to implement this request as the language in the statute is clear i.e., the results of all testing are reported and evaluated. Elimination or discontinuation of a portion of an exam by the testing entity does not otherwise

negate an applicant's historical testing results submitted for a licensure determination.

#### Section 161.15

The TMA inquired whether the Board still intends to require applicants who graduate from a foreign medical school and have board certification to have successfully completed two years of graduate medical training approved by the board in the United States or Canada.

Board Response - The inclusion of board certification in lieu or two years training is specifically recognized because in order to obtain certification by these boards the applicant must meet the post graduate training standards that are equivalent to those of US and Canadian school graduates. This rule sets forth a pathway to licensure that demands an equivalent knowledge and training level of certain foreign applicants.

The TMA noted omitted language relating to the ability to communicate in English and whether or not such is still a requirement for licensure or will be demonstrated through other means.

Board Response - The Board declines to make any change in response to this comment. The English proficiency of an applicant is demonstrated by passage of licensure and jurisprudence examinations because these examinations are only given in English.

#### Section 161.16

The TMA requests that the Board pause implementation of proposed Section 161.16 until the completion of the Draft Guidance Document from the Advisory Commission on Additional Licensing Models.

Board Response - The Board declines to pause implementation. The Foreign Credential Service of America (FSCA) has historically been used and recognized by TMB as providing sufficient proof of adequate training of foreign applicants equivalent to domestic training. The other standards in this rule focus on the demonstrate of adequate competence to practice in this state, such as post graduate training that leads to eligibility for board certification, and licensure in another state for five years without any disciplinary action. This rule allows a pathway to increase the physician population without any diminution of standards and safety.

#### Section 161.20

The TMA seeks clarification from the Board as to whether: (1) it intends to remove these privileges from military service members and their spouses or (2) if these privileges will be explained in a board-approved form for licensing a military service member or the spouse of a military service member.

Board Response - The Board declines to make changes in response to this comment, as the expedited processing is already mandated under Chapter 55 of the Occupations Code and a rule is unnecessary and redundant. Additionally, Chapter 55 allows for discretion in determining competence, and "additional documentation" includes alternative demonstrations of competency and provides greatest flexibility to the agency.

#### Section 161.30

TMA recommended that the proposed rule mention the requirements of the criminal record check located in Section 156.0015 of the Texas Occupations Code, which provides that, in addition to the general registration requirements, a license holder "shall

submit to the board with the registration permit renewal application a complete set of fingerprints."

Board Response - The Board declines to make the requested changes. The criminal record check is required by statute, and therefore a rule is unnecessary.

#### Section 161.31

TMA asked if the proposed rule separates voluntary charity care from retired physician status such that a physician will no longer be forced to retire in order to practice voluntary charity care and will not have to pay licensure fees. They requested confirmation that non-retired physicians who provide voluntary charity care are not required to pay the biennial registration fee.

Board Response - The Board confirms that the rule does not distinguish based on active or retired status.

#### Section 161.46

TMA asked if the proposed rule language changes the scope of an administrative medicine license and any potential impact on enforcement or the scope of an administrative medicine license.

Board Response - The rule does not change the scope of an administrative license. The rule clarifies the long-standing interpretation of the scope of administrative medicine and comports with language used in disciplinary orders regarding administrative medicine.

#### Section 161.51

TMA noted the rule changed the notice period for an application for a faculty temporary license (FTL) from 30 days to 45 days when the corresponding statute has no time such requirement.

Board Response - The increase to 45 days is to ensure all involved parties have adequate time to provide information and process these license types so as to avoid delays in licensing and having faculty for training new physicians.

TMA recommended adding language requiring a recommendation from the applying institution's chief administrative officer and president in order to claim their time spent teaching towards their approved postgraduate residency program requirements.

Board Response - The Board declines making the requested changes to the rule. The language requested and the limitations of the Faculty Temporary License (FTL) and the credit towards post graduate training are set out in the statute, and therefore a rule is unnecessary.

#### Section 161.55

TMA recommended that the Board amend subsection (h) by striking "supervised" and inserting, "under the supervision of a physician" between "medicine" and "that" to read as follows: (h) A PIT permit holder is restricted to the supervised practice of medicine under the supervision of a physician that is part of and approved by the training program and does not allow for the practice of medicine outside of the approved program.

Board Response - The Board declines to make this change as the language is unnecessary because Texas law does not allow supervision of medical acts by anyone other than a physician.

#### Section 161.57

TMA requested that the Board change the phrase "affects" to "which has impaired or impairs" in paragraph (6) of proposed Section 161.57.

Board Response - The Board agrees and adopts the non-substantive change to the section as requested.

#### Section 161.71

TMA recommended adding language to subsections (a) and (b) relating to qualifying events for an emergency license.

Board Response - The Board declines to make the requested changes as the rule adequately describes the potential triggering events that would allow for initiation of Emergency Practice Authorization. Additionally, as proposed the TMA language would cause an emergency license to end immediately upon the emergency declaration ending and provides for no wind down period or transfer of care.

#### Section 161.73

TMA commented that the proposed rule's reference to "all board files, information" is much broader than what is contemplated by the statute and recommends changing the rule to the wording in the statute.

Board Response - The Board declines to make the requested changes. The rule cites to §164.007(c) of the Texas Occupations Code and does not broaden the scope of confidentiality applied to a physician acting under an Emergency Practice Authorization (EPA). The rule provides the same confidentiality protections to EPA files, including enforcement and licensure, that applies to all physician files.

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

#### STATUTORY AUTHORITY:

The repeal of Chapter 161 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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



## CHAPTER 161. PHYSICIAN LICENSURE SUBCHAPTER A. PRE-LICENSURE CRIMINAL HISTORY EVALUATIONS

## 22 TAC §161.1

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

### §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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

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## SUBCHAPTER B. GENERAL LICENSURE REQUIREMENTS

### 22 TAC §§161.5 - 161.7

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

### §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, the American Osteopathic Association Bureau of Professional Education, or the Committee on Accreditation of Canadian Medical Schools.

(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.

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

*§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.

(e) An applicant must pass each part of an examination or examination combination listed in subsections (b) and (c) of this section within three attempts.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

General Counsel

Texas Medical Board

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

### 22 TAC §161.10

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

*§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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

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## SUBCHAPTER D. FOREIGN MEDICAL GRADUATES

### 22 TAC §§161.15 - 161.17

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

#### §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 must demonstrate substantial equivalence through alternate means as set by the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour  
General Counsel

Texas Medical Board

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

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

### 22 TAC §161.20

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour  
General Counsel

Texas Medical Board

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

## SUBCHAPTER F. APPLICATION PROCEDURE

### 22 TAC §161.25

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

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

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

(b) The Executive Director may offer to an applicant a recommendation considered appropriate by the board.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Medical Board

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## SUBCHAPTER G. REGISTRATION OF LICENSE

### 22 TAC §161.30, §161.31

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

#### §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 applicable:
- (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 adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary

to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

*§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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. FULL MEDICAL LICENSE

### 22 TAC §161.40

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

*§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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. LIMITED LICENSES

### 22 TAC §§161.45 - 161.47

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re adoption, re adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

#### §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;

(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;
- (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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## SUBCHAPTER K. TEMPORARY LICENSES

### 22 TAC §§161.50 - 161.52

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re adoption, re adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

#### §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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER L. PHYSICIAN-IN-TRAINING PERMITS

### 22 TAC §§161.55 - 161.58

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

*§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 for the length of the accredited or board approved graduate medical 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 of 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 which has impaired or impairs 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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## SUBCHAPTER M. FELLOWSHIP PROGRAM APPROVAL

### 22 TAC §161.65

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re adoption, re adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

*§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 adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re adoption, re adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

*§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) adopts the repeal of current Chapter 162, concerning Supervision of Medical Students, §162.1 and §162.2. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7720). The repeals will not be republished.

The Board also adopts new Chapter 162, concerning Physician Profiles, §§162.1 - 162.3. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7720). The rules will not be republished.

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 adopted 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.

### COMMENTS:

The Board received one comment from Texas Medical Association (TMA) regarding the repeal of current Chapter 162. A summary of the comment and the Board response is as follows:

#### §§162.1-162.2

TMA is opposed to the repeal of these rules, concerning the requirements for physicians who supervise medical students and student physician assistants, including students who are not enrolled in a Texas medical school or as a visiting medical student with a Texas medical school. They believe that the rules help preserve clinical training sites and medical student preceptorship opportunities for Texas medical students with community-based physicians. TMA expressed concern about potential violations of §61.306 of the Texas Education Code by certain foreign medical schools.

Board Response - The Board declines to retain the repealed rules as urged by TMA. The accreditation and authority to operate as a medical school is outside the regulation of the Board. Additionally, the Board does not regulate the activities of a medical student. The repealed rules are unnecessary because supervision and delegation by any physician in Texas is fully addressed by other statutes and rules, including Chapter 157 of the Texas Occupations Code and board rules related to supervision and delegation. The allowance and ability for the student opportunities as outlined by TMA are not affected in any manner

by repeal of these rules. Physicians still remain responsible for any delegated act and that delegation includes ensuring appropriate qualification and supervision. If any concerns over the activity of a medical student occur, the existing complaint process is adequate to respond to any issues of both the student and the supervising physician.

The Board received no comments regarding the new rules.

## 22 TAC §162.1, §162.2

### STATUTORY AUTHORITY:

The repeal of current Chapter 162 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted in accordance with the requirements of 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 162. PHYSICIAN PROFILES

### 22 TAC §§162.1 - 162.3

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code and establish rules related to licensure and registration of the license. The new rules are adopted in accordance with the requirements of Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures. The new rules are also adopted 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 adoption.

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## CHAPTER 163. LICENSURE

The Texas Medical Board (Board) adopts the repeal of current Chapter 163, concerning Licensure, §§163.1 - 163.6, 163.8 - 163.11 and 163.13. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7722-7723). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7723-7726). The rules will be republished.

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 adopted 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.

#### COMMENTS:

The Board received one comment regarding the repeal of current Chapter 163 from the Texas Medical Association (TMA). A summary of the comment and the Board response is as follows:

##### §163.11

TMA recommended that the contents of the repealed rule be retained despite issues for physicians who took a break from practice for health, family, or professional reasons, as there are remedies for mitigating an inability to meet the requirement.

Board Response - The Board declines to retain the repealed language as the language is overly restrictive and was found to create barriers to licensure. The counting of one year of the last two and then narrowing further by 20 hours per week for 40 weeks created hypertechnical counting. The Board has adopted non-substantive changes to the new licensure rules to address the issue of practice remediation.

The Board received three comments regarding the new rules. A summary of the comments and the Board responses is as follows:

Commenter 1: Texas Medical Association (TMA)

##### §163.1

TMA requested that the Board add language regarding the documentation of checking the Prescription Monitoring Program (PMP). They asked for inclusion of the language to "to the extent applicable" regarding the documentation of a review of the patient's PMP prescribing history.

Board Response - The Board agrees and adopts the non-substantive change to the section as requested.

##### §163.4

TMA requests that the Board retain a 30-day timeframe rather than the use of "immediately" with regard to a physician's responsibilities when leaving a practice in the event of a license surrender or revocation. TMA argues this is less definite, and having a specific deadline will aid physicians in complying with this rule.

Board Response - The Board declines to make the requested change. The rationale for "immediate" is so patients do not have to wait 30 days to get notice of the potential loss of a physician's care, thereby impacting the continuity of care when finding subsequent care may take some time. Accordingly, patients need notice very quickly.

##### §163.11

TMA requested additional language be added to the abortion consent form for an unemancipated minor to reflect the exception

for a "medical emergency." TMA had concerns that the rule, as written, might cause confusion regarding situations involving a medical emergency.

Board Response - The Board declines to make the requested change as TMA's suggested language relating to exception/medical emergency is found in other law that is applicable to patients and adding such language here is unnecessary. Physicians are already required to comply with all applicable laws pertaining to abortions.

Commenter No. 2: Texas Hospital Association (THA)

##### §163.11

THA expressed similar concerns as TMA with regard to the exception to abortion in the case of a "medical emergency." THA requested additional language be added to the abortion consent form for an unemancipated minor and asserts that the rule, as written, might cause confusion regarding situations involving a medical emergency.

Board Response - The Board declines to make the requested change as TMA's and THA's suggested language relating to exception/medical emergency is found in other law that is applicable to patients and adding such language here is unnecessary. Physicians are already required to comply with all applicable laws pertaining to abortions.

Commenter 3: Texas Council of Community Centers (TCCC)

##### §163.1

TCCC inquired about the documentation requirements for checking of the Prescription Monitoring Program (PMP). The concern was similar to that expressed by TMA. They sought some clarification "to the extent applicable" regarding the documentation of a review of the patient's PMP prescribing history.

Board Response - The Board addressed the concern by adopting the non-substantive change to the section as requested by TMA.

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

#### STATUTORY AUTHORITY:

The repeal of Chapter 163 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 163. MEDICAL RECORDS

### SUBCHAPTER A. GENERAL DOCUMENTATION PROVISIONS

#### 22 TAC §§163.1 - 163.5

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

##### §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) To the extent applicable, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. ABORTION DOCUMENTATION

### 22 TAC §§163.10 - 163.13

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

#### §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: 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 judgment 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 adoption and found it to be a valid exercise of the agency's legal authority.

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**CHAPTER 164. PHYSICIAN ADVERTISING**

The Texas Medical Board (Board) adopts the repeal of current Chapter 164, concerning Physician Advertising, §§164.1 - 164.6. The repeals are being adopted without changes to the proposal

as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7726). The repeals will not be republished.

The Board also adopts new Chapter 164, concerning Physician Advertising, §§164.1 - 164.4. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7726). The rules will be republished.

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 adopted 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."

#### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 164.

The Board received comments from an individual and five organizations regarding the proposed new rules. A summary of the comments and the Board responses is as follows:

Commenter No. 1: Individual

#### §§164.1-164.4

The commenter asserted that the revised rules allow physicians to act in bad faith and deceptively advertise by removing some of the language found in the current rules. They also noted the revised rule makes it harder to enforce a violation. The commenter found the addition of the \$200 renewal fee in §164.4 to be offensive, as there are already fees related to board certification.

Board Response - The Board declines to make changes in response to this comment. This rule clarifies the level of transparency needed in advertising and is consistent with existing law that prohibits false and deceptive advertising. The rule as written does not impact the board's enforcement of deceptive advertising. Additionally, the fee is unchanged from the existing fee that has been in place for a number of years.

Commenter No. 2: Association of American Physicians and Surgeons

#### §164.4

AAPS expressed concern that §164.4 is overly broad because it summarily disallows physicians to state they are certified if they are not certified by one of the three certification entities mentioned explicitly in the rule and that the proposed rule is not within the spirit of existing statute Tex. Occ. Code, §153.002

Board Response - The Board declines to make changes in response to this comment. The rules allow for other boards' recognition for advertising as board certified; currently at least 14 certifying boards are recognized by TMB. Additionally, board certification is not required for licensure or to practice in Texas.

Comment No. 3: Texas Association of Nurse Anesthetists (Tx-ANA)

#### §164.3

TxANA commented that the requirement to disclose supervision in advertising is an overreach which will discourage physicians from delegating to CRNAs and other advanced practice providers.

Board Response - The Board declines to make changes in response to this comment. The rules as written are intended to increase transparency for patients to ensure they know who is delegating to a non-physician that is seeing that patient.

Comment No. 4: Texas Nurse Practitioners (TNP)

#### §164.3

TNP commented that the requirement for physicians to disclose in their advertising supervision of or delegation to non-physicians at locations other than primary practice will discourage delegation to nurse practitioners and increase delegation costs.

Board Response - The Board declines to make changes in response to this comment. The rules as written are intended to increase transparency for patients to ensure they know there is physician oversight and who is responsible for delegating their care.

Comment No. 5: National Board of Physicians and Surgeons (NBPAS)

#### §164.4

The president and 59 members of the NBPAS commented that the new rule does not update or modernize the provision on advertising as Board Certified; requires Maintenance of Certification (MOC) programs that are costly and do not prove competence; somehow worsens physician shortages; drives physicians into retirement or out of the state; and delays patient preventative care.

Board Response - The Board declines to make changes in response to the comments. The rules allow for other boards' recognition for advertising as board certified; currently at least 14 certifying boards are recognized by TMB. Additionally, board certification is not required for licensure or to practice in Texas.

Comment No. 6: Texas Medical Association (TMA)

#### §164.1

TMA commented that they had concerns that the phrase "or practice generally" added to new §164.1 is open-ended and should be removed from the definition of "testimonial."

Board Response - The Board declines to make changes in response to this comment. The inclusion of this term is consistent with other terms such as "services" or "treatments" and allows for greater transparency and information for patients.

## 22 TAC §§164.1 - 164.6

#### STATUTORY AUTHORITY:

The repeal of Chapter 164 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority

for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## 22 TAC §§164.1 - 164.4

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted in accordance with the requirements of Texas Occupations Code, §101.201. The new rules are also adopted 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 adoption.

### §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) 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.

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 165. MEDICAL RECORDS

### 22 TAC §§165.1 - 165.9

The Texas Medical Board (Board) adopts the repeal of current Chapter 165, concerning Medical Records, §§165. 1- 165.9. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7728). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §§166.1 - 166.7

The Texas Medical Board (Board) adopts the repeal of current Chapter 166, concerning Physician Registration, §§166.1 - 166.7. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7729). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 167. REINSTATEMENT AND REISSUANCE

### 22 TAC §§167.1 - 167.8

The Texas Medical Board (Board) adopts the repeal of current Chapter 167, concerning Reinstatement and Reissuance, §§167.1 - 167.8. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7730). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 168. CRIMINAL HISTORY EVALUATION LETTERS

### 22 TAC §168.1, §168.2

The Texas Medical Board (Board) adopts the repeal of current Chapter 168, concerning Criminal History Evaluation Letters, §168.1 and §168.2. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7731). The repeals will not be republished.

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.

The repealed sections are as follows:

§168.1 Purpose

§168.2 Criminal History Evaluation Letters

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 169. AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

The Texas Medical Board (Board) adopts the repeal of current Chapter 169, concerning Authority of Physicians to Supply Drugs, §§169.1 - 169.8. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7732). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7732). The rules will be republished.

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 adopted 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.

### COMMENTS:

The Board received no comments regarding the repeal of current chapter 169.

The Board received five comments regarding the new rules. A summary of the comments and the Board responses is as follows:

Commenter 1: Texas Association of Nurse Anesthetists (TxANA) §169.2

TxANA asserted the rule conflicts with a statute related to protocols and orders that may be issued by a delegating physician.

Board Response - The Board declines to make changes in response to this comment. The rule does not conflict with state law in any manner. The rule ensures the content of the issued orders and protocols are clear enough to allow use of professional judgment and training of the person delegated to, but it is not unfettered judgment. The statute states the protocol is "not required to describe exact steps," but that does not preclude a level of specificity a physician believes is appropriate based on the training, knowledge, and experience of a delegate. The text of the rule itself recognizes the inherent flexibility, where it states: Delegation must be through written protocols or prescriptive authority agreements depending on the type of delegate and the medi-

cal acts being delegated. An order or protocol can and should describe steps in some fashion. Further the comment ignores that physicians may delegate to other practitioners and not just advanced registered nurse practitioners (APRNs) and physician assistants (PAs).

#### §169.27

TxANA asserted the rule requires a description of the "appropriate care," which conflicts with a statute related to protocols and orders issued by a delegating physician to Certified Registered Nurse Anesthetists.

Board Response - The Board declines to make changes in response to this comment. This subchapter is for "other delegated acts" related to business models being utilized now and that might develop. But it is not related to the providing of anesthesia by CRNAs, which is specifically addressed in §157.058 of the Occupations Code. This rule is directed specifically at delegation and the role of a delegating physician at facilities other than medical practices that often times do not have trained medical professionals performing certain delegated tasks, but the delegating physician and delegates are still required to meet the standards of Chapter 157 of the Occupations Code when performing delegated acts. Even if construed to be applicable to all delegates, the standards for CRNAs are unchanged. The purpose of delegation is to provide guidance on appropriate care, which is flexible and is "liberally construed" depending on training, knowledge, and experience as well as services being provided at these facilities. Nowhere does this rule say anything about exact doses, drugs, etc. because in these settings the CRNA would not be performing anesthesia services, but rather would be acting in their more general capacity as an APRN.

Commenter 2 - Texas Nurse Practitioners (TNP)

#### §169.2

TNP opposed §169.2, claiming the rule violates the Act and discourages delegation to APRNs and/or limits the use of APRNs and CRNAs. This is the same assertion as the TxANA comment.

Board response - The Board declines to make changes in response to this comment. This rule does not conflict with the statute in any manner. The rule ensures the content of the issued orders and protocols are clear enough to allow use of professional judgment and training of the person delegated to, but it is not unfettered judgment. The statute states the protocol is "not required to describe exact steps" but that does not preclude a level of specificity a physician believes is appropriate based on the training, knowledge, and experience of a delegate. The text of the rule itself recognizes the inherent flexibility, where it states: Delegation must be through written protocols or prescriptive authority agreements depending on the type of delegate and the medical acts being delegated. An order or protocol can and should describe steps in some fashion. Further the comment ignores that physicians may delegate to other practitioners and not just advanced registered nurse practitioners (APRNs) and physician assistants (PAs).

Commenter No. 3: Texas Medical Association

#### §169.10

TMA requested clarification of the term "medical direction" related to EMS services.

Board Response - The Board declines to clarify the term "medical direction" in the context of EMS services, as it is a commonly understood term by practitioners.

#### §169.25

TMA requested clarification on whether the rule applies to IV therapy.

Board Response - The Board's purpose in adopting Subchapter E is to expand delegation and supervision consistent with and in response to not only medical spas, but also other types of practices and expanded medical services that require physician delegation and supervision. This expansion accommodates new business models but continues to maintain standards under Chapter 157 of the Texas Occupations Code related to delegation generally. The Board is also aware of potential legislation forthcoming in this area and plans to consider further revisions to this section at a later date, if necessary.

#### §169.26

TMA expressed concerns about the emergency consultation provision, opining that the new rule lessens requirements by permitting an emergency consultation to be provided by an APRN or PA in addition to a supervising physician, rather than mandating that the physician provide the emergency consultation.

Board Response - The Board declines to make changes in response to this comment. The Board did not include a specific requirement that emergency consultation be provided by a physician so as to create flexibility with accountability because an adverse event by nature is not planned. This rule is similar to a call coverage arrangement where a physician can be called directly or by a delegate if an emergency arises, but the PA or APRN is available in the event the physician is not available for some reason in an emergency. This language ensures there will be someone available to respond in an emergency.

Commenter 4: Texas Health and Human Services - Department of State Health Services (DSHS)/Health and Human Services Commission (HHSC)

#### §169.12

DSHS/HHSC requested addition of the term "Chief Medical Officer" to the title of this rule.

Board Response - The Board agrees and adopts the non-substantive change to the section as requested.

#### §169.13

DSHS/HHSC asked to add the term "guidelines" where rules referred to standing orders and protocols.

Board Response - The Board agrees and adopts the non-substantive revision as requested in multiple places in this rule.

DSHS/HHSC requested to add a requirement that the Medical Director establish protocols, standing orders, and/or guidelines documenting no patient found or cancelled by dispatch. Further, DSHS/HHSC requested additional language providing that direct medical control must be provided by a physician and cannot be delegated to anyone who is not a physician licensed in Texas.

Board Response - The Board TMB declines to add this language. This information will be part of the medical records and dispatch logs, so it is unnecessary. TMB further declines to add language specifying that direct control must only be provided by a licensed physician. Texas law already requires a physician to be licensed to practice medicine in Texas including delegation related to EMS. Further rules are unnecessary.

Commenter 5: Texas Society of Anesthesiologists (TSA)

§169.13

TSA requested to add a provision requiring the medical director to implement and provide oversight of a continuous quality improvement plan for patient care, and a credentialing process for all EMS providers acting under the supervision of the medical director.

Board Response - The Board declines making any changes in response to this comment. The requested change goes beyond the authority of the Board. DSHS/HHSC licenses EMS providers. The requested change would be part of the overall EMS plans submitted as part of the licensure process. Further, any credentialing process would be submitted as part of the licensure process. TMB has no authority to oversee or direct EMS operational standards and plans.

§169.15

TSA requested to add language to subsection (a) requiring that documentation of the on-scene physician providing care be added to this section. TSA also requested language requiring that if that physician directs EMS providers to act outside the approved protocol, the on-scene physician assumes responsibility for the care of that patient and must accompany the patient with the EMS agency to the appropriate receiving facility. TSA further requested to add "if possible" to subsection (b), requiring the on-scene physician and medical director to communicate and coordinate care as appropriate under the circumstances.

Board Response - The Board agrees to add the non-substantive amendment requiring proper documentation of the presence of the on-scene physician providing care to the patient in subsection (a). The Board also agrees to add the qualifier "if possible" to subsection (b). This language clarifies what the proposed rules already required in terms of appropriate documentation of care and on-scene response.

§169.20

TSA requested that "for the" be added to paragraph (b)(3) to improve the clarity of the sentence. TSA further requested that the term "periodic" in subparagraph (c)(3)(D) be defined or clarified as to how often the review of written protocols for drug therapy management, immunizations, and vaccinations are required.

Board Response - The Board agrees and added the requested language to paragraph (b)(3). The Board declines to add language setting forth specific parameters on the required frequency of the reviews in subparagraph (c)(3)(D), as it is unnecessary and a delegating physician must establish appropriate frequency according to the circumstances applicable to the physician and pharmacist procedures.

§169.25

TSA asked to change "can" to "may" in paragraph (a) regarding delegation and supervision of medical acts.

Board Response - The Board declines to make changes in response to this comment as the statute authorizing delegation and supervision uses the term "can."

§169.26

TSA asked to delete "either/or" in subsection (b). TSA further asked for language clarifying that the practitioner-patient relationship be established via a one-on-one visit in person or via telehealth in subparagraph (c)(1) Finally, TSA asked to clarify how the identity and title of the individual performing the dele-

gated act must be disclosed, asking for language requiring individuals to wear photo ID badges containing certain information.

Board Response - The Board declines to make any changes in response to this comment, as the requested changes are unnecessary. Statute permits practitioner-patient relationships to be established via in person or telemedicine visits and requires health care practitioners to be clearly identified to patients.

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS.

New §169.1, Definitions

New §169.2, General Responsibilities of Delegating Physician

SUBCHAPTER B. PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES.

New §169.5, Delegation to a Physician Assistant or Advanced Practice Registered Nurse

SUBCHAPTER C. EMERGENCY MEDICAL SERVICES.

New §169.10, Definitions

New §169.11, Medical Supervision

New §169.12, Medical Director Qualifications

New §169.13, Medical Director Responsibilities

New §169.14, Limits on Off-Line Medical Control

New §169.15, Other Physician Presence at Medical Emergency

SUBCHAPTER D. PHARMACISTS.

New §169.20, General Standards

SUBCHAPTER E. OTHER DELEGATED ACTS.

New §169.25, Other Delegation

New §169.26, General Standards

New §169.27, Physician Responsibilities related to Written Order

New §169.28, Notice and Identification Provisions

**22 TAC §§169.1 - 169.8**

STATUTORY AUTHORITY:

The repeal of Chapter 169 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted in accordance with the requirements of 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 169. DELEGATION

### SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

#### 22 TAC §169.1, §169.2

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies) of the Texas Occupations Code. The new rules are also adopted 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 adoption.

#### §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) **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.

(9) **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.

(10) **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.

(11) **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).

(12) **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.

(13) **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 physician assistant or advanced practice registered nurse under delegation.

(14) **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 adoption and found it to be a valid exercise of the agency's legal authority.

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

### 22 TAC §169.5

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies) of the Texas Occupations Code. The new rules are also adopted 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 adoption.

*§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, including Section 157.055 related to utilization of protocols and orders.

(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.

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



## SUBCHAPTER C. EMERGENCY MEDICAL SERVICES

### 22 TAC §§169.10 - 169.15

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies) of the Texas Occupations Code. The new rules are also adopted 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 adoption.

*§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 or Chief Medical Officer Qualifications.*

(a) In addition to holding an active Texas medical license, a medical director or chief medical officer 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 or chief medical officer 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 or chief medical officer;

(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 or chief medical officer 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 or Chief Medical Officer Responsibilities.* A Medical Director or Chief Medical Officer must:

(1) register with the board on an approved form and provide all required documentation requested;

(2) review, approve, and sign protocols, standing delegation orders, or guidelines for 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, standing orders, and/or guidelines.

(3) developing, implementing, and revising protocols standing delegation orders and/or guidelines, as appropriate; and

(4) monitor compliance with protocols standing orders and/or guidelines 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 and documented appropriately by the EMS agency with the name of the physician providing care.

(b) If possible, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

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## SUBCHAPTER D. PHARMACISTS

### 22 TAC §169.20

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies) of the Texas Occupations Code. The new rules are also adopted 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 adoption.

*§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 for the 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. OTHER DELEGATED ACTS

### 22 TAC §§169.25 - 169.28

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies) of the Texas Occupations Code. The new rules are also adopted 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 adoption.

#### §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 procedures performed at a

physician's practice by the physician or physician assistant or advanced practice registered nurse 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 physician assistant or advanced practice registered nurse 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 physician assistant or advanced practice registered nurse 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 physician assistant or advanced practice registered nurse.

#### §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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 170. PRESCRIPTION OF CONTROLLED SUBSTANCES

The Texas Medical Board (Board) adopts 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7738). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7739). The rules will not be republished.

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 adopted 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.

#### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 170.

The Board received one comment from the Texas Medical Association (TMA). A summary of the comment and the Board response is as follows:

#### §170.1

TMA recommended including language found in existing rule (§198.3(f)) that states a physician does not commit a violation of the Medical Practice Act (unprofessional conduct or standard of care violation) solely on the basis of providing an investigational agent unless done in violation of the rule.

Board Response - The Board declines to make any changes in response to this comment. Sections 489.054 and 489.151 of the Health and Safety Code provide specific protections for the physician. Therefore, a rule is unnecessary.

### SUBCHAPTER A. PAIN MANAGEMENT

#### 22 TAC §§170.1 - 170.3

#### STATUTORY AUTHORITY:

The repeal of current Chapter 170 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. UTILIZATION OF OPIOID ANTAGONISTS

### 22 TAC §§170.4 - 170.8

#### STATUTORY AUTHORITY:

The repeal of current Chapter 170 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

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## SUBCHAPTER C. PRESCRIPTION MONITORING PROGRAM CHECK

### 22 TAC §170.9

#### STATUTORY AUTHORITY:

The repeal of current Chapter 170 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

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## SUBCHAPTER D. ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

### 22 TAC §170.10

#### STATUTORY AUTHORITY:

The repeal of current Chapter 170 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

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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 adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted in accordance with Texas Health and Safety Code, §1003.055. The new rules are also adopted 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, read-

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

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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 adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted in accordance with Texas Health and Safety Code, §1003.055. The new rules are also adopted 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 adoption.

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## CHAPTER 171. POSTGRADUATE TRAINING PERMITS

The Texas Medical Board (Board) adopts the repeal of current Chapter 171, concerning Postgraduate Training Permits, §§171.1 - 171.6. The repeals are being adopted without

changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7741). The repeals will not be republished.

The Board also adopts new Chapter 171, concerning Complementary and Alternative Medicine Standards, §171.1 and §171.2. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7741). The rules will not be republished.

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 adopted 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.

### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 171.

The Board received one comment from the Texas Medical Association (TMA). A summary of the comment and the Board response is as follows:

TMA would like language in current rule to be carried over to the proposed rules - "A licensed physician shall not be found guilty of unprofessional conduct or be found to have committed professional failure to practice medicine in an acceptable manner solely on the basis of administering or providing an investigational drug, biological product, or device, unless it can be demonstrated that such use does not comply with this section

Board Response - The Board declines to make any changes in response to this comment. The recommendation is unnecessary because finding a violation must be due to failure to comply with a law or rule.

### 22 TAC §§171.1 - 171.6

The repeal of current Chapter 171 is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is also adopted 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 repeal.

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## CHAPTER 171. COMPLEMENTARY AND ALTERNATIVE MEDICINE STANDARDS

### 22 TAC §171.1, §171.2

The new rules are adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted 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 adoption.

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) adopts 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7743). The repeals will not be republished.

The Board also adopts new Chapter 172, concerning Pain Management Clinics, §§172.1 - 172.5. The new sections are being adopted with changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7745). The rules will be republished.

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 adopted 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.

### COMMENTS:

The Board received one comment regarding the repeal of current Chapter 172.

### §172.6

Denise Meyer of Garanflo & Meyer Consulting requested confirmation that the Board consulted with stakeholders regarding the elimination of the Visiting Professor Temporary License in repealed §172.6.

Board Response - The Board has discussed the elimination of this license type by repeal with stakeholders.

The Board received one comment from the Texas Society of Anesthesiologists (TSA) regarding the new rules. A summary of the comment and the Board response are as follows:

### §172.1

TSA recommended removing the phrases "post-surgical" and "post-procedure" from the definition of acute pain in paragraph (1). They stated these types of pain are, by definition, acute pain. Additionally, post-surgical and post-procedure pain is adequately described in paragraph (3).

Board Response - The Board agrees and deleted the phrase "or post-surgical, post-procedure," from the definition in paragraph (1).

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §172.1, §172.2

### STATUTORY AUTHORITY:

The repeal of current Chapter 172 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.



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## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §§172.3 - 172.11

The repeal of current Chapter 172 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §§172.12, 172.13, 172.15 - 172.19

The repeal of current Chapter 172 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

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## SUBCHAPTER D. DISASTER EMERGENCY RULE

### 22 TAC §172.20, §172.21

The repeal of current Chapter 172 is adopted 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 Subtitle B of Title 3 of the Occupations Code. The repeals are also adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 172. PAIN MANAGEMENT CLINICS

### 22 TAC §§172.1 - 172.5

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 168 of the Texas Occupations Code, concerning Regulation of Pain Management Clinics. The new rules are also adopted 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 adoption.

§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 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 a 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, if applicable.

(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, if applicable.

(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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 173. PHYSICIAN PROFILES

The Texas Medical Board (Board) adopts the repeal of current Chapter 173, concerning Physician Profiles, §§173.1 - 173.5, and §173.7. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7748). The repeals will not be republished.

The Board also adopts new Chapter 173, concerning Office-Based Anesthesia Services, §§173.1 - 173.5. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7748). The rules will be republished.

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 adopted 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.

### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 173.

The Board received comments from five organizations and 37 individuals regarding the proposed new rules. Certain non-substantive changes are adopted based upon the comments, which include minor typographical corrections and renumbering as required. A summary of the comments and the Board responses is as follows:

Commenter 1: Texas Society of Anesthesiologists (TSA)

#### §173.1

TSA requested adding a new definition recognizing a "certified anesthesiologist assistant" with certain educational requirements.

Board Response - The Board declines to make this change, as the Medical Practice Act currently provides no authority to recognize such a designation or set educational standards for this profession.

TSA objected to the use of the acronym "CRNA" in §173.1 and throughout the rule, stating that using the acronym for "certified registered nurse anesthetists" risks confusion.

Board Response - The Board declines to make this change as the acronym is well understood in the health care community.

TSA requested that the rules require a medical director and specific training and other requirements for a medical director depending on the level of anesthesia performed.

Board Response - The Board declines to adopt the rules with this change. The request seeks to limit the physicians who may un-

dertake OBA. This would exceed TMB authority by adding "specialization training" that is not required to obtain either a license or an OBA certificate. Any physician practicing OBA is expected to meet the standard of care in such a setting. TMB does not issue licenses limited to any particular specialty.

TSA requested that the definition for "hypnotics" have added language to reflect that such drugs alter consciousness. Further TSA requested adding the phrase "and any other dangerous or scheduled drug that alters consciousness" so as to indicate that the listed drugs are not a comprehensive list.

Board Response - The Board adopts the definition with the non-substantive change clarifying that hypnotics are a class of drugs that alter consciousness. The Board declines to include language further stating that the list is not comprehensive, as the language already contains the term "such as" and therefore such language is unnecessary.

TSA requested several non-substantive changes to different definitions under §173.1 related to levels of sedation and anesthesia. These changes requested use current terminology and have clearer descriptions of each of the terms. This request also included adding Perioperative Resuscitation and Life Support Certificate (PeRLS) recognizing the certificate offered by the American Society of Anesthesiologists as an optional requirement for physicians providing certain anesthesia service levels.

Board Response - The Board agrees and adopts the rules under §173.1 with non-substantive changes so that the definitional language has improved clarity and accuracy. The non-substantive changes include the use American Society of Anesthesiologist's (ASA) definitions, and other widely used and recognized terminology modifications. The additions also required deletion of the older terminology previously used.

#### §173.2

TSA recommended adding "or delegating" to subsection (a).

Board Response - The Board adopts the section with the non-substantive change to better clarify the scope of the rules' application including recognition of allowable delegation.

TSA requested that the term "certified anesthesiologist assistants" be added to paragraph (a)(1).

Board Response - The Board declines to adopt the rules with this change. The Medical Practice Act currently provides no authority to recognize such a designation.

TSA requested that the rules require a specific anesthesia consent form adopted by the Texas Medical Disclosure Panel under paragraph (a)(4).

Board Response - The Board declines to adopt the rules with this change at this time. The reference to state law is sufficient.

TSA recommended adding the new definitions for "deep sedation" and "general anesthesia" to subsection (b) and to clarify that O2 analyzers are only utilized in general anesthesia using a closed circuit. TSA further requested that the term "algorithm" be used rather than "measures."

Board Response - The Board adopts the rules with the non-substantive change improving the accuracy of the language.

#### §173.3, Specific Requirements Based on Level of Anesthesia Provided

TSA recommended adding to paragraph (2) a reference to the PeRLS certification offered by ASA and eliminating the term "pre-

measured doses" related to first-line cardiac medications. TSA explained that the term is no longer accurate, asserting that such medications are now distributed in vials with labelled concentration and volume on the packaging. TSA also requested adding the phrase "to treat local anesthetic systemic toxicity" related to when the stocking of lipid emulsion is required for Level II services.

Board Response - The Board agrees the PeRLS certification will be an appropriate training option, and that eliminating the term "pre-measured doses" and tying the stocking of lipid emulsion to the treatment of LAST will improve the clarity of the rule. The Board adopts the rules with those non-substantive changes.

TSA requested adding to subparagraph (3)(A) (Level III services) the requirement that a medical director provide oversight, and that the physician who participated in the procedure possess airway expertise determined appropriate by the Medical Director for the level of sedation provided, and that additional personnel have ACLS, PALs, or PeRLS certification rather than BLS. Finally, TSA recommended adding recognition of PeRLS certification for physicians.

Board Response - The Board agrees that adding PeRLS certification as an option will improve the rule and is a non-substantive change. The Board declines to adopt the rules with the remaining changes requested at this time. State law standards are sufficient. This would exceed TMB authority by adding "specialization training" that is not required to obtain either a license or an OBA certificate. Any physician practicing OBA is expected to meet the standard of care in such a setting. TMB does not issue licenses limited to any particular specialty.

TSA requested language adding to subparagraph (3)(B) the requirement of maintaining a backup cylinder of oxygen and adding the requirement of maintaining lipid emulsion for Level III services.

Board Response - The Board declines to require the stocking of lipid emulsion for Level III services. The Board agrees that requiring a backup cylinder of oxygen will be a non-substantive change that will improve the rule.

TSA recommends changing the term "feed" to "access" under subparagraph (3)(C) to align with current medical terminology, and remove the term "working" as it is an inaccurate term in the context of the rule.

Board Response - The Board agrees and adopts the rule with the non-substantive change.

TSA requests that additional language be added to paragraph (4) (Level IV services) the requirement that a medical director provide oversight, that the physician who participated in the procedure possess airway expertise determined appropriate by the Medical Director for the level of sedation provided. TSA further requested that the stocking of lipid emulsion be required for Level IV services. Finally, TSA requested that language be added requiring the stocking of a backup cylinder of oxygen be required.

Board Response - The Board declines to adopt changes requiring additional training as state law standards are sufficient. This would exceed TMB authority by adding "specialization training" that is not required to obtain either a license or an OBA certificate. Any physician practicing OBA is expected to meet the standard of care in such a setting. TMB does not issue licenses limited to any particular specialty. The Board agrees that requiring a backup cylinder of oxygen for Level IV service will be a non-substantive amendment improving the rule.

TSA requested an additional rule section requiring practices to report adverse events to TMB, suggesting it be placed at §173.6.

Board Response - The Board declines to adopt the rules with this change. Such reporting would create an unnecessary administrative burden. The Board is able to appropriately monitor OBA practices through the audit and complaint processes, which include the ability to obtain relevant documents.

Comment No. 2: Texas Association of Nurse Anesthetists (TxANA)

§173.2

TxANA opposed proposed subsection (a). TxANA claimed that the reference to Chapter 157 of Texas Occupations Code improperly limits CRNA discretion as allowed by §157.058 of Texas Occupations Code, stating that the language requires supervision of CRNAs. TxANA further opined that the reference to §157.058 "expands applicability" of the OBA rules from "anesthesia services that are administered within two hours before an outpatient procedure to all anesthesia services," claiming this will require an "on-site physician when any medication is administered, regardless of whether it is anesthesia for a physician-provided service." TxANA claims that the rule will create market barriers to participation by CRNAs and reduce market competition.

Board Response - The rules do not change to the state law requirements for physicians with respect to delegation in an office-based anesthesia (OBA) practice or CRNA scope of practice in an OBA setting. The duties and scope of a CRNA to administer an anesthesia-service applies in the same manner in any setting and the timing of such services which depend on the variable factors does not change those responsibilities. The new rules under Chapter 173 represent no change from how the repealed rules governing OBA applied to the permitted scope of a CRNA in an OBA setting. But nowhere does this rule say anything to limit CRNA and fully comports with §157.058 of the Occupations Code.

Commenter 3: Texas Medical Association (TMA)

§173.5

TMA requested that language be added to §173.5 so that a five-day notice period is required prior to the Board conducting inspections of OBA practices.

Board Response - The Board declines to add language providing the five-day notice period, as the five-day notice period is provided for in statute. Such language is therefore unnecessary in the rule.

Commenter 4: American Society of Ketamine Physicians, Psychotherapists, & Practitioners (ASKP3)

§173.1

ASKP3 stated that it is a professional association of physicians and other practitioners advocating for sensible regulation of low dose ketamine as a psychotropic agent (as a recognized off-label use) in treatment of PTSD, drug resistant depression and several other mental health conditions.

ASKP3 opined there is a lack of clarity in how the rules apply to the administration of low-dose ketamine as a psychotropic agent as opposed to an anesthetic agent. ASKP3 requested that the use of ketamine as a psychotropic agent (and not as an anesthetic agent), be regulated under a separate section or chapter of the rules, to standardize the administration of low-dose ketamine practices and ensure patient safety.

Board Response - The Board declines to adopt the rules with the proposed change at this time. The rules as written address ketamine as an anesthetic agent. The emerging therapeutic uses at low doses, not for purposes of anesthesia, will need further review. The Board will be undertaking a comprehensive review of this application in the coming year.

Comment No. 5: Texans for Greater Mental Health (T4GMH)

T4GMH expressed support for dedicating a separate chapter to the regulation of psychotropic ketamine therapy, to standardize the administration of low-dose ketamine practices and ensure patient safety.

Board Response - The Board declines to adopt the rules with the proposed change at this time. The rules as written address ketamine as an anesthetic agent. The emerging therapeutic uses at low doses, not for purposes of anesthesia, will need further review. The Board will be undertaking a comprehensive review of this application in the coming year.

Individual Comments

Approximately 37 individuals submitted a comment regarding low-dose ketamine therapy, expressing concerns that the proposed rules may limit their access.

Board Response - The Board declines to adopt the rules with the proposed change at this time. The rules as written address ketamine as an anesthetic agent. The emerging therapeutic uses at low doses, not for purposes of anesthesia, will need further review. The Board will be undertaking a comprehensive review of this application in the coming year.

**22 TAC §§173.1 - 173.5, 173.7**

STATUTORY AUTHORITY:

The repeal of Chapter 173 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**CHAPTER 173. OFFICE-BASED ANESTHESIA SERVICES**

## 22 TAC §§173.1 - 173.5

The new rules are adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted in accordance with the requirements of Chapter 162, Subchapter C (concerning Regulation of Practice of Medicine, Anesthesia in Outpatient Setting). The new rules are also adopted 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.

### §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) Anesthesia--Use of local anesthetics, analgesics, anxiolytics, or hypnotics to create a loss of feeling, sensation, or consciousness by interrupting or depressing nerve and/or brain function.
- (5) Anesthesia Services--The use of anesthesia for the performance of Level II- IV services.
- (6) Anxiolytics--Dangerous or scheduled drugs used to provide sedation or to treat episodes of anxiety.
- (7) ASHI--American Safety and Health Institute.
- (8) ASA--American Society of Anesthesiologists.
- (9) BLS--Basic Life Support, as defined by the AHA.
- (10) Certified registered nurse anesthetist (CRNA)--A person licensed by the Texas Board of Nursing (TBON) as a certified registered nurse anesthetist.
- (11) 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."
- (12) Deep sedation--a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.
- (13) General anesthesia--a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.
- (14) Hypnotics--Dangerous or scheduled drugs that alter consciousness. This includes inhaled anesthetics and nonvolatile anes-

thetic agents such as barbiturates, benzodiazepines, opioids, Etomidate, Propofol, and Ketamine.

#### (15) Level I services.

(A) Delivery of narcotic analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level not to exceed minimal sedation, as defined under this chapter; or

(B) Delivery of nitrous oxide/oxygen inhalation sedation.

#### (16) Level II services.

(A) The administration of tumescent anesthesia;

(B) The delivery of tumescent anesthesia in conjunction with the delivery of narcotic analgesics or anxiolytics by mouth in dosages as defined under 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.

(17) Level III services-- Intravenous, intramuscular, mucosal, rectal or inhalational delivery of narcotic analgesics, anxiolytics, or hypnotics to achieve moderate sedation, as defined under this Chapter. Level III services do not include deep sedation or general anesthesia.

(18) Level IV services--The use of regional or neuraxial anesthesia and/or the use of anxiolytics, narcotic analgesics, and/or hypnotics to establish deep sedation or general anesthesia, as defined under this Chapter.

(19) Local anesthetics--Dangerous drugs administered topically or by injection, which interrupt nerve conduction, temporarily creating a loss of sensation to an affected area.

(20) Minimal sedation--a drug-induced state during which patients respond appropriately to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilatory and cardiovascular functions are unaffected.

(21) Moderate sedation--a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(22) Narcotic analgesics--Opioid or opioid-like dangerous or scheduled drugs that alleviate pain, but not including non-opioid based drugs such as acetaminophen or non-steroidal anti-inflammatory drugs (NSAIDs).

(23) Neuraxial anesthesia--the administration of dangerous drugs or controlled substances into the subarachnoid space or epidural space to produce anesthesia and analgesia. This includes spinal, epidural and caudal anesthesia.

(24) 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.

(25) PALS--Pediatric Advanced Life Support, as defined by the AHA.

(26) PerRLS--Perioperative Resuscitation and Life Support Certificate, as defined by the ASA

(27) Regional anesthesia--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.

(28) Scheduled drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code.

(29) 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 or delegating anesthesia services in an outpatient setting, physicians must ensure:

(1) compliance with delegation and supervision laws under Chapter 157 of the Act, including §157.058, regarding CRNAs;

(2) counseling and preparing patients for anesthesia per ASA standards;

(3) performing:

(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) obtaining 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) providing 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 deep sedation or general anesthesia is utilized, an end-tidal CO2 analyzer;

(v) if general anesthesia utilizing a closed circuit, an O2 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 algorithms available in the office to assist with 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, ASHI, or ASA

in ACLS, PALS, or PeRLS 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 subsection (b) of this section;
- (ii) first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;
- (iii) benzodiazepines for intravenous or intramuscular administration;
- (iv) lipid emulsion to treat local anesthetic systemic toxicity, 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; 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, ASHI, or ASA in ACLS or PALS, or PeRLS as appropriate. The additional personnel member(s) must be currently certified by AHA, ASHI, or ASA in ACLS, PALS, or PeRLS, as appropriate.

(B) A crash cart must be present containing the same drugs and equipment required for Level II, and a backup cylinder of oxygen, except for lipid emulsion.

(C) Intravenous access 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 listed in subparagraphs (A) - (I) of this paragraph:

- (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;
- (H) Guidelines for Office-Based Anesthesia; and
- (I) Practice sites shall maintain a separate oxygen cylinder as a secondary supply.

§173.4. *Registration.*

Each physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient set-

ting, excluding Level I services, shall register with and pay a fee in the amount of \$220 per biennium.

§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.

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Scott Freshour

General Counsel

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## CHAPTER 174. TELEMEDICINE

The Texas Medical Board (Board) adopts 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7752). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7753). The rules will not be republished.

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 adopted 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.

### COMMENTS:

The Board received one comment from the Texas Medical Association (TMA) regarding the proposed new rules. A summary of the comments and the Board responses is as follows

#### §174.2

TMA expressed opposition to the removal of certain provisions related to non-profit health organizations that exist in the repealed rules and further inquire whether such information is elsewhere in the new proposed rules. They specifically requested that the Board include language in rule §174.2(a) and (b) stating "the health organization is not established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act."

Board Response - The Board declines to make changes to the rule in response to this comment. The identified provisions removed are specifically delineated in statute and are unnecessary to duplicate in the rule. The rule as proposed does not alter or change any processes concerning non-profit health organizations. Any complaints are received and evaluated using standard procedures applied to all TMB complaints. The inclusion of language concerning "contravention of any provision of the act" is unnecessary because that authority is already in statute.

### SUBCHAPTER A. TELEMEDICINE

#### 22 TAC §§174.1 - 174.8

#### STATUTORY AUTHORITY:

The repeal of Chapter 174 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, reoption with amendments, or repeal every four years. No other statutes, articles, or codes are affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. MENTAL HEALTH SERVICES

#### 22 TAC §174.9

STATUTORY AUTHORITY:

The repeal of Chapter 174 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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**CHAPTER 174. BUSINESS ORGANIZATIONS**  
**SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS**

**22 TAC §174.1, §174.2**

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

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**SUBCHAPTER B. JOINTLY OWNED ENTITIES**

**22 TAC §174.5**

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

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**SUBCHAPTER C. PHYSICIAN CALL COVERAGE ARRANGEMENTS**

**22 TAC §174.10**

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this adoption.

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## CHAPTER 175. FEES AND PENALTIES

The Texas Medical Board (Board) adopts the repeal of current Chapter 175, concerning Fees and Penalties, §§175.1 - 175.5. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7755). The repeal will not be republished.

The Board also adopts new Chapter 175, concerning Telemedicine, §§175.1- 175.3. Section 175.1 and §175.2 are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7755), and will not be republished. Section 175.3 is being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7755), and will be republished.

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 adopted 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.

### COMMENTS:

The Board received two comments regarding the proposed new rules.

Commenter 1: Texas Council of Community Centers (TCCC)

#### §175.3

TCCC recommended further clarification of when a doctor may prescribe on behalf of a supervised/delegated advanced practice nurse or physician assistant. They suggested language that under the telemedicine statute (§111.006 of the Texas Occupations Code), a valid prescription requires either the establishment of a physician-patient relationship or the evaluation of the patient by another provider under delegation.

Board Response - TMB declines to make changes in response to this comment. The issuing of a prescription by telemedicine is subject to all applicable laws and regulations, including statutory provisions regarding prescriptive delegation under Chapter 157 of the Occupations Code.

Commenter 2: Garanflo and Meyer Consulting

#### §175.3

The commenter requested to add back into the rule language in repealed rule §172.12(f) regarding exceptions to licensure for certain telemedicine practices.

Board Response - The Board declines to make changes in response to the comment. The exceptions are found in §151.056 of the Texas Occupations Code and therefore a rule is unnecessary.

## 22 TAC §§175.1 - 175.5

### STATUTORY AUTHORITY:

The repeal of Chapter 175 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 175. TELEMEDICINE

### 22 TAC §§175.1 - 175.3

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 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 readoption, readoption with amendments, or repeal every four years.

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

#### §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. A physician must use audio and video two-way communication, unless the patient:

(1) is an established pain patient of the prescribing physician;

(2) receives a prescription identical to the prescription issued at the previous visit; and

(3) was seen by the prescribing physician, or their delegate, in the last 90 days either;

(A) in-person; or

(B) by audio and video two-way communication.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 176. HEALTH CARE LIABILITY LAWSUITS AND SETTLEMENTS

### 22 TAC §§176.1 - 176.9

The Texas Medical Board (Board) adopts the repeal of current Chapter 176, concerning Health Care Liability Lawsuits and Settlements, §§176.1 - 176.9. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7756-7757). The repeals will not be republished.

The Board also adopts new Chapter 176, concerning Reporting Malpractice Claims, §§176.1 and 176.2. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7758). The rules will not be republished.

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 adopted 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.

No comments were received regarding the repeal or new rules.

The repeal to current Chapter 176 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## CHAPTER 176. REPORTING MALPRACTICE CLAIMS

### 22 TAC §176.1, §176.2

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 160 of the Texas Occupations Code. The new rules are also adopted 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.

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## CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS

The Texas Medical Board (Board) adopts 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 and §177.20. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7758). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7758). The rules will not be republished.

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 adopted 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.

#### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 177.

The Board received three comments regarding the proposed new rules. A summary of the comments and the Board responses are as follows:

Commenter 1: Texas Association of Nurse Anesthetists (TxANA)  
§177.2

TxANA asserted the requirement to post public notifications on how to file complaints with the board at "any location where physician supervision or delegation is required" is intended to limit or discourage delegation. They said it would directly regulate NPs who own their own practice and receive delegation

from an off-site physician. They claimed it is another way to discourage physicians who would otherwise delegate, resulting in higher prices for services.

Board response - The Board declines to make any changes in response to this comment. The requirement for posting notices of how to file a complaint concerning a physician with TMB is statutory and has been in place for over a decade. The rule simply recognizes that medical services can be provided at a number of locations/facilities other than a physicians' office. No matter the location, these are still medical acts, and patients need to be informed as to who delegated the act to the provider and where to complain if issues arise. This is intended to maintain patients' protection, patients' right to an informed decision, and transparency. The new rule does not change or alter physician delegation in any manner.

Commenter 2: Texas Nurse Practitioners (TNP)

#### §177.2

TNP listed the same comments as TxANA regarding the requirement to post public notifications on how to file a complaint with the board at "any location where physician supervision or delegation is required."

Board response - The Board declines to make any changes in response to this comment. The requirement for posting notices of how to file a complaint concerning a physician with TMB is statutory and has been in place for over a decade. The rule simply recognizes that medical services can be provided at a number of locations/facilities other than a physicians' office. No matter the location, these are still medical acts, and patients need to be informed as to who delegated the act to the provider and where to complain if issues arise. This is intended to maintain patients' protection, patients' right to an informed decision, and transparency. The new rule does not change or alter physician delegation in any manner.

Commenter 3: Texas Medical Association (TMA)

#### §177.21

TMA is opposed to the new language that would allow an expert reviewer to be "of the same or similar specialty for the area of practice that is the basis of the complaint." They recommend that only a physician with the same specialty is qualified to conduct an expert review related to a complaint. In the alternative, they recommend the board revert back to the language in repealed §182.8.

Board Response - The Board disagrees and declines to make any changes in response to this comment. The rule as written is consistent with statute and allows flexibility in the event of difficulty obtaining certain highly specialized practitioners. Also, several specialties have crossover areas of care which is recognized by the rule as proposed. This ensures the Board has sufficient qualified reviewers to carry out these required reviews.

#### SUBCHAPTER A. DEFINITIONS

##### 22 TAC §177.1

##### STATUTORY AUTHORITY:

The repeal of Chapter 177 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour  
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## SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS

### 22 TAC §§177.2 - 177.13

#### STATUTORY AUTHORITY:

The repeal of Chapter 177 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## SUBCHAPTER C. JOINTLY OWNED ENTITIES

### 22 TAC §§177.14 - 177.16

#### STATUTORY AUTHORITY:

The repeal of Chapter 177 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## SUBCHAPTER D. EMPLOYMENT OF PHYSICIANS

### 22 TAC §177.17

#### STATUTORY AUTHORITY:

The repeal of Chapter 177 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## SUBCHAPTER E. PHYSICIAN CALL COVERAGE MEDICAL SERVICES

### 22 TAC §177.18, §177.20

#### STATUTORY AUTHORITY:

The repeal of Chapter 177 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## CHAPTER 177. COMPLAINTS AND INVESTIGATIONS

### SUBCHAPTER A. COMPLAINTS

#### 22 TAC §§177.1 - 177.3

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

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### SUBCHAPTER B. INVESTIGATIVE PROCESS

#### 22 TAC §§177.10 - 177.13

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

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### SUBCHAPTER C. EXPERT PANEL REVIEW

#### 22 TAC §177.20, §177.21

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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.



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## CHAPTER 178. COMPLAINTS

### 22 TAC §§178.1 - 178.9

The Texas Medical Board (Board) adopts the repeal of current Chapter 178, concerning Complaints, §§178.1 - 178.9. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7763). The repeals will not be republished.

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

The repealed section are as follows:

§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.

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 179. INVESTIGATIONS

The Texas Medical Board (Board) adopts the repeal of current Chapter 179, concerning Investigations, §§179.1 - 179.8. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7764). The repeals will not be republished.

The Board also adopts 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; Subchapter I, concerning Out-of-Network Billing, §179.40. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7764). The rules will be republished.

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.

The adopted new sections are as follows:

### 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 Conference (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 recordation 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.

#### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 179.

The Board received one comment from the Texas Medical Association (TMA) on the new rules. A summary of the comment and the Board responses is as follows:

#### §179.20

TMA stated that the rule does not provide a clear overview of the procedure for contested cases. They suggested adding references to and outlining the contested case and appeal provisions in Occupations Code, §§ 164.005, 164.006, 164.007, 164.0071, 164.0072, 164.008, 164.009, and Government Code, Chapter 2001. Additionally, they stated that the phrase "proposal for decision" is not defined, so it is not clear to readers what is meant.

Board Response - For the sake of clarity, the Board has inserted the phrase "After the issuance of a proposal for decision by the State Office of Administrative Hearings (SOAH)" at the beginning of the sentence. This makes clear what the rule is referring to. However, the Board declines to add in the statutory references listed by TMA, as the statute is clear.

#### 22 TAC §§179.1 - 179.8

#### STATUTORY AUTHORITY:

The repeal of Chapter 179 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## CHAPTER 179. PROCEDURAL RULES

### SUBCHAPTER A. DEFINITIONS.

#### 22 TAC §179.1

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

#### §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.

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## SUBCHAPTER B. REPORTING REQUIREMENTS

### 22 TAC §179.5

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

#### §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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. PRE-SETTLEMENT CONFERENCE RESOLUTION PROCESS

### 22 TAC §179.10

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

#### §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.

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## SUBCHAPTER D. INFORMAL SETTLEMENT CONFERENCE

### 22 TAC §179.15, §179.16

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, con-

cerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

§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.

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## SUBCHAPTER E. CONTESTED CASE PROCEDURE

### 22 TAC §179.20

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning

Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

*§179.20. Notice of Oral Argument.*

After the issuance of a proposal for decision by the State Office of Administrative Hearings (SOAH), all parties shall be given notice of the opportunity to attend and provide oral argument concerning the 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).

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## SUBCHAPTER F. TEMPORARY SUSPENSION OR RESTRICTION PROCEEDINGS

### 22 TAC §179.25, §179.26

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

*§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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §179.30

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

#### §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 licensee; 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. CEASE AND DESIST ORDERS

### 22 TAC §179.35

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

#### §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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. OUT-OF-NETWORK BILLING

### 22 TAC §179.40

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 154 of the Texas Occupations Code, concerning Public Interest Information and Complaint Procedures, and Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

*§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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM

The Texas Medical Board (Board) adopts the repeal of current Chapter 180, concerning Texas Physician Health Program, §§180.1 - 180.4. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7770). The repeals will not be republished.

The Board adopts new Chapter 180, concerning Disciplinary Guidelines. This includes new Subchapter A, concerning Violation Guidelines, §180.1; and Subchapter B, concerning Sanction Guidelines, §180.5. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7770). The rules will not be republished.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapters 180 is more efficient than proposing multiple amendments to make the required changes.

The adopted new sections are as follows:

### 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.

### COMMENTS:

The Board received no comments regarding the repeal of current Chapter 180.

The Board received one comment from the Texas Council of Community Centers on the new rules. A summary of the comment and the Board responses are as follows:

### §180.1(3)(F)

Texas Council of Community Centers asked if this subparagraph is intended to make physicians responsible for all billing statements sent on their behalf, e.g., by their employers. They recommended clarifying that a physician is not held accountable for billing processes conducted by their employer.

Board Response - The Board declines to make any changes in response to this comment. Physicians are responsible for all billing done under their taxpayer identification number and/or national provider identification (NPI).

### 22 TAC §§180.1 - 180.4

### STATUTORY AUTHORITY:

The repeal of Chapter 180 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 180. DISCIPLINARY GUIDELINES SUBCHAPTER A. VIOLATION GUIDELINES

### 22 TAC §180.1

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. SANCTION GUIDELINES

### 22 TAC §180.5

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also

adopted 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 adoption.

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## CHAPTER 181. CONTACT LENS PRESCRIPTIONS

The Texas Medical Board (Board) adopts the repeal of current Chapter 181, concerning Contact Lens Prescriptions, §§181.1 - 181.7. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7773). The repeals will not be republished.

The Board also adopts new Chapter 181, concerning Compliance Program, §§181.1 - 181.8. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7773). The rules will not be republished.

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 adopted 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.

COMMENTS:

The Board received no comments regarding the repeal of current Chapter 181.

The Board received one comment from the Texas Medical Association (TMA) on the new rules. A summary of the comment and the Board responses is as follows:

§181.1

TMA did not recommend any changes to this section, but instead asked for clarification of qualifications for "monitoring physicians" as the term is used in the rule.

Board Response - The Board declines to make any changes in response to this comment. The monitoring physician selection is an internal board process and fully explained to a licensee when the licensee and compliance staff meet. As it is an internal process, the Board declines to include it in the rule.

**22 TAC §§181.1 - 181.7**

STATUTORY AUTHORITY:

The repeal of Chapter 181 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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**22 TAC §§181.1 - 181.8**

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance

with Chapter 164 of the Texas Occupations Code, concerning Disciplinary Actions and Procedures. The new rules are also adopted 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 adoption.

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**CHAPTER 182. USE OF EXPERTS**

The Texas Medical Board (Board) adopts the repeal of current Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7776). The repeals will not be republished.

The Board also adopts new Chapter 182, concerning Texas Physician Health Program, §§182.1 - 182.4. The new sections are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7776). The rules will not be republished.

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 adopted 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.

No comments were received regarding the repeal or new rules.

**22 TAC §§182.1, 182.3, 182.5, 182.8**

STATUTORY AUTHORITY:

The repeal of Chapter 182 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## CHAPTER 182. TEXAS PHYSICIAN HEALTH PROGRAM

### 22 TAC §§182.1 - 182.4

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §167.006. The new rules are also adopted 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 adoption.

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## CHAPTER 183. ACUPUNCTURE

The Texas Medical Board (Board) adopts the repeal of current Chapter 183, concerning Acupuncture, §§183.1 - 183.27. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7779). The repeals will not be republished.

The Board also adopts new Chapter 183, concerning Physician Assistants. This includes new Subchapter A, concerning Physician Assistant Board, §§183.1 - 183.5; 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. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7779). The rules will be republished.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 183 is more efficient than proposing multiple amendments to make the required changes.

### 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.

#### NEW 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.

No comments were received regarding the repeal or new rules.

#### 22 TAC §§183.1 - 183.27

The repeal of Chapter 183 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## CHAPTER 183. PHYSICIAN ASSISTANTS

## SUBCHAPTER A. PHYSICIAN ASSISTANT BOARD

### 22 TAC §§183.1 - 183.5

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §§204.101 and 204.102. The new rules are also adopted 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 adoption.

#### §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.

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## SUBCHAPTER B. LICENSING AND REGISTRATION

### 22 TAC §§183.10 - 183.17

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §§204.101 and 204.102. The new rules are also adopted 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 adoption.

*§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.

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

*§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 subtitle;
- (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 title 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 subtitle; 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 and §183.11 of this subtitle.

(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 adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

General Counsel

Texas Medical Board

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## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §183.20, §183.21

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §§204.101 and 204.102. The new rules are also adopted 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 adoption.

#### §183.20. *On-Going Reporting Requirements.*

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.

#### §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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §183.25

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §§204.101 and 204.102. The new rules are also adopted 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 adoption.

#### §183.25. *Procedural Rules.*

(a) In accordance with §204.312 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 184. SURGICAL ASSISTANT

The Texas Medical Board (Board) adopts the repeal of current Chapter 184, concerning Surgical Assistants §§184.1 - 184.9 and §§184.12 - 184.26. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7785). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7785). The rules will be republished.

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 adopted 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, ACUDETTOX 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.

No comments were received regarding the repeal or new rules.

### 22 TAC §§184.1 - 184.9, 184.12 - 184.26

The repeal of Chapter 184 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

General Counsel

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## CHAPTER 184. ACUPUNCTURE

### SUBCHAPTER A. ACUPUNCTURE BOARD

#### 22 TAC §§184.1 - 184.4

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §205.101. The new rules are also adopted 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 adoption.

§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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. LICENSING AND REGISTRATION

### 22 TAC §§184.10 - 184.19

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §205.101. The new rules are also adopted 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 adoption.

#### §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.

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

§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 title;
- (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 one 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);

(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 online 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 previous 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 and §184.11 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

General Counsel

Texas Medical Board

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## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §§184.25 - 184.27

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §205.101. The new rules are also adopted 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 adoption.

*§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 Request for Medical Records).

*§184.26. 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.

*§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.

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §184.30

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §205.101. The new rules are also adopted 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 adoption.

### *§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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. ACUDETTOX SPECIALISTS

### 22 TAC §§184.35 - 184.37

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are also adopted under the authority of the Texas Occupations Code, §205.101. The new rules are also adopted 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 adoption.

### *§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 \$262.50, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 185. PHYSICIAN ASSISTANTS

The Texas Medical Board (Board) adopts the repeal of current Chapter 185, concerning Physician Assistants, §§185.1 - 185.33. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7794). The repeals will not be republished.

The Board also adopts new Chapter 185, concerning Surgical Assistants, §§185.1 - 185.11. The new sections are being adopted with non-substantive changes to the proposal as pub-

lished in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7794). The rules will be republished.

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 adopted 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.

No comments were received regarding the repeal or new rules.

### 22 TAC §§185.1 - 185.33

The repeal of Chapter 185 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

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## CHAPTER 185. SURGICAL ASSISTANTS

### 22 TAC §§185.1 - 185.11

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 206 of the Texas Occupations Code, concerning Surgical Assistants. The new rules are also adopted 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 adoption.

#### §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 \$315.00, 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 subtitle;

(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 title;

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

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

#### §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 (CAAHEP);
- (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.

(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 \$315.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §185.3 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 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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) adopts the repeal of current Chapter 186, concerning Respiratory Care Practitioners §§186.1 - 186.14 and §§186.16 - 186.30. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7798). The repeals will not be republished.

The Board also adopts 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. The

new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7798). The rules will be republished.

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 adopted 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 three 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 Technologist 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.

No comments were received regarding the repeal or new rules.

**22 TAC §§186.1 - 186.14, 186.16 - 186.30**

The repeal of Chapter 186 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 186. MEDICAL RADIOLOGIC TECHNOLOGY

### SUBCHAPTER A. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY

#### 22 TAC §§186.1 - 186.4

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 601 of the Texas Occupations Code, concerning Medical Radiologic Technologists. The new rules are also adopted 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 adoption.

#### §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 Adminis-

trative 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2024.



## SUBCHAPTER B. MEDICAL RADIOLOGIC TECHNOLOGIST CERTIFICATION, REGISTRATION, AND PRACTICE REQUIREMENTS

### 22 TAC §§186.10 - 186.21

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 601 of the Texas Occupations Code, concerning Medical Radiologic Technologists. The new rules are also adopted 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 adoption.

#### §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, if applicable;
  - (C) a certified transcript of specialty examination scores, if applicable;
  - (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.

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

#### §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 and the requirements listed in §601.002(10-b) 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 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 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 JRCCVT 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;

(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, with the exception of completion of the national certification or specialty examination; or

(3) who must remedy current clinical practice issues set forth in §186.14 of this chapter.

(c) In order to be determined eligible for a temporary certificate to remedy a current clinical practice issue under §186.14 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 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 online verification;

- (4) completing biennial Continuing Education (CE) required under §186.19 of this chapter; 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. Scope of Practice.*

(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 adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER C. NON-CERTIFIED  
TECHNICIAN REGISTRATION AND PRACTICE  
REQUIREMENTS**

**22 TAC §§186.25 - 186.32**



The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 601 of the Texas Occupations Code, concerning Medical Radiologic Technologists. The new rules are also adopted 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 adoption.

*§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; 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 subtitle 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.

*§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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. HARDSHIP EXEMPTIONS

### 22 TAC §186.40, §186.41

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 601 of the Texas Occupations Code, concerning Medical Radiologic Technologists. The new rules are also adopted 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 adoption.

*§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 utilized x-radiation; and

(ii) 4 hours of radiation safety and protection training.

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## SUBCHAPTER E. EDUCATION PROGRAMS AND INSTRUCTOR REQUIREMENTS

### 22 TAC §186.45

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 601 of the Texas Occupations Code, concerning Medical Radiologic Technologists. The new rules are also adopted 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 adoption.

*§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) JRCCVT 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. PROCEDURAL RULES

### 22 TAC §186.50, §186.51

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 601 of the Texas Occupations Code, concerning Medical Radiologic Technologists. The new rules are also adopted 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 adoption.

#### §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 to the board within 10 days after the event.

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## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts 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, 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7809). The repeals will not be republished.

The Board also adopts 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. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7809). The rules will be republished.

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 adopted 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 applicants 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.

No comments were received regarding the repeal or new rules.

### SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

#### 22 TAC §§187.1 - 187.9

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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### SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

**22 TAC §§187.10, 187.11, 187.13 - 187.16, 187.18 - 187.21**

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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**SUBCHAPTER C. FORMAL BOARD  
PROCEEDINGS AT SOAH**

**22 TAC §§187.22 - 187.31, 187.33**

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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**SUBCHAPTER D. FORMAL BOARD  
PROCEEDINGS**

**22 TAC §§187.35 - 187.37, 187.39, 187.42**

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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.

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**SUBCHAPTER E. PROCEEDINGS RELATING  
TO PROBATIONERS**

**22 TAC §§187.43 - 187.45**

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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.

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## SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

### 22 TAC §§187.55 - 187.62

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §§187.70 - 187.72

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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.

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## SUBCHAPTER H. IMPOSITION OF ADMINISTRATIVE PENALTY

### 22 TAC §§187.75 - 187.82

The repeal of Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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.

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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 Chapter 187 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

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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 adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the

practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 604 of the Texas Occupations Code, concerning Respiratory Care Practitioners. The new rules are also adopted 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 adoption.

#### §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 adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. CERTIFICATION AND REGISTRATION

### 22 TAC §§187.10 - 187.17

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 604 of the Texas Occupations Code, concerning Respiratory Care Practitioners. The new rules are also adopted 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 adoption.

#### §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, if requested;

(C) birth certificate or other similar proof of age;

(D) current NBRC verification, if applicable;

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

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

*§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 chapter;
- (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 chapter, with the exception of the national certification examination; or
- (3) who must remedy current clinical practice issues set forth in §187.11 of this chapter.

(c) In order to be determined eligible for a temporary permit to remedy a current clinical practice issue under §187.11 of this chapter, 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 chapter 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 subtitle.

(d) After a certificate has been cancelled, an applicant must meet all requirements under §187.11 and §187.14 of this subtitle to obtain recertification.

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## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §187.20

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 604 of the Texas Occupations Code, concerning Respiratory Care Practitioners. The new rules are also adopted 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 adoption.

#### §187.20. *On-Going Reporting Requirements.*

A certificate holder must report any event listed in §162.2(b)(1) - (7) of this title (relating to Physician Supervision of a Student Physician Assistant) to the Advisory Board within 10 days after the event.

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §187.25, §187.26

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with Chapter 604 of the Texas Occupations Code, concerning Respiratory Care Practitioners. The new rules are also adopted 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 adoption.

#### §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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 188. PERFUSIONISTS

The Texas Medical Board (Board) adopts the repeal of current Chapter 188, concerning Perfusionists, §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 - 188.30. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7818). The repeals will not be republished.

The Board also adopts new Chapter 188, concerning Perfusionists, §§188.1 - 188.14. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7818). The rules will be republished.

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 adopted 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.

No comments were received regarding the repeal or new rules.

## **22 TAC §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 - 188.30**

The repeal of Chapter 188 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **22 TAC §§188.1 - 188.14**

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 603, Texas Occupations Code, concerning Perfusionists. The new rules are also adopted 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 adoption.

### *§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.

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

#### §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 §603.259 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 title, 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; 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 title 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 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 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, 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 shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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## CHAPTER 189. COMPLIANCE PROGRAM

The Texas Medical Board (Board) adopts the repeal of current Chapter 189, concerning Compliance Program, §§189.1 - 189.16. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7821). The repeals will not be republished.

The Board also adopts new Chapter 189, concerning Medical Physicists, §§189.1 - 189.13. The new sections are being adopted with non-substantive changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7821). The rules will be republished.

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 adopted 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.

No comments were received regarding the repeal or new rules.

## 22 TAC §§189.1 - 189.16

The repeal of Chapter 189 is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The repeals are adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 189. MEDICAL PHYSICISTS

### 22 TAC §§189.1 - 189.13

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings, perform its duties, regulate the practice of medicine, and enforce Subtitle B of Title 3 of the Texas Occupations Code. The new rules are adopted in accordance with the requirements of Chapter 602, Texas Occupations Code, concerning Perfusionists. The new rules are also adopted 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 adoption.

#### §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.

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

#### §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.*

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 title.

(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 of \$130.00 for a single specialty, \$50.00 for each additional specialty, and additional fees and surcharges as applicable.

(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 subtitle; 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 (SNMMI), 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 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, 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 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 adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7826). The repeals will not be republished.

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.

The repealed sections are as follows:

SUBCHAPTER A. GENERAL PROVISIONS

§190.1 Purpose

§190.2 Board's Role

SUBCHAPTER B. VIOLATION GUIDELINES

§190.8 Violation Guidelines

SUBCHAPTER C. SANCTION GUIDELINES

§190.14 Disciplinary Sanction Guidelines

§190.15 Aggravating and Mitigating Factors

SUBCHAPTER D. ADMINISTRATIVE PENALTIES

§190.16 Administrative Penalties

No comments were received regarding the repeal.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §190.1, §190.2

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

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SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14, §190.15

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

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SUBCHAPTER D. ADMINISTRATIVE PENALTIES

22 TAC §190.16

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

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## CHAPTER 191. DISTRICT REVIEW COMMITTEES

### 22 TAC §§191.1 - 191.5

The Texas Medical Board (Board) adopts the repeal of current Chapter 191, concerning District Review Committees, §§191.1-191.5. The repeals are being adopted without changes to the proposal as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8015). The repeals will not be republished.

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 191 in its entirety is more efficient than proposing multiple amendments to make the required changes.

The repealed sections are as follows:

- §191.1 Purpose
- §191.2 Districts
- §191.3 Committee Meetings
- §191.4 Activities and Scope of Authority
- §191.5 Per Diem and Expenses

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour  
General Counsel  
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## CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

### 22 TAC §§192.1 - 192.6

The Texas Medical Board (Board) adopts the repeal of current Chapter 192, concerning Office-Based Anesthesia Services, §§192.1 - 192.6. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7828). The repeals will not be republished.

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.

The repealed sections are as follows:

- §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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

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## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §§193.1 - 193.7, 193.9 - 193.20

The Texas Medical Board (Board) adopts the repeal of current Chapter 193, concerning Standing Delegation Orders, §§193.1 - 193.7, §§193.9 - 193.20. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7829). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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) adopts 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7830). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

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## CHAPTER 195. PAIN MANAGEMENT CLINICS

### 22 TAC §§195.1 - 195.5

The Texas Medical Board (Board) adopts the repeal of current Chapter 195, concerning Pain Management Clinics, §§195.1 - 195.5. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7831). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

### 22 TAC §§196.1, 196.2, 196.4, 196.5

The Texas Medical Board (Board) adopts the repeal of current Chapter 196, concerning Voluntary Relinquishment or Surrender

of a Medical License, §§196.1, 196.2, 196.4, and 196.5. The repeals are being adopted without changes to the proposal as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8016). The repeals will not be republished.

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 196 in its entirety is more efficient than proposing multiple amendments to make the required changes.

The repealed sections are as follows:

§196.1 Relinquishment of License

§196.2 Surrender Associated with Disciplinary Action

§196.4 Relicensure After Relinquishment or Surrender of License

§196.5 Competence to Resume Practice

COMMENTS:

One comment was received from the Texas Medical Association (TMA) regarding the repeal. A summary of the comment and the Board response is as follows:

§196.4 and §196.5

TMA requested that the repealed rules be retained in the new licensure rules to provide a more definite framework for the relicensure process and to aid the regulated community in understanding its requirements.

Board Response - The Board declines to retain the repealed rules. The Board has addressed reinstatement or reissuance of a license in new §161.25(c), which references §§164.151 - 164.153 of the Texas Occupations Code. Further revision of Chapter 161 of the new rules will be considered by the Board.

STATUTORY AUTHORITY:

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 197. EMERGENCY MEDICAL SERVICE

### 22 TAC §§197.1 - 197.7

The Texas Medical Board (Board) adopts the repeal of current Chapter 197, concerning Emergency Medical Services, §§197.1 - 197.7. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7832). The repeals will not be republished.

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.

The repealed sections are as follows:

§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

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS



The Texas Medical Board (Board) adopts 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 repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7833). The repeals will not be republished.

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.

The repealed subchapters and sections are as follows:

**SUBCHAPTER A STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES**

§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

**SUBCHAPTER B INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES**

§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

No comments were received regarding the repeal.

**SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES**

**22 TAC §§198.1 - 198.4**

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES**

**22 TAC §198.5, §198.6**

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

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**CHAPTER 199. PUBLIC INFORMATION**

**22 TAC §§199.1 - 199.6**

The Texas Medical Board (Board) adopts the repeal of current Chapter 199, concerning Public Information, §§199.1, 199.6. The repeals are being adopted without changes to the proposal as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8017). The repeals will not be republished.

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 199 in its entirety is more efficient than proposing multiple amendments to make the required changes.

The repealed sections are as follows:

§199.1 Public Information Committee

§199.2 Requests to Speak

§199.3 Requests for Information

§199.4 Charges for Copies of Public Records

§199.5 Notice of Ownership Interest in a Niche Hospital

§199.6 Enhanced Contract or Performance Monitoring

COMMENTS:

One comment was received from the Texas Medical Association (TMA) regarding the repeal. A summary of the comment and the Board response is as follows:

§199.5

TMA requests that the repealed rule be retained as §162.052(d) of the Texas Occupations Code requires the Board to adopt rules governing the form and content of the notice required by subsection (b) of the same statute.

Board Response - The Board declines to make any changes in response to this comment at this time, as such changes would be substantive. The form is available on the Board's website as it has been, and the Board will consider revision of new Chapter 174 to adopt the form as required by statute.

STATUTORY AUTHORITY:

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

§199.1. *Public Information Committee.*

§199.2. *Requests to Speak.*

§199.3. *Requests for Information.*

§199.4. *Charges for Copies of Public Records.*

§199.5. *Notice of Ownership Interest in a Niche Hospital.*

§199.6. *Enhanced Contract or Performance Monitoring.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

22 TAC §§200.1 - 200.3

The Texas Medical Board (Board) adopts the repeal of current Chapter 200, concerning Standards for Physicians Practicing Complementary and Alternative Medicine, §§200.1 - 200.3. The repeals are being adopted without changes to the proposal as published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7835). The repeals will not be republished.

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.

The repealed sections are as follows:

§200.1 Purpose

§200.2 Definitions

§200.3 Practice Guidelines for the Provision of Complementary and Alternative Medicine

No comments were received regarding the repeal.

The repeal is adopted 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 Subtitle B of Title 3 of the Texas Occupations Code. The repeal is adopted 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 adoption.

§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 adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE SUBCHAPTER B. AUTHORITY TO CONTRACT

31 TAC §51.61

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted an amendment to 31 TAC §51.61, concerning Enhanced Contract Monitoring, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8052). The rule will not be republished. The amendment adds a comprehensive provision to the list of factors in subsection (b) that the department considers when making a determination to implement enhanced contract monitoring measures.

Under Government Code, §2261.253(c), a state agency is required to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring. The current rule lists multiple factors that the department will consider when determining whether a contract requires enhanced monitoring. The amendment adds new paragraph (17) to provide for the consideration of any factors in addition to those enumerated in subsection (b) and is intended to provide the department with additional flexibility to consider other important factors, especially those recommended by the Comptroller of Public Accounts' Statewide Procurement Division.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received one comment opposing adoption of the rule as proposed.

The department received four comments supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Murphy  
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Texas Parks and Wildlife Department  
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For further information, please call: (512) 389-4775



## SUBCHAPTER G. NONPROFIT ORGANIZATIONS

### 31 TAC §51.168

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted an amendment to 31 TAC §51.168, concerning Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans, without change to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8053). The rule will not be republished.

The amendment replaces an inaccurate acronym where necessary throughout the section. Under the provisions of §51.161, concerning Definitions, the acronym for "Nonprofit partner" in Subchapter G is "NP." However, in §51.168, the acronym "NPP" is employed, which could cause confusion. The amendment would rectify the inaccuracy.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received no comments opposing adoption of the rule as proposed.

The department received two comments supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.208, which allows the commission to establish by rule the criteria under which the department may select a nonprofit partner and the guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities provided by the nonprofit partner.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
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## SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

### 31 TAC §51.301

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted an amendment to 31 TAC §51.301, concerning Duties of the Department, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8055). The rule will not be republished. The amendment eliminates current subsection (a), which is no longer necessary.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received no comments opposing adoption of the rule as proposed.

The department received one comment supporting adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release and use of customer information by rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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