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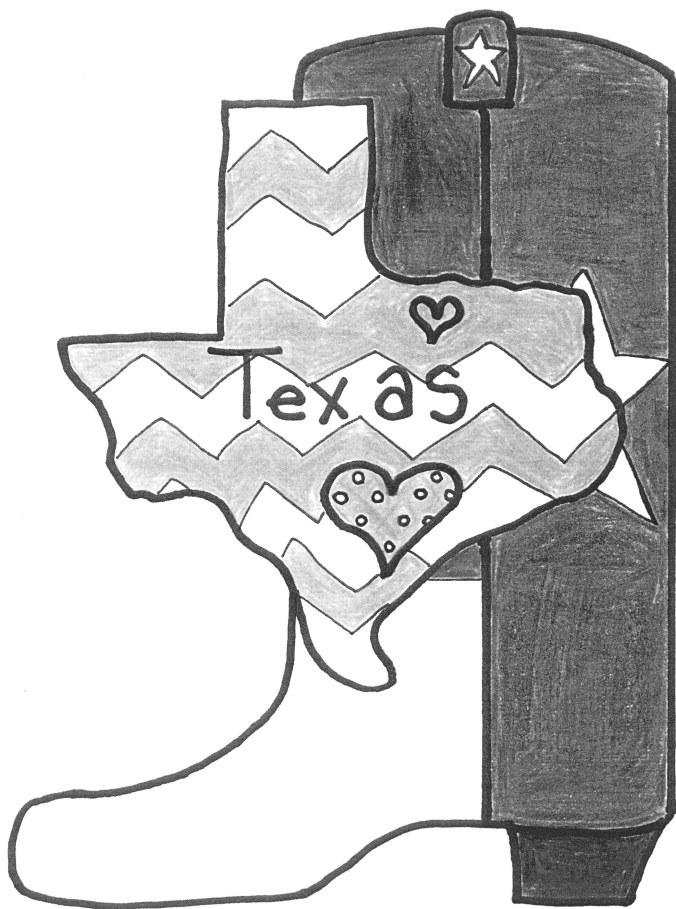
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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-4157

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, a disaster proclamation was issued on Friday, July 5, 2024, as amended later the same day and again on Saturday, July 6, 2024, certifying that Hurricane Beryl posed a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, life-threatening storm surge, damaging wind, and heavy rainfall in Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Dallas, DeWitt, Delta, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kenedy, Kinney, Kleberg, La Salle, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Madison, Marion, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wood, Zapata, and Zavala Counties;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, do hereby renew the aforementioned proclamation.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of December, 2024.

Greg Abbott, Governor  
TRD-202406328



Proclamation 41-4158

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Aransas, Atascosa, Bee, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Coleman, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Jacinto, San Patricio, Schleicher, Shackelford, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of December, 2024.

Greg Abbott, Governor  
TRD-202406329



Proclamation 41-4159

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions persist in certain counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Aransas, Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Brewster, Burnet, Caldwell, Calhoun, Cameron, Childress, Clay, Collingsworth, Colorado, Comal, Crane, Culberson, Donley, El Paso, Foard, Franklin, Frio, Gillespie, Goliad, Grayson, Guadalupe, Hall, Hardeman, Hays, Hidalgo, Hudspeth, Jeff Davis, Jim Wells, Karnes, Kendall, Kerr, Kleberg, Lampasas, Lavaca, Live Oak, Llano, Loving, Lubbock, Matagorda, Maverick, Medina, Midland, Mitchell, Montgomery, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Scurry, Terrell, Travis, Uvalde, Val Verde, Ward, Washington, Wharton, Wichita, Willacy, Williamson, Wilson, Winkler, and Zapata Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business

or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of December, 2024.

Greg Abbott, Governor

TRD-202406330



# PROPOSED RULES

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

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

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

###### 19 TAC §74.1003

The Texas Education Agency (TEA) proposes an amendment to §74.1003, concerning college and career readiness. The proposed amendment would update the criteria used to identify the industry-based certifications to be used for public school accountability.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 74.1003 defines the industry-based certifications that are recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system.

New subsection (a) would establish tiers for industry-based certifications for purposes of public school accountability.

Existing subsection (a), relating to the 2017-2018 and 2018-2019 school years, would be removed.

Existing subsection (b), which references the list of certifications provided in the annual accountability manual, would be removed.

Existing subsection (c), re-lettered as subsection (b), would be amended to specify that the list of industry-based certifications used for public school accountability will be reviewed and updated every five years beginning in 2028.

New subsection (c) would establish the criteria industry-based certifications must meet to be recognized for the purpose of public school accountability beginning in the 2025-2026 school year. To be included on the list, a credential must be a certification or license, industry recognized and valued, attainable by a high school student, portable, and offered as a capstone or at the end of a program.

Subsection (d) would be modified to clarify the subsection's applicability to the 2022-2023 through 2024-2025 school years.

New subsection (e) would specify the circumstances under which a credential will not be included on the list of industry-based certifications for public school accountability.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs

to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by updating the criteria industry-based certifications must meet to be recognized for the purpose of public school accountability and including additional criteria to tier industry-based certifications.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with clarification regarding the criteria an industry-based certification must meet to be recognized for the purpose of academic accountability. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not

require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §39.001, which requires the commissioner to adopt rules as necessary to administer TEC, Chapter 39; and TEC, §39.053, which requires the commissioner to adopt a set of indicators of the quality of learning and achievement, including improving student preparedness for success in entering the workforce, the military, or postsecondary education.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §39.001 and §39.053.

§74.1003. *Industry-Based Certifications for Public School Accountability.*

(a) Industry-based certifications to be used in the public school accountability system shall be categorized as follows using U.S. Department of Labor and Texas Workforce Commission data with thresholds determined by the Texas Education Agency (TEA).

(1) A Tier 1 certification meets the criteria in subsection (c)(1)-(5) of this section and is in demand and directly aligned to one or more high-wage occupations.

(2) A Tier 2 certification meets the criteria in subsection (c)(1)-(5) of this section and is directly aligned to an occupation that is:

(A) in demand and high wage; or

(B) high skill.

(3) A Tier 3 certification meets criteria in subsection (c)(1)-(5) of this section and:

(A) does not meet indicators in paragraph (1) or (2) of this subsection; or

(B) requires curriculum (whether purchased as a package or to access the certification assessment), unless the curriculum is required by a Texas or federal government agency.

[(a) The list of certifications provided in this subsection will be recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system for the 2017-2018 and 2018-2019 school years.]  
[Figure: 19 TAC §74.1003(a)]

[(b) Beginning in the 2019-2020 school year, the list of certifications provided in the annual accountability manual adopted as a figure in §97.1001 of this title (relating to Accountability Rating System) will be recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system.]

(b) [(e)] The list of industry-based certifications to be used in the public school accountability system shall be reviewed and updated every five [two] years beginning in 2028 [2021].

(c) Certifications recognized for the purpose of public school accountability in the 2025-2026 through the 2029-2030 school years shall meet the following criteria.

(1) Certification. A certification is defined as a validation or license that indicates an individual possesses certain industry-specific skills and that meets the following criteria:

(A) the certification is:

(i) related to the performance requirements of a specific occupation and measured against a set of industry-accepted standards; and

(ii) earned by successfully completing an assessment that is provided by or evaluated by an independent, third-party certifying entity and demonstrates an individual's proficiency of the prescribed standards; or

(B) the certification is issued by the State of Texas and requires students to demonstrate proficiency of the prescribed standards through courses within a TEA-approved statewide or regional program of study.

(2) Industry recognized and valued. A certification is industry recognized and valued if:

(A) the certification is a license awarded by the State of Texas, the federal government, or a national board;

(B) the certification is included on the Department of Labor's CareerOneStop Certifications List as being:

(i) third-party industry-endorsed; or

(ii) in demand;

(C) the certification is included on the Texas Workforce Commission's (TWC's) Eligible Training Provider List;

(D) the certification is referred to TEA by TWC as a result of determined correlation between certification attainment and job-related salary;

(E) a certifying entity provides evidence of industry recognition and value that is validated by TEA; or

(F) the certification is referred to TEA by TWC as part of the inventory of industry-recognized credentials approved by the industry-based certification advisory council authorized by Texas Labor Code, §312.002, and meets indicators in subparagraphs (A), (B), (C), (D), or (E) of this paragraph.

(3) Attainable by a high school student. A certification is attainable by a high school student if the certification:

(A) does not require a bachelor's degree;

(B) does not require over 1,500 hours of documented work, unless the certifying entity provides verifiable documented evidence that Texas high school students have earned the certification in one of the past two years;

(C) does not require a certification applicant to be 21 years of age or over; and

(D) coursework is not required after a student graduates from high school.

(4) Portable. The certification:

(A) can be transferred seamlessly to postsecondary work through acceptance for one or more core program courses at a

Southern Association of Colleges and Schools Commission on Colleges-accredited institution of higher education and verified through the institution of higher education's website;

(B) counts toward a minimum of 5% of the hours required in an aligned apprenticeship program and can be verified through the apprenticeship's website;

(C) is part of a prescribed coherent sequence of industry-recognized credentials to show progressive skills development such as I, II, and III or User, Associate, and Professional;

(D) is documented by TWC as supporting employment in more than one region of the state; or

(E) is a license awarded by the State of Texas, the federal government, or a national board.

(5) Capstone or end-of-program. A certification assessment is taken at the culmination of a single high school course or multiple related courses within a secondary program of study. There must be at least 50% alignment between the certification assessment standards and the identified occupation-specific student expectations within at least one level 3 or 4 course in a program of study.

(d) Certifications [Beginning in the 2022-2023 school year, certifications] recognized for the purpose of public school accountability in the 2022-2023 through the 2024-2025 school years shall meet the following criteria.

(1) Certification. A certification is defined as a validation or license that indicates an individual possesses certain industry-specific skills and that meets two or more of the following criteria:

(A) the certification is related to the performance requirements of a career or occupation, measured against a set of industry-accepted standards, and not dependent upon a particular curriculum or program;

(B) the certification is earned by successfully completing an assessment that demonstrates an individual's proficiency of the prescribed standards; or

(C) the certification is a time-limited credential that must be maintained through ongoing professional training and/or testing requirements.

(2) Industry recognized and valued.

(A) A certification is industry recognized and valued if the certification is:

(i) referred to TEA [the Texas Education Agency (TEA)] :

(I) by TWC [the Texas Workforce Commission (TWC)] as part of the inventory of industry-recognized credentials approved by the industry-based certification advisory council authorized by Texas Labor Code, §312.002; or

(II) directly using a process identified and implemented by TEA and published on the TEA website if the certification is not referred to TEA by TWC under subclause (I) of this clause; and

(ii) determined to be valued by a representative sample of employers, as demonstrated in at least one of the following ways:

(I) inclusion of the certification in job postings as required or highly recommended;

(II) use of the certification as a factor in selecting candidates for an interview or for hire; or

(III) offer of higher pay for individuals who possess the certification.

(B) If a determination of value under subparagraph (A)(ii) of this paragraph is not made prior to referral under subparagraph (A)(i)(I) of this paragraph, TEA may use a third-party organization with expertise in gathering information from employers related to the value of industry-based certifications to directly contact groups of employers and report to TEA regarding whether the standards under subparagraph (A)(ii) of this paragraph have been met.

(3) Attainable by a high school student. All eligibility requirements such as age and experience can be met and the certification awarded before or within the summer after a student's high school graduation.

(4) Portable. The certification can:

(A) be transferred seamlessly to postsecondary work through acceptance for credit or hours in core program courses at an institution of higher education;

(B) be counted toward hours in an aligned apprenticeship program;

(C) be part of a prescribed coherent sequence of industry-recognized credentials to show progressive skills development; or

(D) support employment in more than one region of the state.

(5) Certifying entity. The assessment of the knowledge and skills required to obtain the certification is provided by or determined by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies.

(6) Capstone or end-of-program. A certification assessment is taken at the culmination of a single high school course or multiple related courses within a secondary program of study. There must be at least 50% overlap between the certification assessment standards and:

(A) the essential knowledge and skills for a secondary course aligned to the career cluster associated with the certification assessment; or

(B) the applicable essential knowledge and skills for a set of courses within a program of study in a secondary career and technical education program.

(e) A credential shall not be included on the list of industry-based certifications for public school accountability if:

(1) the assessment for the credential is open book, open reference, or allows limitless retake opportunities without remediation or remuneration; or

(2) the credential is designed for high school students and not attainable by adults.

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

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

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## CHAPTER 97. PLANNING AND ACCOUNTABILITY

### SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

#### 19 TAC §97.1001

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 10, 2025, issue of the Texas Register.)*

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The proposed amendment would adopt in rule applicable excerpts of the *2025 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

**BACKGROUND INFORMATION AND JUSTIFICATION:** TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

The proposed amendment to §97.1001 would adopt excerpts of the *2025 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2025 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Chapter 12 describes the specific criteria and calculations that will be used to assign 2025 Results Driven Accountability (RDA) performance levels. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.003.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2025 accountability and RDA. Edits for clarity regarding consistent language and terminology throughout each chapter are embedded within the proposed *2025 Accountability Manual*.

Chapter 1 gives an overview of the entire accountability system. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added. Language would be adjusted to clarify the existing processes of the data validation system.

Chapter 2 describes the "Student Achievement" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 3 describes the "School Progress" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 4 describes the "Closing the Gaps" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added. The language for methodology for English language proficiency would be updated.

Chapter 5 describes how the overall ratings are calculated. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 6 describes distinction designations. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. Dates and years for which data are considered would be updated.

Chapter 8 describes the process for appealing ratings. Dates and years for which data are considered would be removed. Edits for clarity regarding consistent language and terminology would be added.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 10 provides information on the federally required identification of schools for improvement. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 11 describes the local accountability system. Edits for clarity regarding consistent language and terminology would be added.

Chapter 12 describes the RDA system. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added. Detailed language regarding the change of report only to performance level assignment indicators for Bilingual Education/ English as a Second Language/ Emergent Bilingual (BE/ESL/EB) Indicator for TELPAS Composite Rating Levels, Special Education Indicator for Out of School Suspension and Expulsion, and Special Education Indicator for In-School Suspension would be added. Detailed language discontinuing the Hold Harmless element of certain Other Special Populations would be added. Detailed language for indicators that will no longer be reported through RDA would be added. Detailed language regarding the change from report only to No in performance level assignment indicators would be added. Indicator numbers and data note numbers would be updated.

**FISCAL IMPACT:** Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation due to its effect on school accountability for 2025.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to continue to inform the public of the existence of annual manuals specifying rating procedures for public schools by including this rule in the *Texas Administrative Code*.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 3, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as

necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. §1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. §1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students

enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant (PEG) program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under TEC, §39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under

TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

*§97.1001. Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053 ; [§] 39.054 ; [§] 39.0541 ; [§] 39.0548 ; [§] 39.055 ; [§] 39.151 ; [§] 39.201 ; [§] 39.2011 ; [§] 39.202 ; [§] 39.203 ; [§] 29.081(e), (e-1), and (e-2) ; [§] and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2025 [2024] are based upon specific criteria and calculations, which are described in excerpted sections of the 2025 [2024] *Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

[Figure: 49 TAC §97.1001(b)]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.003 [§39.057] .

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for



all purposes, including accountability, data standards, and audits, with respect to those school years.

(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.

(g) The assignment of performance levels for school districts and charter schools in the 2025 [2024] RDA report is based on specific criteria and calculations, which are described in the 2025 [~~2024~~] *Accountability Manual* provided in subsection (b) of this section.

(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.

(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



### 19 TAC §97.1002

The Texas Education Agency (TEA) proposes new §97.1002, concerning accountability rating appeals process and timeline. The proposed new section would adopt in rule the accountability ratings appeals process and timeline that will supersede the timelines referenced in Chapter 8 of the *2023 Accountability Manual* and *2024 Accountability Manual* and apply to all accountability rating appeals from 2023 and beyond until otherwise updated.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Proposed new §97.1002 would adopt in rule the figure *Accountability Ratings Appeals Process and Timeline*. The new figure would specify the process and timeline by which school districts and open-enrollment charter schools can challenge an agency decision relating to an academic rating that affects the district or school, including a determination of consecutive school years of unacceptable performance ratings in accordance with Texas Education Code, §39.151. The process and timeline would supersede the timelines referenced in Chapter 8 of the *2023 Accountability Manual* and *2024 Accountability Manual* and apply to all accountability rating appeals from 2023 and beyond until otherwise updated.

**FISCAL IMPACT:** Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-

year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to establish the timeline for appealing accountability ratings.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be establishing a timeline for appealing accountability ratings that would apply to all accountability rating appeals from 2023 and beyond until otherwise updated. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The new section is proposed under Texas Education Code, §39.151, which provides a process for a

school district or an open-enrollment charter school to challenge an academic or financial accountability rating

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §39.151.

§97.1002. Accountability Rating Appeals Process and Timeline.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); 29.201; 29.202; and 12.104(b)(3)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The process and timeline by which districts, campuses, and charter schools can appeal ratings are based upon the requirements described in the *Accountability Ratings Appeals Process and Timeline* adopted as a figure in this subsection. This figure supersedes the timelines referenced in Chapter 8 of the *2023 Accountability Manual* and *2024 Accountability Manual* and applies to all accountability rating appeals from 2023 and beyond until otherwise updated.

Figure: 19 TAC §97.1002(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner of education as authorized under TEC, §39.003.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

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## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

## CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS SUBCHAPTER F. SPECIAL EDUCATION- RELATED SERVICES PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes the repeal of §231.701, new §231.701 and §231.710, and amendment to §231.709, concerning special education-related services personnel assignments. The proposed revisions would provide requirements for school districts to make personnel assignment decisions based on the correlating certification and demonstration of content proficiency requirements. The proposed revisions would also expand the list of certificates appropriate for personnel serving in special education-related assignments and include a section dedicated to requirements for an assignment of Teachers of Students who are Deafblind.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 231 establish the personnel assignments that correlate with appropriate certifications. The list of courses, organized by grade level and subject area, identify the corresponding certificates and requirements for placement of individuals into classroom and/or campus assignments. This information assists districts with hiring and personnel assignment decisions.

The proposed revisions to 19 TAC Chapter 231, Subchapter F, Special Education-Related Personnel Assignments, address requirements for placement into special education-related personnel assignments. These proposed revisions, as a part of the broader special education teacher certification redesign plan, aim to ensure that special education teachers are knowledgeable of the grade-level content in which they teach, while allowing flexibility in how this content knowledge is demonstrated.

### *Previous SBEC Discussion*

A summary of previous SBEC discussion is outlined in the following table.

Figure: 19 TAC Chapter 231, Subchapter F - Preamble

### *Proposed Updates to Subchapter F, Special Education-Related Services Personnel Assignments:*

The following is a description of the proposed revisions to 19 TAC Chapter 231, Subchapter F.

#### *Proposed New 19 TAC §231.701. Special Education Teacher*

The SBEC proposes the repeal of and new §231.701, Special Education Teacher, to clearly articulate requirements for placement into special education assignments at the elementary and secondary levels.

Proposed new 19 TAC §231.701(a) would specify the effective date of provisions in this revised section.

Proposed new 19 TAC §231.701(b) would specify the required SBEC-issued special education certificate needed to serve in an assignment of special education teacher.

Proposed new 19 TAC §231.701(c) would clarify that the certificates listed in subsection (a) are appropriate for Prekindergarten-Grade 12 unless additional requirements are noted elsewhere.

Proposed new 19 TAC §231.701(d) would specify content area competency requirements for teachers in an assignment of special educator serving as the teacher of record. These proposed rules would require special education teachers of record to hold a valid content area certificate that matches the subject and grade level of the assignment or meet all requirements as outlined in the Texas Content Area Competency Worksheet for Special Education Teachers of Record to be adopted in rule as Figure: 19 TAC §231.701(d).

Proposed new 19 TAC §231.701(e) would specify that the employing school district is responsible for ensuring educators are trained to meet the needs of their assignment.

*Proposed Amendment to 19 TAC §231.709. Teacher of Students with Auditory Impairments*

The SBEC proposes updating the section title to align with certificate naming conventions and more accurate terminology used in the field.

The proposed amendment to 19 TAC §231.709(a)-(c) would strike "Teacher of Students with Auditory Impairments" and replace with "Teacher of the Deaf and Hard of Hearing" to align with the new section title and more appropriate terminology used in the field.

*Proposed New 19 TAC §231.710. Teacher of Students who are Deafblind*

The SBEC proposes the addition of 19 TAC §231.710, Teachers of Students who are Deafblind, to specify the Deafblind Supplemental: Early Childhood-Grade 12 certificate as the appropriate credential for placement into this teaching assignment.

Proposed new 19 TAC §231.710(a) would specify the certification requirement for an assignment of Teachers of Students who are Deafblind.

Proposed new §231.710(b) would provide a list of additional certificates a teacher of students who are Deafblind might hold.

**FISCAL IMPACT:** Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

The proposal may result in an increase in fees paid to the Texas Education Agency (TEA) as the proposal would include new certification requirements for the assignment of Teachers of Students who are Deafblind. The Deafblind Supplemental: Early Childhood-Grade 12 is a new certificate for the field that could generate additional fees. While TEA collects \$11 per exam administered, TEA is unable to estimate revenue because this is an optional certification and the assignment of Teachers of Students who are Deafblind is not required for students who are Deafblind.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** While the proposal imposes a cost on regulated persons, it is not subject to TGC, §2001.0045, because the proposal is necessary to receive a source of funds or to comply with federal law. In addition, the proposal is necessary to ensure certified Texas educators are competent to educate Texas students and, therefore, necessary to protect the health, safety, and welfare of the residents of this state. The TEA staff has determined there are fiscal implications as a result of the proposal. Beginning in Fiscal Year (FY) 2025, both the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates will retire. Candidates seeking a similar certification to fulfill the requirements for an assignment of Special Education Teacher would need to pursue the Special Education Specialist Early Childhood-Grade 12 certificate. The exam aligned to the Special Education Specialist Early Childhood-Grade 12 certificate costs \$136 in comparison to \$116 for the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates, respectively. However, at this time, TEA staff cannot estimate the total anticipated costs since there are multiple options for satisfying the special education certification requirements for an assignment of Special Education Teacher, including the Core/Special Education with Science of Teaching Reading: Early Childhood-Grade 6.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would require an increase in fees paid to TEA by requiring teachers who pursue the Deafblind Supplemental: Early Childhood-Grade 12 certificate to take the new Deafblind EC-12 certification exam; would create new regulations by requiring the new Deafblind Supplemental: Early Childhood-Grade 12 certificate for teachers of students who are deafblind and establishing content competency requirements for special education teachers of record; would repeal an existing regulation by removing rules related to special education personnel assignments in order to provide an updated list of SBEC-approved special education certificates and clarity related to content competency requirements for special education teachers of record; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would be updated requirements and clarity relating to the assignment of special educator in Texas public schools. There is an anticipated cost to persons who are required to comply with the proposal, but those costs would only be incurred if a teacher is seeking one of the following certificates to satisfy special education personnel assignment requirements as outlined in this proposal: Special Education Specialist Early Childhood-Grade 12, Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6, Deafblind Supplemental: Early

Childhood-Grade 12, or Bilingual Special Education Supplemental: Early Childhood-Grade 12. Beginning in FY 2025, both the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates will retire. Candidates seeking a similar certification to fulfill the requirements for an assignment of Special Education Teacher would need to pursue the Special Education Specialist Early Childhood-Grade 12 certificate. The exam aligned to the Special Education Specialist Early Childhood-Grade 12 certificate costs \$136 in comparison to \$116 for the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates, respectively. However, at this time, TEA staff cannot estimate the total anticipated costs since there are multiple options for satisfying the special education certification requirements for an assignment of Special Education Teacher, including the Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6.

The proposed rule that would carve out requirements for the specialized assignment of Teachers of Students who are Deafblind would also result in additional costs for teachers since this assignment requires the Deafblind Supplemental: Early Childhood-Grade 12 certificate in addition to holding a Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 or Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificates. TEA staff estimates teachers seeking this certificate would pay between \$400-600 in exam fees depending on the certification route; however, since this is an optional new certificate field and Teachers of Students who are Deafblind are not required to serve students who are deafblind, staff cannot estimate total anticipated costs.

**DATA AND REPORTING IMPACT:** The proposal would have no additional data and reporting impact.

**ENVIRONMENTAL IMPACT:** The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff has determined that the proposal would require a written report or other paperwork to be completed by a principal or classroom teacher. In proposed new 19 TAC §231.701(c), a principal or other school district administrator would have to complete a worksheet for a teacher to demonstrate content competency.

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the February 14, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

### 19 TAC §231.701

**STATUTORY AUTHORITY.** The repeal is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a),

which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective June 12, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §§21.003(a); 21.031(a); 21.041(b)(1) and (2); and 21.064.

*§231.701. Special Education Teacher.*

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

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Cristina De La Fuente-Valadez

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State Board for Educator Certification

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### 19 TAC §§231.701, 231.709, 231.710

**STATUTORY AUTHORITY.** The new sections and amendment are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective June 12, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The new sections and amendment implement Texas Education Code, §§21.003(a); 21.031(a); 21.041(b)(1) and (2); and 21.064.

*§231.701. Special Education Teacher.*

(a) The provisions of this section are effective September 1, 2025, unless otherwise specified in rule.

(b) Subject to the requirements in subsection (d) of this section, an assignment of Special Education Teacher is allowed with one of the following SBEC-issued certificates:

(1) Bilingual Special Education Supplemental: Early Childhood-Grade 12;

(2) Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6;

(3) Deafblind Supplemental: Early Childhood-Grade 12;

(4) Special Education Specialist: Early Childhood-Grade 12;

(5) Special Education Supplemental (valid at grade level and subject area of the base certificate);

(6) Special Education: Early Childhood-Grade 12;

(7) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12;

(8) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12; or

(9) any special education certificate issued before September 1, 2003, and deemed appropriate by the employing school district for placement into the assignment.

(c) The certificates specified in subsection (b) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.

(d) If an individual in an assignment of special education teacher serves as the teacher of record and is responsible for evaluating student achievement and assigning grades, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate content area competency through requirements as applicable in the figure provided in this subsection, the state's Texas Content Competency Worksheet for Special Education Teachers of Record (Grades EC-12).  
Figure: 19 TAC §231.701(d)

(1) Individuals who previously demonstrated content competency through the state's 2010 and 2011 high objective uniform standard of evaluation for elementary and secondary special education teachers in an assignment of special education teacher of record before September 1, 2025, must hold a valid certificate that matches the subject and grade level of the assignment, or the individual must demonstrate content area competency as attested by the administrator in Sections A-B and F of Figure: 19 TAC §231.701(d).

(2) Individuals who did not previously demonstrate content competency through the state's 2010 and 2011 high objective uniform standard of evaluation for elementary and secondary special education teachers of record before September 1, 2025, must hold a valid certificate that matches the subject and grade level of the assignment, or the individual must demonstrate content area competency through requirements as applicable in Sections A and C-E and Section F of Figure: 19 TAC §231.701(d).

(e) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of children. If a staff member does not have the skills and knowledge needed for the assignment, the school district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

§231.709. Teacher of the Deaf and Hard of Hearing. [Teacher of Students with Auditory Impairments.]

(a) An assignment for Teacher of the Deaf and Hard of Hearing [Teacher of Students with Auditory Impairments] is allowed with one of the following certificates.

(1) Deaf and Severely Hard of Hearing.

(2) Hearing Impaired.

(3) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(b) A teacher in an assignment for Teacher of the Deaf and Hard of Hearing [Teacher of Students with Auditory Impairments] must be available to students with auditory impairments.

(c) A teacher in an assignment for Teacher of the Deaf and Hard of Hearing [Teacher of Students with Auditory Impairments] is not required to pass the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) in order to be assigned to a classroom in which another communication method is used predominately. If this teacher completes certification requirements through a State Board for Educator Certification-approved educator preparation program in Texas, the program must have assessed proficiency in the communication method and verified it to be at an appropriate level.

§231.710. Teacher of Students who are Deafblind.

(a) An assignment for Teacher of Students who are Deafblind is allowed with the Deafblind Supplemental: Early Childhood-Grade 12 certificate.

(b) A teacher in an assignment for Teacher of Students who are Deafblind must also hold one or more of the following certificates.

(1) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(2) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(3) Teacher of Students who are Visually Impaired.

(4) Deficient Vision.

(5) Visually Handicapped.

(6) Deaf and Severely Hard of Hearing.

(7) Hearing Impaired.

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

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## CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS

The State Board for Educator Certification (SBEC) proposes an amendment to §235.1, new §§235.2, 235.11, 235.21, and 235.61, and the repeal of §§235.11, 235.13, 235.21, 235.41, 235.61, and 235.63, concerning classroom teacher certification standards. The proposed revisions would repeal the current grade-banded classroom teacher pedagogy standards and replace them with the new Classroom Teacher Pedagogy standards.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 235, Classroom Teacher Certification Standards, specify the standards for the classroom teacher class of certificates. SBEC is statutorily authorized to ensure that all candidates for certification or renewal demonstrate the knowledge and skills necessary to improve the performance of this state's student population. The classroom teacher certification standards are the basis for EPPs to effectively prepare classroom teachers and the foundation for the certification examinations.

#### *Updated Classroom Teacher Pedagogy Standards*

At the September 2023 SBEC meeting, the Board approved membership to the Educator Standards Advisory Committee (ESAC). The ESAC participated in sessions that informed their work and engaged in an iterative standards revision process from November 2023-March 2024.

At the April 2024 SBEC meeting, Board members reviewed and discussed a draft of the updated Classroom Teacher Pedagogy Standards. Both Board members and stakeholders indicated a need to more clearly include lesson design as an essential skill for teachers. TEA staff updated the standards to include lesson design and presented an updated draft to the Board at their July 2024 meeting. During the July and September 2024 SBEC meetings, Board members reviewed and discussed the updated drafts of the Classroom Teacher Pedagogy Standards reflective of additional stakeholder feedback. Since the September 2024 SBEC meeting, minor changes were made to the standards in response to Board and stakeholder feedback.

#### *Proposed Revisions to 19 TAC Chapter 235, Subchapters A, B, C, and D:*

The following is a description of the proposed revisions to 19 TAC Chapter 235, Subchapters A, B, C, and D. The proposed revisions reflect a reorganization of educator standard groups and include the new classroom teacher certification standards that would serve to implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023. The proposed revisions would also provide additional specification related to implementation of HB 159, 87th Texas Legislature, Regular Session, 2021, and Senate Bill (SB) 226, 87th Texas Legislature, Regular Session, 2021.

#### *Subchapter A. General Provisions*

##### *Proposed Amendment to 19 TAC §235.1*

The proposed amendment to 19 TAC §235.1(a) would update the cross reference to the SBEC's rules related to educator preparation curriculum and outline the required use of educator standards in educator preparation program (EPP) curriculum.

The proposed amendment to 19 TAC §235.1(b)(4) would strike through the term "grade-band" to better align with subsequent subchapters and sections and create a single set of standards across Early Childhood-Grade 12.

##### *Proposed New 19 TAC §235.2. Definitions*

The proposed new 19 TAC §235.2 would include definitions that provide clarity for the field and promote a common understanding of terms used within the updated Classroom Teacher Pedagogy Standards.

#### *Subchapter B. Early Childhood Certificate Standards*

The SBEC proposes the repeal of Subchapter B, Elementary School Certificate Standards, and proposes new Subchapter B, Early Childhood Certificate Standards, to remove the Pedagogy and Professional Responsibilities Standards for Prekindergarten-Grade 3 and Early Childhood-Grade 6 and align with the reorganization of subsequent subchapters. The SBEC has also updated the subchapter title to more accurately reflect the content standards for teachers of students in Prekindergarten-Grade 3.

##### *Proposed New 19 TAC §235.11. Content Standards, Early Childhood: Prekindergarten-Grade 3*

The proposed new 19 TAC §235.11 would outline the content standards for Prekindergarten-Grade 3.

#### *Subchapter C. Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12*

The SBEC proposes the repeal and replacement of Subchapter C, Middle School Certificate Standards, to remove the Pedagogy and Professional Responsibilities Standards for Grades 4-8 and align with the reorganization of the proposed new subchapters. The SBEC has also updated the subchapter title to more accurately reflect the updated classroom teaching standards for Early Childhood-Grade 12.

##### *Proposed New 19 TAC §235.21. Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12*

The proposed new 19 TAC §235.21 would outline teacher pedagogy and English language arts and reading (ELAR) and Mathematics content pedagogy standards for teachers of students in Early Childhood-Grade 12. These proposed updated standards would work to inform the preparation, appraisal, and professional development of Early Childhood-Grade 12 pre- and in-service teachers in Texas.

The proposed new §235.21(a) would provide an overview of the educator standards in proposed new Subchapter C, Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12.

The proposed new §235.21(b) would outline the necessary knowledge and skills related to instructional preparation.

The proposed new §235.21(c) would outline the necessary knowledge and skills related to instructional delivery and assessment.

The proposed new §235.21(d) would outline the necessary knowledge and skills related to content pedagogy for all teachers and for teachers leading ELAR and mathematics classes.

The proposed new §235.21(e) would outline the necessary knowledge and skills related to learning environment.

The proposed new §235.21(f) would outline the necessary knowledge and skills related to professional practices and responsibilities.

#### *Subchapter D. Trade and Industrial Workforce Training Certification Standards*

The SBEC proposes the repeal and replacement of Subchapter D, Secondary School Certificate Standards, to remove the Ped-

agogy and Professional Responsibilities Standards for Grades 7-12 and align with the reorganization of the proposed new subchapters. The SBEC has also updated the subchapter title to more accurately reflect rules that are focused on the Trade and Industrial Workforce Training Certification Standards for Grades 6-12.

*Proposed New 19 TAC §235.61. Pedagogy and Professional Responsibilities Standards, Grades 6-12, Trade and Industrial Workforce Training*

The proposed new 19 TAC §235.61 would outline pedagogy and professional responsibilities standards for teachers of students in Grades 6-12 Trade and Industrial Workforce Training courses.

The following table provides a high-level overview of the reorganization of educator standards in Chapter 235, Subchapters B, C, and D.

Figure: 19 TAC Chapter 235 - Preamble

**FISCAL IMPACT:** Jessica McLoughlin, associate commissioner for educator preparation, certification and enforcement, has determined that for the first five years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments. There may be an additional fiscal impact on entities required to comply with the proposal. The proposal contains standards explicitly required by state mandates, including HB 1605, 88th Texas Legislature, Regular Session, 2023, and HB 159 and SB 226, 87th Texas Legislature, Regular Session, 2021.

Implementation of the revised teacher pedagogy standards may impose costs on EPPs to comply with the standards. Programs may incur new costs related to training faculty and revising curriculum in accordance with the revised standards. Costs incurred by programs vary depending on program size, course offerings, and the procedures by which a program updates curriculum. The anticipated costs range from \$3,000-\$6,000 and are an estimated average based on a sampling of traditional and alternative certification programs.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal will have an additional fiscal impact on entities required to comply with the proposal, including small businesses, microbusinesses, and EPPs in rural communities. Implementation of the revised teacher pedagogy standards will impose costs on small-sized EPPs to comply with the standards. Programs will incur new costs related to training faculty and revising curriculum in accordance with the revised standards. Accordingly, an economic impact statement and regulatory flexibility analysis have been prepared and included in the notice of this proposed rule.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would include a set of clear and common expectations for all parties invested in the preparation of teachers. The updated standards align with current legislation and set a high bar for the quality of teachers in Texas. There is no anticipated cost to teacher candidates who will be required to meet the new standards.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact.

**ENVIRONMENTAL IMPACT STATEMENT:** The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the February 14, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §235.1, §235.2

**STATUTORY AUTHORITY.** The amendment and new section are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules

that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.1. *General Requirements.*

(a) The knowledge and skills identified in this section must be used by an educator preparation program in the development of the curricula and coursework as prescribed in §228.57 [§228.30] of this title (relating to Educator Preparation Curriculum) and serve as the basis for developing the examinations as prescribed in §230.35 of this title (relating to Development, Approval, Implementation, and Evaluation of Teacher Certification Standards).

(b) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each shall include the following:

(1) the relevant Texas Essential Knowledge and Skills (TEKS) curriculum adopted by the State Board of Education, as prescribed in §74.1 of Part 2 [H] of this title (relating to Essential Knowledge and Skills);

(2) the English Language Proficiency Standards (ELPS) adopted by the State Board of Education, as prescribed in Chapter 120, Subchapter B, [§74.4] of Part 2 [H] of this title (relating to English Language Proficiency Standards);

(3) the relevant knowledge and application of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills; and

(4) the relevant [grade-banded] Pedagogy and Professional Responsibilities Standards, specifically including how to effectively address the needs of all student populations.

(c) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial standard certification must pass the appropriate examination(s) as prescribed in §230.21 of this title (relating to Educator Assessment).

§235.2. *Definitions.*

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

(1) Academic language--The oral, written, auditory, and visual language specific to a discipline. It includes vocabulary, grammar, punctuation, syntax, discipline-specific terminology, and rhetorical conventions that allow students to acquire knowledge and academic skills.

(2) Accelerated instruction/Acceleration--Includes aligned research-driven strategies and supports within a multi-tiered instructional model that helps students make more than one year of growth in one year of time.

(3) Complex text--Texts that provide students opportunities to work with new language, knowledge, and ways of thinking. Text complexity is evaluated along quantitative dimensions such as word and sentence length, qualitative dimensions such as text structure, levels of meaning, and language conventions, and considerations, including the reader's background, motivation, and knowledge of the topic.

(4) Deliberate practice--Practice that is systematic, requires sustained attention, and is conducted with the specific goal of improving performance on targeted skills.

(5) Encoding--The process by which information is initially coded to be stored and retrieved. Encoding requires attention to key concepts and knowledge structures and is aided by reducing extraneous cognitive load or information in the learning environment.

(6) Engagement--A state in which students are cognitively and behaviorally connected to and involved in their learning experience, characterized by participation, curiosity, and perseverance.

(7) Evidence-based--A concept or strategy that has been evaluated as a whole and found to have positive effects when implemented with programmatic fidelity.

(8) Explanatory feedback--Feedback that provides the learner with an explanation of strengths and weaknesses related to the learning activity or assignment.

(9) Explicit instruction--Instruction in which the teacher's actions are clear, unambiguous, direct, and visible. Explicit instruction makes it clear what the students are to do and learn.

(10) Fixed personality traits--The misconception that personality traits become fixed at certain stages of an individual's development and do not change over time.

(11) Formative assessment--A deliberate low or no-stakes process used by teachers during instruction to elicit and use evidence of student learning to provide actionable feedback and improve students' attainment of learning targets.

(12) Hemispheric dominance--The misconception that each brain hemisphere is specialized to process information differently and that the dominant hemisphere determines a person's personality and way of thinking.

(13) High-quality instructional materials--Instructional materials that ensure full coverage of Texas Essential Knowledge and Skills; are aligned to evidence-based best practices in the relevant content areas; support all learners, including students with disabilities, emergent bilingual students, and students identified as gifted and talented; enable frequent progress monitoring through embedded and aligned assessments; include implementation supports for teachers; and provide teacher and student-facing lesson-level materials.

(14) Instructional preparation--Describes the process by which a teacher uses knowledge of students and student learning to prepare instructional delivery to a unique group of students. Instructional preparation may include activities such as lesson plan design, evaluation of instructional materials, and lesson internalization.

(15) Interleaving--An instructional technique that arranges practice of topics in such a way that consecutive problems cannot be solved by the same strategy.

(16) Just-in-time supports--A learning acceleration strategy that integrates small, timely supports to address gaps in the most critical prerequisite knowledge and skills that students will need to access grade or course level content in upcoming units.

(17) Learning styles--The disproven theory that identifies learners by type--visual, auditory, reading and writing, and kinesthetic--and adapts instruction to the individual's learning style.

(18) Lesson plan design--Describes the process by which a teacher creates the planned learning experiences and related instructional materials for a topic. Lesson plan design includes activities such as developing or selecting objectives, learning experiences, sequenc-



ing, scaffolds, resources, materials, tasks, assessments, and planned instructional practices.

(19) Lesson internalization--An aspect of instructional preparation specific to teaching a lesson or unit. It includes activities such as evaluating sequencing, learning goals, and expected outcomes, using assessment data to identify prior knowledge, studying lesson content, rehearsing lesson delivery, identifying possible misconceptions, as well as planning instructional strategies, materials, and pacing.

(20) Metacognition--The awareness of how one's mind learns and thinks and the use of that awareness to optimize the efficiency of learning and cognition.

(21) Multiple means of engagement--A range of options provided to engage and motivate students in learning.

(22) Multiple means of representation--A range of options provided in the ways that information is presented to students.

(23) Multiple means of action and expression--A range of options provided in the ways that students express or demonstrate their learning.

(24) Open education resource instructional materials--State-developed materials included on the list of approved instructional materials maintained by the State Board of Education under Texas Education Code (TEC), §31.022, where the underlying intellectual property is either owned by the state of Texas or it can be freely used and modified by the state in perpetuity.

(25) Patterns of student thinking--Common patterns in the ways in which students think about and develop understanding and skill in relation to particular topics and problems.

(26) Productive struggle--Expending effort to understand a challenging situation and determine a course of action when no obvious strategy is stated, and receiving support that encourages persistence without removing the challenge.

(27) Recall--Also referred to as "retrieval," the mental process of retrieving information that was previously encoded and stored in long-term memory.

(28) Remediation--Strategies that focus on the drilling of isolated skills that bear little resemblance to current curriculum. Activities connect to past standards and aim to master content from past years.

(29) Research-based--A concept or strategy with positive findings from studies effective in isolation or combination with other researched strategies or evidence-based programs.

(30) Retrieval practice--Also referred to as "testing effect" or "active recall," it is the finding that trying to remember previously learned material, including by responding to questions, tests, assessments, etc., leads to better retention than restudying or being retold the material for an equivalent amount of time.

(31) Science of learning--The summarized existing cognitive-science, cognitive psychology, educational psychology, and neuroscience research on how people learn, as it connects to practical implications for teaching.

(32) Second language acquisition--The process through which individuals leverage their primary language to learn a new language. A dynamic process of learning and acquiring proficiency in the English language, supported by exposure to comprehensible input, interaction, formal instruction, and access to resources and support in English and primary language.

(33) Spaced practice/Distributed practice--Spaced practice sequences learning in a way that students actively retrieve learned information from long-term memory through multiple opportunities over time with intervals in between--starting with shorter intervals initially (e.g., hours or days) and building up to longer intervals (e.g., weeks).

(34) State Board of Education-approved instructional materials--Materials included on the list of approved instructional materials maintained by the State Board of Education under Texas Education Code (TEC), §31.022.

(35) Summative assessment--Medium-to-high-stakes assessments, administered at the conclusion of an instructional period that are used to evaluate student learning, knowledge, proficiency, or mastery of a learning target.

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

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Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



## SUBCHAPTER B. ELEMENTARY SCHOOL CERTIFICATE STANDARDS

### 19 TAC §§235.11, 235.13, 235.21

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.11. *Pedagogy and Professional Responsibilities Standards, Early Childhood: Prekindergarten-Grade 3.*

§235.13. *Content Standards, Early Childhood: Prekindergarten-Grade 3.*

§235.21. *Pedagogy and Professional Responsibilities Standards, Early Childhood-Grade 6.*

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

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## SUBCHAPTER B. EARLY CHILDHOOD CERTIFICATE STANDARDS

### 19 TAC §235.11

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.11. *Content Standards, Early Childhood: Prekindergarten-Grade 3.*

(a) Early Childhood: Prekindergarten-Grade 3 Content Standards. The content standards identified in this section are targeted for classroom teachers of early learners (birth through age eight). The standards address the discipline that deals with the content knowledge required to teach early learners. The standards address content knowledge in Prekindergarten-Grade 5, with an emphasis on Prekindergarten-Grade 3, in order to meet the needs of all learners

and address vertical alignment. The standards align with the *Texas Prekindergarten Guidelines*, Chapter 110 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading), Chapter 111 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Mathematics), Chapter 112 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Science), Chapter 113 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Social Studies), Chapter 115 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Health Education), Chapter 116 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Physical Education), Chapter 117 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts), and The National Association for the Education of Young Children Professional Preparation Standards.

(b) Child Development. The Early Childhood: Prekindergarten-Grade 3 classroom teachers use their understanding of young children's characteristics and needs, and of multiple interacting influences on children's development and learning, to create environments that are healthy, respectful, supportive, and challenging for each child. Early Childhood: Prekindergarten-Grade 3 classroom teachers must:

(1) know and understand young children's characteristics and needs, from birth through age eight;

(2) know and understand the multiple influences on early development and learning; and

(3) use developmental knowledge to create healthy, respectful, supportive, and challenging learning environments for young children.

(c) English Language Arts and Reading. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS), with an emphasis on Kindergarten-Grade 3, and Emergent Early Literacy *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(d) Mathematics. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Mathematics TEKS, with an emphasis on Kindergarten-Grade 3, and Mathematics *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(e) Science. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Science TEKS, with an emphasis on Kindergarten-Grade 3, and Science *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(f) Social Studies. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Social Studies TEKS, with an emphasis on Kindergarten-Grade 3, and Social Studies *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(g) Fine Arts, including Theatre, Art, and Music. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Theatre, Art, and Music TEKS, with an emphasis on Kindergarten-Grade 3, and Fine Arts

Texas Prekindergarten Guidelines and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(h) Health Education. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Health Education TEKS, with an emphasis on Kindergarten-Grade 3, and Physical Development Texas Prekindergarten Guidelines and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(i) Physical Education. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Physical Education TEKS, with an emphasis on Kindergarten-Grade 3, and Physical Development Texas Prekindergarten Guidelines and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

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

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## SUBCHAPTER C. CLASSROOM TEACHER PEDAGOGY STANDARDS, EARLY CHILDHOOD-GRADE 12

### 19 TAC §235.21

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.21. Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12.

(a) The standards identified in this section are targeted for classroom teachers in Early Childhood-Grade 12. The standards emphasize the knowledge and skills required for teachers to select, evaluate, internalize, and implement high-quality instructional materials. They assume that practicing teachers are aware of the Open Education Resource Instructional Materials (OER), customize materials as directed by their district, and engage in initial lesson plan design when they are directed by their school district to do so. The standards describe the knowledge and skills required for teachers to prepare, deliver, and assess instruction that results in positive outcomes for all students; describe the knowledge and skills required for teachers to build positive relationships with and among students in a safe and productive learning environment; reflect research and evidenced-based practices that ensure all students are held to rigorous grade-level academic and nonacademic standards; and define a teacher's role as a professional, an ethical, and a reflective practitioner.

(b) Instructional Preparation. Teachers understand how students learn and prepare for instructional delivery by designing lessons, evaluating instructional materials, leveraging their knowledge of students, and engaging in a thorough process for lesson internalization.

(1) Teachers apply basic principles of lesson plan design from the learning sciences to prepare for instruction.

(A) Teachers understand learning as an active and social process of meaning-making that results in changes in student knowledge and behavior based on connections between past and new experiences.

(B) Teachers prepare instruction that uses research and evidence-based teaching strategies for eliciting and sustaining attention and motivation and supporting encoding such as use of multimedia learning principles, reduction of extraneous cognitive load, use of worked examples, interleaving, and deep integration of new experiences with prior knowledge.

(C) Teachers prepare instruction that uses research and evidence-based strategies for memory and recall such as interleaving, spacing, retrieval practice, and metacognition.

(D) Teachers recognize misconceptions about learning, the brain, and child and adolescent development, including myths such as learning styles, personality traits, and hemispheric dominance, and avoid unsupported instructional practices based on these misunderstandings.

(2) Teachers evaluate instructional materials and select or customize the highest quality district-approved option to prepare for instruction.

(A) Teachers identify the components of high-quality instructional materials such as a logical scope and sequence, clear learning objectives, grade or course level content, explicit instruction, student engagement, academic language, deliberate practice, and assessment, appropriate to the discipline.

(B) Teachers identify the benefits of using high-quality instructional materials.

(C) Teachers apply knowledge of the components of high-quality instructional materials to select or customize instructional materials when appropriate.

(D) Teachers analyze instructional materials and digital resources to ensure quality, rigor, and access to grade or course level content.

(E) Teachers use high-quality materials to plan instruction that connect students' prior understanding and real-world experiences to new content and contexts.

(3) Teachers understand initial lesson plan design and, when district-approved materials are not available and when directed by their district, engage in initial lesson plan design using science of learning concepts.

(A) Teachers design lessons based on the components of high-quality instructional materials such as a logical scope and sequence, clear learning objectives, application of explicit instruction, and grade or course level content.

(B) Teachers design lessons that effectively connect learning objectives with explicit instruction, student engagement, academic language, deliberate practice, and assessment.

(C) Teachers design lessons that connect students prior understanding and real-world experiences to new content and contexts.

(D) Teachers plan for the use of digital tools and resources to engage students in active deep learning.

(4) Teachers ensure lesson sequence and materials meet the needs of all learners and adapt methods when appropriate.

(A) Teachers plan for the use of multiple means to engage students, varied ways of representing information, and options for students to demonstrate their learning.

(B) Teachers leverage student data to prepare flexible student groups that facilitate learning for all students.

(C) Teachers differentiate instruction and align methods and techniques to diverse student needs, including acceleration, just-in-time supports, technology, intervention, linguistic supports, appropriate scaffolding, and implementation of Individualized Education Programs (IEPs).

(5) Teachers recognize students' backgrounds (familial, educational, linguistic, and developmental) as assets and apply knowledge of students to engage them in meaningful learning.

(A) Teachers plan to present information in a meaningful way that activates or provides prerequisite knowledge to maximize student learning.

(B) Teachers collaborate with other professionals, use resources, and plan research and evidence-based instructional strategies to anticipate and respond to the unique needs of students, including disabilities, giftedness, bilingualism and biliteracy.

(C) Teachers plan instructional practices and strategies that support language acquisition so that language is comprehensible, and instruction is fully accessible.

(D) Teachers apply knowledge of how each category of disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 can affect student learning and development.

(6) Teachers engage in a thorough process of lesson internalization to prepare well-organized, sequential instruction that builds on students' prior knowledge.

(A) Teachers identify how the intentional sequencing of units, lessons, and learning tasks supports student knowledge and mastery throughout the year.

(B) Teachers identify how the learning goals of units and lessons are aligned to state standards.

(C) Teachers use assessment data to identify prior knowledge and plan for the learning needs of students.

(D) Teachers internalize lesson content by reading the texts, completing learning tasks and assessments, rehearsing lesson delivery, and identifying any personal gaps in understanding.

(E) Teachers plan for pacing, use of teacher resources, and transitions between activities.

(F) Teachers create or analyze and customize exemplar responses and anticipate potential barriers to learning.

(G) Teachers strategically plan instructional strategies, formative assessments, technology, scaffolds, and enrichment to make learning accessible to all students.

(c) Instructional Delivery and Assessment. Teachers intentionally apply their knowledge of students and the learning process to implement high-quality instruction and assessment practices that are research and evidence-based and informed by student work.

(1) Teachers deliver research and evidence-based instruction to meet the needs of all learners and adapt methods when appropriate.

(A) Teachers effectively communicate grade or course level expectations, objectives, and goals to help all students reach high levels of achievement.

(B) Teachers apply research and evidence-based teaching strategies for eliciting and sustaining attention and motivation and supporting memory encoding and recall such as interleaving, spacing, metacognition, and distributed practice.

(C) Teachers ensure a high degree of student engagement through explicit instruction, student discussion, feedback, and opportunities for deliberate practice.

(D) Teachers apply research and evidence-based teaching strategies that connect students' prior understanding and real-world experiences to new content and contexts and invite student perspectives.

(E) Teachers implement appropriate scaffolds in response to student needs.

(F) Teachers strategically implement tools, technology, and procedures that lead to increased participation from all students, elicit patterns of student thinking, and highlight varied responses.

(G) Teachers provide multiple means of engagement to encourage all students to remain persistent in the face of challenges.

(H) Teachers collaborate with other educational professionals, when appropriate, to deliver instruction that addresses students' academic and non-academic needs.

(2) Teachers scaffold instruction, from initial knowledge and skill development, through automaticity, toward complex, higher-order thinking, providing opportunities for deeper learning.

(A) Teachers set high expectations and facilitate rigorous grade or course level learning experiences for all students that encourage them to apply disciplinary and cross-disciplinary knowledge to real-world problems.

(B) Teachers apply instructional strategies to deliberately engage all students in critical thinking and problem solving.

(C) Teachers validate student responses utilizing them to advance learning for all students.

(D) Teachers respond to student errors and misconceptions with prompts or questions that build new understanding on prior knowledge.

(E) Teachers use strategic questioning to build and deepen student understanding.

(F) Teachers strategically incorporate technology that removes barriers and allows students to interact with the curriculum in more authentic, significant, and effective ways.

(3) Teachers consistently check for understanding, give feedback, and make lesson adjustments as necessary.

(A) Teachers use a variety of formative assessments during instruction to gauge and respond to student progress and address misconceptions.

(B) Teachers implement frequent or low- or no-stakes assessments to promote retrieval of learned information.

(C) Teachers continually monitor and assess students' progress to guide instructional outcomes and determine next steps to ensure student mastery of grade or course level content.

(D) Teachers build student capacity to self-monitor their progress.

(E) Teachers provide frequent, timely, and specific explanatory feedback that emphasizes effort, improvement, and acknowledges students' strengths and areas for growth.

(F) Teachers strategically implement instructional strategies, formative assessments, scaffolds, and enrichment to make learning accessible to all students.

(G) Teachers set goals for each student in response to previous outcomes from formative and summative assessments.

(H) Teachers involve all students in self-assessment, goal setting, and monitoring progress.

(4) Teachers implement formative and summative methods of measuring and monitoring student progress through the regular collection, review, and analysis of data.

(A) Teachers regularly review and analyze student work, individually and collaboratively, to understand students' thinking, identify strengths and progress toward mastery, and identify gaps in knowledge.

(B) Teachers combine results from different measures to develop a holistic picture of students' strengths and learning needs.

(C) Teachers apply multiple means of assessing learning, including the use of digital tools, to accommodate according to students' learning needs, linguistic differences, and/or varying levels of background knowledge.

(D) Teachers use assessment results to inform and adjust instruction and intervention.

(E) Teachers clearly communicate the results of assessments with students, including setting goals, identifying areas of strength, and opportunities for improvement.

(d) Content Pedagogy Knowledge and Skills. Teachers show a full understanding of their content and related pedagogy, and the appropriate grade-level Texas Essential Knowledge and Skills (TEKS).

(1) Teachers understand the major concepts, key themes, multiple perspectives, assumptions, processes of inquiry, structure, and real-world applications of their grade-level and subject-area content.

(A) Teachers demonstrate a thorough understanding of and competence in the use of open education resource instructional materials when available for the grade level and subject area.

(B) Teachers have expertise in how their content vertically and horizontally aligns with the grade-level/subject-area continuum, leading to an integrated curriculum across grade levels and content areas.

(C) Teachers identify gaps in students' knowledge of subject matter and communicate with their leaders and colleagues to ensure that these gaps are adequately addressed across grade levels and subject areas.

(D) Teachers deliberately and regularly share multiple different examples of student representations and resolutions.

(E) Teachers stay current with developments, new content, new approaches, and changing methods of instructional delivery within their discipline.

(2) Teachers demonstrate content-specific pedagogy that meets the needs of diverse learners, utilizing engaging instructional materials to connect prior content knowledge to new learning.

(A) Teachers teach both the key content knowledge and the key skills of the discipline and requisite linguistic skills making the information accessible to all learners by constructing it into usable knowledge.

(B) Teachers make appropriate and authentic connections across disciplines, subjects, and students' real-world experiences to build knowledge from year to year.

(C) Teachers provide multiple means of representation and engagement to promote literacy and ensure discipline-specific academic language is accessible for all students.

(D) Teachers explicitly teach, encourage, and reinforce the use of academic language, including vocabulary, use of symbols, and labeling.

(E) Teachers prepare for and apply scaffolds in the lesson to make content accessible to all students, including diverse learners such as emergent bilingual students, students with disabilities, and students working above and below grade level.

(F) Teachers engage students in productive struggle by allowing them time to work, asking questions to deepen their thinking, encouraging multiple approaches, praising effort on successful and unsuccessful attempts, and contrasting student attempts and correct solutions.

(3) Teachers demonstrate research and evidence-based best practices specific to planning, instruction, and assessment of mathematics.

(A) Teachers communicate, using multiple means of representation, the relationship between mathematical concepts and mathematical procedures.

(B) Teachers engage students in recursive lesson activities that reinforce automaticity in prerequisite knowledge and skills to mitigate the use of working memory when engaging those knowledge and skills as task complexity increases.

(C) Teachers use multiple means of representation to engage students in mathematical tasks that deepen students' un-

derstanding of conceptual understanding, procedural fluency, and mathematical reasoning.

(D) Teachers prepare and deliver instruction and questioning to deliberately solicit different explanations, representations, solutions, and reasoning from all students.

(E) Teachers prepare and deliver explicit instruction and modeling that links grade-level conceptual understanding with mathematical procedures and avoids shortcuts to problem solving.

(F) Teachers analyze instructional plans to ensure an appropriate balance between conceptual understanding and procedural fluency.

(G) Teachers facilitate discourse through regular opportunities for students to communicate the relationship between mathematical concepts and mathematical procedures.

(H) Teachers provide time for students to apply conceptual understanding and procedural fluency collaboratively and independently to problem-solving.

(I) Teachers communicate and model the connections between mathematics and other fields that utilize mathematics to problem solve, make decisions, and incorporate real-world applications in instruction.

(J) Teachers explicitly teach and model that math abilities are expandable and improvable.

(4) Teachers demonstrate research and evidence-based best practices specific to planning, instruction, and assessment of language arts and reading.

(A) Teachers analyze instructional materials in preparation for instruction to ensure they provide grade-level appropriate systematic and explicit practice in foundational literacy skills.

(B) Teachers analyze instructional materials in preparation for instruction to ensure that foundational literacy skills are reached at each grade or course level.

(C) Teachers implement clear and explicit reading instruction aligned to the Science of Teaching Reading (STR) competencies and engage students in deliberate practice to make meaning from text.

(D) Teachers identify and analyze grade or course level and complex texts for quality in preparation for instruction.

(E) Teachers prepare and deliver explicit reading instruction that uses grade-level and complex texts to build student knowledge.

(F) Teachers strategically plan and implement supports such as read-aloud and questioning at varied levels of complexity to support comprehension of high-quality complex texts.

(G) Teachers engage students in writing practice, including text-based writing, that builds comprehension and higher-order thinking skills.

(H) Teachers engage students in speaking practice that builds comprehension, language acquisition, and higher-order thinking skills.

(I) Teachers use high-quality assessments to monitor grade-level appropriate foundational skills development.

(J) Teachers implement and analyze a variety of high-quality literacy assessments to monitor grade-level appropriate comprehension and identify gaps.

(K) Teachers apply just-in-time supports and intervention on prerequisite skills and continually monitor to determine the need for additional learning support.

(e) Learning Environment. Teachers maintain a safe and supportive learning environment that is characterized by respectful interactions with students, consistent routines, high expectations, and the development of students' self-regulation skills.

(1) Teachers establish, implement, and communicate consistent routines for effective classroom management, including clear expectations for student behavior and positive interventions, that maintain a productive learning environment for all students.

(A) Teachers arrange their classrooms and virtual learning spaces in an organized way that is safe, flexible, and accessible to maximize learning that accommodates all students' learning and physical needs.

(B) Teachers implement consistent classroom and behavior management systems to maintain an environment where all students are engaged and can reach academic and nonacademic goals.

(C) Teachers model and provide explicit instruction on effective behavior regulation skills to build students' resilience and self-discipline.

(D) Teachers maintain a safe and positive culture of student ownership and group accountability that fosters engagement by all students in the classroom expectations, culture, and norms.

(2) Teachers lead and maintain classroom environments in which students are motivated and cognitively engaged in learning.

(A) Teachers maintain a classroom environment that is based on high expectations and student self-efficacy.

(B) Teachers strategically use instructional time, including transitions, to maximize learning.

(C) Teachers manage and facilitate strategic and flexible groupings to maximize student learning.

(f) Professional Practices and Responsibilities. Teachers are self-aware and consistently hold themselves to a high standard for individual development. They collaborate with other educational professionals, communicate regularly with stakeholders, maintain professional relationships, comply with federal, state, and local laws, and conduct themselves ethically and with integrity.

(1) Teachers model ethical and respectful behavior and demonstrate integrity in all settings and situations.

(A) Teachers understand and comply with applicable federal, state, and local laws pertaining to the professional behaviors and responsibilities of educators.

(B) Teachers adhere to the educators' code of ethics in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators), including following policies and procedures at their specific school placement(s).

(C) Teachers demonstrate understanding of their role in strengthening American democracy and are willing to support and defend the constitutions of the United States and Texas.

(D) Teachers advocate for and apply knowledge of students' progress and learning plans through the maintenance of thorough and accurate records.

(E) Teachers model and promote for students the safe, ethical, and legal practices with digital tools and technology.

(2) Teachers actively self-reflect upon their practice and collaborate with other educational professionals to deepen knowledge, demonstrate leadership, and improve their instructional effectiveness.

(A) Teachers apply consistent reflective practices, analysis of student work, and video evidence of teaching, to identify and communicate professional learning needs.

(B) Teachers seek and apply job-embedded feedback from colleagues, including supervisors, mentors, coaches, and peers.

(C) Teachers establish and strive to achieve professional goals to strengthen their instructional effectiveness and better meet students' needs.

(D) Teachers engage in relevant professional learning opportunities that align with their growth goals and student learning needs.

(E) Teachers seek to lead other adults on campus through professional learning communities, grade- or subject-level team leadership, committee membership, or other opportunities.

(F) Teachers collaborate with educational professionals to ensure learning is accessible and enables all students reach their academic and non-academic goals.

(3) Teachers communicate consistently, clearly, and respectfully with all community stakeholders, including students, parents and families, colleagues, administrators, and staff.

(A) Teachers clearly communicate the mission, vision, and goals of the school to students, colleagues, parents and families, and other community members.

(B) Teachers communicate regularly, clearly, and appropriately with families about student progress, providing detailed and constructive feedback in a language that is accessible to families to support students' developmental and learning goals.

(C) Teachers build mutual understanding of expectations with students, parents, and families through clear, respectful, and consistent communication methods.

(D) Teachers communicate with students and families regularly about the importance of collecting data and monitoring progress of student outcomes, sharing timely and comprehensible feedback so they understand students' goals and progress.

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

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Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



## SUBCHAPTER C. MIDDLE SCHOOL CERTIFICATE STANDARDS

### 19 TAC §235.41

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.41. *Pedagogy and Professional Responsibilities Standards, Grades 4-8.*

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

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## SUBCHAPTER D. SECONDARY SCHOOL CERTIFICATE STANDARDS

### 19 TAC §235.61, §235.63

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires

the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.61. *Pedagogy and Professional Responsibilities Standards, Grades 7-12.*

§235.63. *Pedagogy and Professional Responsibilities Standards, Grades 6-12, Trade and Industrial Workforce Training.*

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

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## SUBCHAPTER D. TRADE AND INDUSTRIAL WORKFORCE TRAINING CERTIFICATION STANDARDS

### 19 TAC §235.61

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), and 21.031, 21.041(b)(1), (2), and (4).

§235.61. *Pedagogy and Professional Responsibilities Standards, Grades 6-12, Trade and Industrial Workforce Training.*

(a) Grades 6-12 Pedagogy and Professional Responsibilities (PPR) Standards. The PPR standards identified in this section are targeted for classroom teachers of students in Grades 6-12 Trade and Industrial Workforce Training courses. The standards address the discipline that deals with the theory and practice of teaching to inform skill-based training and development. The standards inform proper teaching techniques, strategies, teacher actions, teacher judgements, and decisions by taking into consideration theories of learning, understandings of students and their needs, and the backgrounds and interests of individual students. The standards are also aligned with the Commissioner's Teacher Standards in Chapter 149, Subchapter AA, of Part 2 of this title (relating to Commissioner's Rules Concerning Teacher Standards).

(b) Instructional Planning and Delivery. Trade and Industrial Workforce Training Grades 6-12 classroom teachers demonstrate understanding of instructional planning and delivery by providing standards-based, data-driven, differentiated instruction that engages students and makes learning relevant for today's learners. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) develop lessons that build coherently toward objectives based on course content, curriculum scope and sequence, and expected student outcomes;

(2) effectively communicate goals, expectations, and objectives to help all students reach high levels of achievement;

(3) connect students' prior understanding and real-world experiences to new content and contexts, maximizing learning opportunities;

(4) plan instruction that is developmentally appropriate, is standards driven, and motivates students to learn;

(5) use and adapt resources, technologies, and standards-aligned instructional materials to promote student success in meeting learning goals;

(6) plan student groupings, including pairings and individualized and small-group instruction, to facilitate student learning;

(7) ensure that the learning environment features a high degree of student engagement by facilitating discussion and student-centered activities as well as leading direct instruction;

(8) monitor and assess students' progress to ensure that their lessons meet students' needs; and

(9) provide immediate feedback to students in order to reinforce their learning and ensure that they understand key concepts.

(c) Knowledge of Student and Student Learning. Trade and Industrial Workforce Training Grades 6-12 classroom teachers work to ensure high levels of learning and achievement outcomes for all students, taking into consideration each student's educational and developmental backgrounds and focusing on each student's needs. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) connect learning, content, and expectations to students' prior knowledge, life experiences, and interests in meaningful contexts; and

(2) understand how learning occurs and how learners develop, construct meaning, and acquire knowledge and skills.



(d) Content Knowledge and Expertise. Trade and Industrial Workforce Training Grades 6-12 classroom teachers exhibit an understanding of content and related pedagogy as demonstrated through the quality of the design and execution of lessons and the ability to match objectives and activities to relevant state standards. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) organize curriculum to facilitate student understanding of the subject matter; and

(2) teach both the key content knowledge and the key skills of the discipline.

(e) Learning Environment. Trade and Industrial Workforce Training Grades 6-12 classroom teachers interact with students in respectful ways at all times, maintaining a physically and emotionally safe, supportive learning environment that is characterized by efficient and effective routines, clear expectations for student behavior, and organization that maximizes student learning. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) maintain and facilitate respectful, supportive, positive, and productive interactions with and among students;

(2) arrange the physical environment to maximize student learning and to ensure that all students have access to resources;

(3) implement behavior management systems to maintain an environment where all students can learn effectively;

(4) maintain a culture that is based on high expectations for student performance and encourages students to be self-motivated, taking responsibility for their own learning;

(5) maximize instructional time, including managing transitions; and

(6) manage and facilitate groupings in order to maximize student collaboration, participation, and achievement.

(f) Data-Driven Practices. Trade and Industrial Workforce Training Grades 6-12 classroom teachers use formal and informal methods to assess student growth aligned to instructional goals and course objectives and regularly review and analyze multiple sources of data to measure student progress and adjust instructional strategies and content delivery as needed. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) gauge student progress and ensure mastery of content knowledge and skills by providing assessments aligned to instructional objectives and outcomes that are accurate measures of student learning; and

(2) analyze and review data in a timely, thorough, accurate, and appropriate manner, both individually and with colleagues, to monitor student learning.

(g) Professional Practices and Responsibilities. Trade and Industrial Workforce Training Grades 6-12 classroom teachers consistently hold themselves to a high standard for individual development, collaborate with other educational professionals, communicate regularly with stakeholders, maintain professional relationships, comply with all campus and school district policies, and conduct themselves ethically and with integrity. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must adhere to the educators' code of ethics in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators), including following policies and procedures at their specific school placement(s).

(h) Implementation Date. The provisions of this section apply to an applicant who is admitted to an educator preparation program

for the Trade and Industrial Workforce Training: Grades 6-12 teacher certificate on or after September 1, 2019.

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

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## CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes amendments to §§249.3, 249.11 - 249.15, 249.17, 249.26, 249.27, and 249.37, concerning disciplinary proceedings, sanctions, and contested cases. The proposed amendments reflect the results of prior discussions on Chapter 249 by the SBEC, as well as multiple stakeholder engagement sessions, by amending the contract abandonment mitigating factors; amending the definition of solicitation to add grooming behaviors; updating the SBEC's mandatory minimum sanctions; updating the SBEC's mailing procedures to allow original petitions and default petitions to be sent via electronic mail; clarifying that all notices sent to comply with Texas Government Code, §2001.054, will be sent via certified or registered mail, removing the requirement that exceptions must be filed or an issue is waived; clarifying the erroneously issued certificate section to explicitly state that the cancellation of a certificate issued as the result of a Texas Education Agency (TEA) information technology (IT) error will not result in a contested case; and amending the SBEC's definition of abuse to mirror the definition of abuse found in Texas Family Code, Chapter 261, as well as additional technical edits.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, establish the sanction requirements and procedures for disciplinary actions against educators.

The SBEC engaged in discussions related to potential amendments during the April, July, and September 2024 SBEC meetings. At the April meeting, the Board had a preliminary discussion on potential amendments to Chapter 249. The recommendations discussed were informed by challenges and areas for improvement identified by staff in the application of Chapter 249 or issues previously raised by the SBEC at prior meetings.

TEA staff brought these potential changes to the Educator Preparation Stakeholder Group on June 21, 2024, and held a stakeholder engagement meeting with the general public on July 9, 2024. TEA staff presented the feedback from these stakeholder engagement meetings to the SBEC at the July meeting. TEA staff presented the preliminary draft to stakeholders at a stakeholder engagement meeting on August 30, 2024, and presented the feedback from this stakeholder engagement

meeting to the SBEC at the September meeting. TEA staff received feedback on the draft text presented at the September meeting, and the proposed amendments incorporate both SBEC input as well as input from stakeholders.

#### *Subchapter A, General Provisions*

##### *§249.3, Definitions.*

The proposed amendment to §249.3(1) would align the definition of *Abuse* with the definition of *Abuse* in Texas Family Code, §261.001(1), as well as the commissioner of education's definition of *Abuse* in 19 TAC §153.1201(b), Definitions.

The proposed amendment to §249.3(29) would update the definition of *Mail* to include first-class United States mail and electronic mail and remove the phrase, "unless otherwise provided by this chapter."

The proposed amendment to §249.3(51) would add new subparagraph (K) to the definition of *Solicitation of a romantic relationship* to add grooming behaviors in the totality of the circumstances, specifically showing a student special attention; giving the student individual gifts, money, or privileges; isolating the student; exposing the student to adult topics or conversation and/or media that is not age appropriate; or meeting behind closed doors with the student without another adult present; as well as removes the words "may" and "prima facie" related to what acts considered in context constitute evidence of solicitation. Subsequent subparagraphs would be relettered.

Technical edits would be made to §249.3(44) to correct a typographical error and to §249.3(52) to update a cross reference for clarity.

#### *Subchapter B, Enforcement Actions and Guidelines*

##### *§249.11, Test Irregularities; Appeal, Sanctions.*

The proposed amendment to §249.11(a) would modify the methods of service for written notice of alleged violations of certification test administration rules or procedures to allow for the notice to be sent via first-class United States mail or electronic notification only.

##### *§249.12, Administrative Denial; Appeal.*

The proposed amendment to §249.12(b) would add persons that are subject to placement on the Registry of Persons Not Eligible for Hire under TEC, §22.092, and conduct that demonstrates that a person violated 19 TAC Chapter 247, Educators' Code of Ethics, as reasons the TEA staff may administratively deny a certificate. Subsequent subparagraphs would be relettered.

##### *§249.13, Cancellation of an Erroneously Issued Certificate.*

Proposed new §249.13(f) would provide that this section does not apply to erroneously issued certificates as the result of a TEA systems error.

##### *§249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.*

Proposed new §249.14(p) would add that before institution of agency proceedings, TEA staff shall send a letter via certified or registered mail to the certificate holder giving them notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law for the retention of the certificate. Subsequent subparagraphs would be relettered.

##### *§249.15, Disciplinary Action by State Board for Educator Certification.*

The proposed amendment to §249.15(a)(5) would add that the SBEC may impose classes and treatment programs that the SBEC deems necessary as a condition or restriction on a certificate.

##### *§249.17, Decision-Making Guidelines.*

The proposed amendment to §249.17(d)(1) would add the requirement that to establish the good cause factor of serious illness or health condition of the educator or close family member of the educator, the educator must provide documentation from a licensed medical provider. It would also add the requirement to provide documentation to establish the good cause factor of relocation to a new city as a result of change in employer of the educator's spouse or partner as a requirement.

The proposed amendment to §249.17(d)(2) would add that a reduction of one month in suspension time be applied for each mitigating factor established.

The proposed amendment to §249.17(e) would add that an educator who is required to complete pretrial diversion for a felony-level offense is subject to sanction.

The proposed amendment to §249.17(g) would add that an educator is subject to a one-year mandatory minimum sanction for intentional violations of the security or confidential integrity of a test required under TEC in a manner described by 19 TAC §101.3031(a)(3) and remove the mandatory minimum for manipulation of test results.

Proposed new §249.17(k) would add a mandatory minimum sanction of a one-year suspension for an educator who is court-ordered to complete a period of deferred adjudication, community supervision, or pretrial diversion for an offense under Texas Election Code, Chapter 255. The subsequent subsection would be relettered.

#### *Subchapter C, Prehearing Matters*

##### *§249.26, Petition.*

The proposed amendment to §249.26(c) would add that TEA staff may serve a petition by electronic mail to the respondent as well as send a copy of the petition to the respondent's attorney if notice of representation has been provided by electronic mail. It would remove the option for service of the petition on the respondent by United States certified mail, return receipt requested.

##### *§249.27, Answer.*

The proposed amendment to §249.27 would allow a respondent to serve an answer on TEA by electronic mail and remove the requirement that a respondent serve an answer by United States certified mail, return receipt requested.

#### *Subchapter E, Post-Hearing Matters*

##### *§249.37, Exceptions and Replies.*

The proposed amendment to §249.37 would remove the requirement that a disagreement with a factual finding or conclusion of law in the proposal for decision be contained in an exception to the proposal otherwise it is waived. Subsequent subparagraphs would be relettered.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has de-

terminated that for the first five years the rules will be in effect there is no additional fiscal impact on local governments

The proposed rule change allows TEA staff to send original petitions and default petitions via electronic mail. Under the current rule, TEA staff is required to send original petitions and default petitions via registered certified mail and U.S. first class mail. TEA staff sent 631 original petitions and default petitions via registered certified mail and U.S. first class mail in Fiscal Year 2024. In at least 50% of those cases, TEA staff sent the petition to an additional address. An average of 947 petitions mailed annually by TEA staff multiplied by the cost of mailing for certified mail and U.S. first class mail at \$9.64 is an annual savings of \$9,129.08 to the state. Additionally, the cost of mailing typically goes up annually so the cost savings will increase year after year. The rule does not have foreseeable implications relating to revenues of the state or to local governments.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would be clarification and transparency in the SBEC's sanctioning procedures. Overall, the proposal will help to ensure efficient and predictable outcomes for educators in SBEC disciplinary proceedings. There is no anticipated cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact.

**ENVIRONMENTAL IMPACT STATEMENT:** The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the February 14, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §249.3

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally

dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and (8), which authorize the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies

to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

*§249.3. Definitions.*

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

(1) Abuse--This term has the meaning assigned by Texas Family Code, §261.001(1). [~~Includes the following acts or omissions:~~

~~[(A) mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;]~~

~~[(B) causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;]~~

~~[(C) physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or]~~

~~[(D) sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.]~~

(2) Administrative denial--A decision or action by the Texas Education Agency staff, acting on behalf of the State Board for Educator Certification, to deny certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), renewal of certification, or reinstatement of a previously suspended certificate based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; evidence of a lack of good moral character; or evidence of improper conduct.

(3) Administrative law judge--A person appointed by the chief judge of the State Office of Administrative Hearings under the Texas Government Code, Chapter 2003.

(4) Answer--The responsive pleading filed in reply to factual and legal issues raised in a petition.

(5) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from the Texas Education Agency staff or the State Board for Educator Certification.

(6) Cancellation--The invalidation of an erroneously issued certificate.

(7) Certificate--The whole or part of any educator credential, license, or permit issued under the Texas Education Code, Chapter 21, Subchapter B. The official certificate is the record of the certificate as maintained on the Texas Education Agency's website.

(8) Certificate holder--A person who holds an educator certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

(9) Chair--The presiding officer of the State Board for Educator Certification, elected pursuant to the Texas Education Code, §21.036, or other person designated by the chair to act in his or her absence or inability to serve.

(10) Chief judge--The chief administrative law judge of the State Office of Administrative Hearings.

(11) Code of Ethics--The Educators' Code of Ethics codified in Chapter 247 of this title (relating to the Educators' Code of Ethics).

(12) Complaint--A written statement submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, the complainant's verifiable contact information, including full name, complete address, and phone number, which provides grounds for sanctions.

(13) Contested case--A proceeding under this chapter in which the legal rights, duties, and privileges related to a party's educator certificate are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter.

(14) Conviction--An adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt.

(15) Deferred adjudication--The resolution of a criminal charge, based on a defendant's plea to the offense of guilty or nolo contendere, which results in the suspension of adjudication of the defendant's guilt and the imposition of conditions such as community supervision or restitution, and, upon successful completion of those conditions, the dismissal of the criminal case. In a contested case under this chapter, the defendant's acceptance of deferred adjudication in a criminal case may be considered as provided by the Texas Occupations Code, §53.021.

(16) Disciplinary proceedings--Any matter arising under this chapter or Chapter 247 of this title (relating to the Educators' Code of Ethics) that results in a final order or finding issued by the Texas Education Agency staff, the State Office of Administrative Hearings, or the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate.

(17) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

(18) Effective date--The date the decision or action taken by the State Board for Educator Certification or the Texas Education Agency staff becomes final under the appropriate legal authority.

(19) Endanger--Exposure of a student or minor to unjustified risk of injury or to injury that jeopardizes the physical health or safety of the student or minor without regard to whether there has been an actual injury to the student or minor.

(20) Examinee--A person who registers to take or who takes any examination required by the State Board for Educator Certification for admission to an educator preparation program or to obtain an educator certificate.

(21) Expired--No longer valid because a specific period or term of validity of a certificate has ended; an expired certificate is not subject to renewal or revalidation and a new certificate must be issued.

(22) Filing--Any written petition, answer, motion, response, other written instrument, or item appropriately filed under this chapter with the Texas Education Agency staff, the State Board for Educator Certification, or the State Office of Administrative Hearings.

(23) Good moral character--The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21), or by the commission of acts involving moral turpitude, but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts.

(24) Inactive--Lacking current effectiveness. An inactive certificate does not currently entitle the certificate holder to work as a professional educator in Texas public schools. An inactive certificate

is distinguished from a certificate that is void or expired by the fact that it can be reactivated by satisfying the condition or conditions that caused it to be placed in inactive status (failure to renew, failure to submit fingerprint information, or payment of fees), subject to any other certification requirements applicable to active certificates.

(25) **Inappropriate relationship**--A violation of Texas Penal Code, §21.12(a); a sexual or romantic relationship with a student or minor; or solicitation of a sexual or romantic relationship with a student or minor.

(26) **Informal conference**--An informal meeting between the Texas Education Agency staff and an educator, applicant, or examinee; such a meeting may be used to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score pursuant to Texas Government Code, §2001.054(c).

(27) **Invalid**--Rendered void; lacking legal or administrative efficacy.

(28) **Law**--The United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions and orders of the State Board for Educator Certification and the commissioner of education.

(29) **Mail**--Certified United States mail, return receipt requested, first-class United States mail, or electronic mail [unless otherwise provided by this chapter].

(30) **Majority**--A majority of the voting members of the State Board for Educator Certification who are present and voting on the issue at the time the vote is recorded.

(31) **Moral turpitude**--Improper conduct, including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(32) **Neglect**--The placing or leaving of a student or minor in a situation where the student or minor would be exposed to a substantial risk of physical or mental harm.

(33) **Party**--Each person named or admitted to participate in a contested case under this chapter.

(34) **Permanent revocation**--Revocation without the opportunity to reapply for a new certificate.

(35) **Person**--Any individual, representative, corporation, or other entity, including the following: an educator, applicant, or examinee; the Texas Education Agency staff; or the State Board for Educator Certification, the State Office of Administrative Hearings, or any other agency or instrumentality of federal, state, or local government.

(36) **Petition**--The written pleading served by the petitioner in a contested case under this chapter.

(37) **Petitioner**--The party seeking relief, requesting a contested case hearing under this chapter, and having the burden of proof by a preponderance of the evidence in any contested case hearing or proceeding under this chapter.

(38) **Physical mistreatment**--Any act of unreasonable or offensive touching that would be offensive to a reasonable person in a similar circumstance. It is an affirmative defense that any unreason-

able or offensive touching was justified under the circumstances, using a reasonable person standard.

(39) **Presiding officer**--The chair or acting chair of the State Board for Educator Certification.

(40) **Proposal for decision**--A recommended decision issued by an administrative law judge in accordance with the Texas Government Code, §2001.062.

(41) **Quorum**--A majority of the 14 members appointed to and serving on the State Board for Educator Certification (SBEC) pursuant to the Texas Education Code, §21.033; eight SBEC members, including both voting and non-voting members, as specified in the SBEC Operating Policies and Procedures.

(42) **Recklessly**--An educator acts recklessly, or is recklessly, with respect to circumstances surrounding his or her conduct or the results of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or that the result will occur.

(43) **Reinstatement**--The restoration of a suspended certificate to valid status by the State Board for Educator Certification.

(44) **Reported criminal history**--Information concerning any formal criminal justice system charges and dispositions. The term includes, without limitation, arrests, detentions, indictments, criminal information [inforcements], convictions, deferred adjudications, and probations in any state or federal jurisdiction.

(45) **Representative**--A person representing an educator, applicant, or examinee in matters arising under this chapter; in a contested case proceeding before the State Office of Administrative Hearings (SOAH), an attorney licensed to practice law in the State of Texas or other person authorized as a party representative under SOAH rules.

(46) **Reprimand**--The State Board for Educator Certification's formal censuring of a certificate holder.

(A) An "inscribed reprimand" is a formal, published censure appearing on the face of the educator's virtual certificate.

(B) A "non-inscribed reprimand" is a formal, unpublished censure that does not appear on the face of the educator's virtual certificate.

(47) **Respondent**--The party who contests factual or legal issues or both raised in a petition; the party filing an answer in response to a petition.

(48) **Restricted**--The condition of an educator certificate that has had limitations or conditions on its use imposed by State Board for Educator Certification order.

(49) **Revocation**--A sanction imposed by the State Board for Educator Certification invalidating an educator's certificate.

(50) **Sanction**--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.

(51) **Solicitation of a romantic relationship**--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, [may] constitute [prima facie]

evidence of the solicitation by an educator of a romantic relationship with a student:

(A) behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:

- (i) the nature of the communications;
- (ii) the timing of the communications;
- (iii) the extent of the communications;
- (iv) whether the communications were made openly

or secretly;

(v) the extent that the educator attempts to conceal the communications;

(vi) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and

(vii) any other evidence tending to show the context of the communications between educator and student;

(B) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;

(C) making sexually demeaning comments to a student;

(D) making comments about a student's potential sexual performance;

(E) requesting details of a student's sexual history;

(F) requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;

(G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

(H) inappropriate hugging, kissing, or excessive touching;

(I) providing the student with drugs or alcohol;

(J) violating written directives from school administrators regarding the educator's behavior toward a student;

(K) grooming behaviors, considered in context and on the totality of circumstances, including, but not limited to:

(i) showing the student special attention;

(ii) giving the student individual gifts, money, or privileges;

(iii) isolating the student;

(iv) exposing the student to adult topics or conversations and/or media that is not age appropriate; or

(v) meeting behind closed doors with the student without another adult present;

(L) [(K)] suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

(M) [(L)] any other acts tending to show that the educator solicited a romantic relationship with a student.

(52) State assessment testing violation--Conduct that violates the security or confidential integrity of any test or assessment required by the Texas Education Code, Chapter 39, Subchapter B, or conduct that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of Part 2 of this title (relating to Assessment). The term does not include benchmark tests or other locally required assessments.

(53) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.

(54) State Board for Educator Certification member(s)--One or more of the members of the State Board for Educator Certification, appointed and qualified under the Texas Education Code, §21.033.

(55) Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.

(56) Surrender--An educator's voluntary relinquishment of a particular certificate in lieu of disciplinary proceedings under this chapter resulting in an order of revocation of the certificate.

(57) Suspension--A sanction imposed by the State Board for Educator Certification (SBEC) temporarily invalidating a particular certificate until reinstated by the SBEC.

(58) Test administration rules or procedures--Rules and procedures governing professional examinations administered by the State Board for Educator Certification through the Texas Education Agency staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

(59) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(60) Unworthy to instruct or to supervise the youth of this state--Absence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and Chapter 247 of this title (relating to Educators' Code of Ethics). Unworthy to instruct serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and for administrative denial under §249.12(b) of this title (relating to Administrative Denial; Appeal). A determination that a person is unworthy to instruct does not require a criminal conviction. It is a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.

(61) Virtual certificate--The official record of a person's certificate status as maintained on the Texas Education Agency's website.

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

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406358

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



## SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

### 19 TAC §§249.11 - 249.15, 249.17

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and

(8), which authorize the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail,



or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

§249.11. *Test Irregularities; Appeal; Sanctions.*

(a) Upon satisfactory evidence that the examinee has violated certification test administration rules or procedures, the State Board for Educator Certification may cancel the examinee's test scores or registration and bar the person from being admitted to future test administrations. The Texas Education Agency (TEA) staff shall provide written notice of this action and the factual and legal reasons for it to the exami-

nee by first-class United States mail [personal service, registered or certified mail,] or electronic notification [email] to the most recent address provided to the TEA or its test contractor by the examinee. The examinee may attempt to show compliance with test administration rules or procedures by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided.

(b) The examinee may appeal and request a SOAH hearing of the administrative cancellation of test scores and/or test admission bar. The appeal of an administrative cancellation shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings).

(c) In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the examinee received or is deemed to have received written notice of the TEA staff's action. Unless otherwise proved by the examinee, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the examinee. The TEA staff may dismiss an appeal not timely filed.

(d) The TEA staff shall send an answer to the petition to the examinee and shall refer the petition and answer to the SOAH for a contested case hearing.

§249.12. *Administrative Denial; Appeal.*

(a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.

(b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:

- (1) the person filed a fraudulent application;
- (2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;
- (3) the person has committed an act that would make them subject to required revocation under the Texas Education Code, §21.058, or placement on the Registry of Persons Not Eligible for Hire under Texas Education Code, §22.092, not due to State Board for Educator Certification (SBEC) action;
- (4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);
- (5) the person has engaged in conduct or committed a crime or an offense that:

(A) demonstrates that the person lacks good moral character;

(B) demonstrates that the person violated the Educators' Code of Ethics under Chapter 247 of this title (relating to Educators' Code of Ethics);

(C) ~~(B)~~ demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or

(D) [(C)] constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or

(6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the SBEC [State Board for Educator Certification] or the TEA staff.

(c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it to the person whose application or request has been administratively denied. The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.

(d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.

(e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

§249.13. *Cancellation of an Erroneously Issued Certificate.*

(a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff shall cancel the certificate. The effective date of cancellation is the date the person's virtual certificate is updated to reflect that the certificate is no longer valid.

(b) Before canceling the certificate, the TEA staff shall notify the person issued the certificate of the reasons for which the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be canceled. Unless otherwise proved by the person, the show cause notice shall be deemed to have been received by the person no later than five calendar days after mailing to the most recent address the person is required to provide pursuant to §230.91 of this title (relating to Procedures in General).

(c) The TEA staff shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.

(d) The TEA staff will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person will not be required to repeat any coursework, training, internship, or other certification requirements that an educator preparation program certifies that the person has completed.

(e) The person whose erroneously issued certificate has been canceled may request a contested case hearing before the State Office of Administrative Hearings (SOAH). For the purposes of notice, time

limits, appeal requirements, and determining the placement of the burden of proof at the SOAH contested case hearing, the person whose certificate has been canceled shall be deemed to have had his or her original application for the erroneously issued certificate administratively denied pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) on the effective date of the cancellation.

(f) This section does not apply to a certificate erroneously issued as the result of a documented TEA systems error.

§249.14. *Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.*

(a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.

(b) Complaints against an educator, applicant, or examinee must be filed in writing.

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or district of innovation, the director of a charter school, regional education service center, or shared services arrangement, or the chief administrative officer of a private school may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven business days of the date the person either receives a report from a principal under subsection (e) of this section or knew of any of the following circumstances, except if the person is a superintendent or director of a public school and has completed an investigation in accordance with Texas Education Code (TEC), §21.006(c-2), resulting in a determination that the educator did not engage in misconduct:

(1) that an applicant for or a holder of a certificate has a reported criminal history, which the superintendent or director obtained information by a means other than the criminal history clearinghouse established under Texas Government Code, §411.0845;

(2) that a certificate holder was terminated from employment and there is evidence that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;

(3) that a certificate holder has submitted a notice of resignation and that there exists evidence that he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and that sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.

(C) A superintendent or director of a school district shall complete an investigation of an educator if there is reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or

(4) any other circumstances requiring a report under the TEC, §21.006.

(e) A person who serves as a principal in a school district, a district of innovation, or a charter school must notify the superintendent or director of the school district, district of innovation, or charter school and may be subject to sanctions for failure to do so no later than seven business days after:

(1) an educator's termination or resignation following an alleged incident of misconduct involving one of the acts described in subsection (d)(2) of this section; or

(2) the principal knew about an educator's reported criminal history.

(f) Pursuant to the TEC, §21.006(b-2), (c), (h), and (i), a report filed under subsections (d) and (e) of this section must include:

(1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator; and

(2) the factual circumstances requiring the report and the subject of the report by providing the following available information:

(A) name and any aliases; certificate number, if any, or social security number;

(B) last known mailing address and home and daytime phone numbers;

(C) all available contact information for any alleged victim or victims;

(D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;

(E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and

(F) involvement by a law enforcement or other agency, including the name of the agency.

(g) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee.

(h) A person who is required to file a report under subsections (d) and (e) of this section but fails to do so timely is subject to sanctions under this chapter.

(i) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.

(j) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:

(1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;

(2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and

(3) submits the following required attachments to the written complaint:

(A) the educator's resignation letter, if any;

(B) the agreement with the educator regarding the effective date of separation from employment, if any;

(C) the educator's contract; and

(D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).

(k) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.

(1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (l) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) state assessment testing violations;

(K) deadly conduct; and

(L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

(2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:

(A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;

(B) contract abandonment; and

(C) code of ethics violations that do not constitute Priority 1 conduct.

(l) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (k)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (m)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (m)(2) of this section.

(m) The following procedures must be followed for placing an investigative notice on the educator's certification records.

(1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.

(2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.

(3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.

(n) An investigative notice is subject to the following time limits.

(1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.

(2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal or administrative matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal or administrative matter includes an audit by a state or federal agency, an arrest, an investigation, related litigation or other enforcement action brought by a state or federal administrative agency, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal or administrative matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with the agency where a related matter is pending to determine whether the related matter has been closed or otherwise resolved.

(3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.

(o) The TEA staff shall remove an investigative notice from an educator's certification records:

(1) when a case's final disposition occurs within the time limits established in subsection (n) of this section; or

(2) when the time limits for an investigative notice have been exceeded, if:

(A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and

(B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.

(p) Before institution of agency proceedings, TEA staff shall send a letter via certified or registered mail to the certificate holder giving them notice of the facts or conduct alleged to warrant the intended

action and an opportunity to show compliance with all requirements of law for the retention of the certificate.

(q) [(p)] Only the TEA staff may file a petition seeking sanctions under §249.15 of this title (relating to Disciplinary Action by State Board for Educator Certification). Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

§249.15. *Disciplinary Action by State Board for Educator Certification.*

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

(1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;

(2) issue an inscribed or non-inscribed reprimand;

(3) suspend a certificate for a set term or issue a probated suspension for a set term;

(4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;

(5) impose any conditions or restrictions, including classes and treatment programs, upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials; or

(6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1) the person has conducted school or education activities in violation of law;

(2) the person is unworthy to instruct or to supervise the youth of this state;

(3) the person has violated a provision of the Educators' Code of Ethics;

(4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;

(5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);

(6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;

(7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);

(8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as de-

scribed in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of Part 2 of this title (relating to Assessment);

(9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) state assessment testing violations;

(K) deadly conduct; or

(L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

(A) offenses involving moral turpitude;

(B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) offenses involving school property or funds;

(E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felony offenses involving driving while intoxicated (DWI);

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;

(13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;

(14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or

(15) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

§249.17. *Decision-Making Guidelines.*

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ),

and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

- (1) the seriousness of the violation;
- (2) whether the misconduct was premeditated or intentional;
- (3) attempted concealment of misconduct;
- (4) prior misconduct and SBEC sanctions;
- (5) the potential danger the conduct poses to the health and welfare of students;
- (6) the effect of the prior conduct upon any victims of the conduct;
- (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
- (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;
- (9) whether the sanction will deter future violations; and
- (10) any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator, as evidenced by documentation from a licensed medical provider;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator as supported by documentation;

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or

(D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

(2) Mitigating factors. The following factors shall be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c). A reduction of one month in suspension time will be given for each factor established. The educator:

(A) gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;

(B) assisted the school district in finding a replacement educator to fill the position;

(C) continued to work until the school district hired a replacement educator;

(D) assisted in training the replacement educator;

(E) showed good faith in communications and negotiations with the school district;

(F) provided lesson plans for classes following the educator's resignation;

(G) changed careers within the field of education:

(i) to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates);

(ii) to a position with a higher level of authority within the principal class of certificate; or

(iii) to a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described in clauses (i) and (ii) of this subparagraph;

(H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

(I) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or

(J) any other relevant circumstances or facts.

(3) Mandatory sanction for contract abandonment.

(A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2)(B)-(J) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.

(B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(ii) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(iii) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default)

or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(C) The factors listed in subsection (c) of this section and in paragraphs (1) and (2) of this subsection may mitigate an educator's sanction so significantly that the SBEC takes no disciplinary action.

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication, ~~or~~ community supervision, or pretrial diversion for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally, as defined in §247.1 of this title (relating to Purpose and Scope; Definitions), ~~manipulates the results or~~ violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, in a manner described by §101.3031(a)(3) of Part 2 of this title (relating to Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments), may not receive a sanction of less than a ~~suspension for~~ one year suspension ~~from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH~~.

(h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

(i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:

(1) engaged in any sexual contact or romantic relationship with a student or minor;

(2) solicited any sexual contact or romantic relationship with a student or minor;

(3) possessed or distributed child pornography;

(4) was registered as a sex offender;

(5) committed criminal homicide;

(6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;

(7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or

(8) committed any offense described in the TEC, §21.058.

(j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:

(1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or

(2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.

(k) Mandatory minimum for electioneering. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication, community supervision, or pretrial diversion for an offense under Texas Election Code, Chapter 255, may not receive a sanction of less than a one-year suspension.

~~(j)~~ Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

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

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406359





## SUBCHAPTER C. PREHEARING MATTERS

### 19 TAC §249.26, §249.27

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and (8), which authorize the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the

SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or

neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

*§249.26. Petition.*

(a) The party seeking relief and requesting a contested case hearing under this chapter shall serve a petition as required under this chapter. The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.

(b) The petition shall contain the following items:

(1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;

(2) a reference to the particular sections of the statutes and rules involved;

(3) a statement of the matters asserted;

(4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;

(5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and

(6) if the petition seeks to impose sanctions against a certificate holder, a notification set forth as follows in at least 12-point boldface type: If you do not file a written answer to this petition with the Texas Education Agency (TEA) staff WITHIN 30 CALENDAR DAYS of being served with this petition, the State Board for Educator Certification may grant the relief requested in this petition, including revocation of your certificate by default. The matters asserted in the petition will be deemed admitted unless your written answer specifically denies each assertion pled and is filed within the prescribed time period. If you file a written answer but then fail to attend a scheduled hearing, the State Board for Educator Certification may grant any relief requested in this petition, up to and including REVOCATION OF YOUR CERTIFICATE.

(c) The petition shall be served on the respondent by electronic mail or [United States certified mail, return receipt requested, and] by regular first-class United States mail<sup>[;]</sup> to the current mailing and email address a certified educator is required to provide pursuant to §230.91 of this title (relating to Procedures in General) and by electronic mail to the respondent's attorney if notice of representation has been provided to TEA staff, or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, Legal Certification Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

*§249.27. Answer.*

(a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing. The respondent shall serve the answer on the petitioner by electronic mail or [United States certified mail, return receipt requested, and] by regular first-class United States mail.

(b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.

(c) The answer shall contain the name, current mailing address, daytime telephone number, email address, and facsimile number, if any, of the respondent and the respondent's authorized representative.

(d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

(e) An answer that does not comply with the requirements of this section and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings) may provide grounds for default judgment in favor of the petitioner, as provided in this chapter.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



## SUBCHAPTER E. POST-HEARING MATTERS

### 19 TAC §249.37

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and (8), which authorize

the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have

agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

*§249.37. Exceptions and Replies.*

(a) A party may file any exceptions to the proposal for decision within 15 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 15 calendar days of the filing of exceptions. These time limits may be

extended by agreement of the parties and the administrative law judge (ALJ). Exceptions and replies shall be:

(1) served upon the other party by mail, hand-delivery, facsimile, any method allowed by the State Office of Administrative Hearings rules, or any electronic transmission agreed to by the parties; and

(2) filed with the ALJ in accordance with 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

~~[(b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.]~~

~~(b)~~ [(e)] Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

(1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

(3) Arguments shall be logical and coherent and citations to authorities shall be complete.

~~(c)~~ [(d)] Exceptions to the proposal for decision may be based on the following:

(1) the ALJ has made an incorrect conclusion of law;

(2) the ALJ has failed to make an essential fact finding;

(3) the ALJ applied the incorrect burden or standard of proof;

(4) the findings of fact do not support the conclusions of law; or

(5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT**

**CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS**

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §341.100, Definitions. TJJD also proposes

new 37 TAC §341.308, Notification to Office of Independent Ombudsman.

#### SUMMARY OF CHANGES

The amended §341.100 will add a definition for *Non-Juvenile Justice Contract Facility*.

The new §341.308 will explain that: 1) the chief administrative officer or designee must notify the Office of Independent Ombudsman via email when a juvenile is placed in a non-juvenile justice contract facility; and 2) the notification must be made no later than 10 days after the juvenile's placement.

The new §341.308 will also explain that: 1) the chief administrative officer or designee must notify the Office of Independent Ombudsman via email when a juvenile who was placed in a non-juvenile justice contract facility has been removed from the facility for any reason; and 2) the notification must be made no later than 10 days after the juvenile's removal.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new and amended sections as proposed. No private real property rights are affected by adoption of the sections.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new and amended sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

## SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

### 37 TAC §341.100

#### STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

#### §341.100. Definitions.

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

(1) **Alternative Referral Plan**--A procedure that deviates from the requirements of **Family Code** [Texas Family Code] §53.01(d) regarding referral of cases to the prosecutor.

(2) **Approved Personal Restraint Technique** ("personal restraint")--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(3) **Approved Mechanical Restraint Devices** ("mechanical restraint")--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The only mechanical restraint devices approved for use are the following:

(A) **Ankle Cuffs**--Metal band designed to be fastened around the ankle to restrain free movement of the legs.

(B) **Handcuffs**--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.

(C) **Plastic Cuffs**--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) **Soft Restraints**--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

(E) **Waist Belt**--A cloth, leather, or metal band designed to be fastened around the waist and used to secure the arms to the sides or front of the body.

(4) **Case Management System**--A computer-based tracking system that provides a systematic method to track and manage juvenile offender caseloads.

(5) **Chief Administrative Officer**--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including the juvenile probation department of a multi-county judicial district.

(6) **Comprehensive Folder Edit**--A report generated in the Caseworker or Juvenile Case Management System (JCMS) application that performs an extensive edit of the case file information. This report

identifies incorrectly entered data and questionable data that impact the accuracy of the reports and programs.

(7) Criminogenic Needs--Issues, risk factors, characteristics, and/or problems that relate to a person's risk of reoffending.

(8) Data Coordinator--A person employed by a juvenile probation department who is designated to serve and function as the primary contact with TJJD on all matters relating to data collection and reporting.

(9) Department--A juvenile probation department.

(10) Draw--To unholster a weapon in preparation for use against a perceived threat.

(11) EDI Specifications--A document developed by TJJD outlining the data fields and file structures that each juvenile probation department is required to follow in submitting the TJJD EDI extract.

(12) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, and blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(13) Field Supervision--Supervision ordered by a juvenile court in accordance with Family Code [Texas Family Code] §54.04(d)(1)(A) where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(14) Formal Referral--An event that occurs only when all three of the following conditions exist:

(A) a juvenile has allegedly committed delinquent conduct, conduct indicating a need for supervision, or a violation of probation;

(B) the juvenile probation department has jurisdiction and venue; and

(C) the office or official designated by the juvenile board has:

(i) made face-to-face contact with the juvenile and the alleged offense has been presented as the reason for this contact; or

(ii) given written or verbal authorization to detain the juvenile.

(15) Initial Disposition--The disposition of probation issued by a juvenile court after a child is:

(A) formally referred to a juvenile probation department for the first time; or

(B) formally referred to a juvenile probation department after any and all previous periods of supervision by the department have ended.

(16) Inter-County Transfer--As described in Family Code [Texas Family Code] §51.072, a transfer of supervision from one juvenile probation department in Texas to another juvenile probation department in Texas for a juvenile who moves or intends to move to another county and intends to remain in that county for at least 60 days.

(17) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant, such as electronic restraint devices, irritants, and impact weapons. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient.

(18) Intern--An individual who performs services for a juvenile justice program or facility through a formal internship program

that is sponsored by a juvenile justice agency or is part of an approved course of study through an accredited college or university.

(19) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(20) Juvenile Board--A governing board created under Chapter 152, [of the Texas] Human Resources Code.

(21) Juvenile Justice Program--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; and

(B) is operated solely or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) juvenile justice alternative education programs;

(ii) non-residential programs that serve juvenile offenders under the jurisdiction of the juvenile court or the juvenile board; and

(iii) juvenile probation departments.

(22) Non-Juvenile Justice Contract Facility--A facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(23) [(22)] Professional--A [a] person who meets the definition of professional in §344.100 of this title.

(24) [(23)] Resident--A juvenile or other individual who has been lawfully admitted into a pre-adjudication secure juvenile detention facility, post-adjudication secure juvenile correctional facility, or a non-secure juvenile correctional facility.

(25) [(24)] Residential Placement--Supervision ordered by a juvenile court in which the child is placed on probation outside the child's home in a foster home or a public or private institution or agency.

(26) [(25)] Restraints--Personal or mechanical restraint.

(27) [(26)] Responsivity Factors--Factors that are not necessarily related to criminal activity but are relevant to the way in which the juvenile reacts to different types of interventions (e.g., learning styles and abilities, self-esteem, motivation for treatment, resistance to change, etc.)

(28) [(27)] SRSXEdit--An audit program developed by TJJD to assist juvenile probation departments not using the Caseworker or JCMS application with verifying their data prior to submission to TJJD.

(29) [(28)] Supervision--The case management of a juvenile by the assigned juvenile probation officer or designee through contacts (e.g., face-to-face, telephone, office, home, or collateral contacts) with the juvenile, the juvenile's family, and/or other persons or entities involved with the juvenile.

(30) [(29)] TCOLE--Texas Commission on Law Enforcement.

(31) [(30)] Title IV-E Approved Facility--A facility licensed and/or approved by the Texas Department of Family and Protective Services for Title IV-E participation.

(32) [(31)] TJJD--Texas Juvenile Justice Department.

(33) [(32)] TJJJ Electronic Data Interchange (EDI) Extract--An automated process to extract and submit modified case records from the department's case management system to TJJJ. The extract must be completed in accordance with this chapter.

(34) [(33)] TJJJ Mental Health Screening Instrument--An instrument selected by TJJJ to assist in identifying juveniles who may have mental health needs.

(35) [(34)] Volunteer--An individual who performs services for the juvenile probation department without compensation from the department who has:

(A) any unsupervised contact with juveniles in a juvenile justice program or facility; or

(B) regular or periodic supervised contact with juveniles in a juvenile justice program or facility.

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

### 37 TAC §341.308

#### STATUTORY AUTHORITY

The new section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

*§341.308. Notification to Office of Independent Ombudsman.*

(a) The chief administrative officer or designee must notify the Office of Independent Ombudsman when a juvenile is placed in a non-juvenile justice contract facility. The notification must be made no later than 10 days after the juvenile's placement and must be made via email to the Office of Independent Ombudsman.

(b) The chief administrative officer or designee must notify the Office of Independent Ombudsman when a juvenile who was placed in a non-juvenile justice contract facility has been removed from the facility for any reason. The notification must be made no later than 10 days after the juvenile's removal and must be made via email to the Office of Independent Ombudsman.

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

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Jana Jones

General Counsel

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## CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POSTADJUDICATION CORRECTIONAL FACILITIES

### SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

#### 37 TAC §343.261

The Texas Juvenile Justice Department (TJJJ) proposes new 37 TAC §343.261, Resident Supervision.

#### SUMMARY OF CHANGES

New §343.261 will require juvenile probation departments to enact policies to prohibit the view through windows used to observe residents from being blocked and to instruct staff of what actions to take if the view through an observation window is blocked.

New §343.261 will also explain that refusing to remove an item obstructing the viewing window is considered a serious threat to safety and/or security.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be increased safety of youth in juvenile facilities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

#### GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJJ.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJJ.

- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

**PUBLIC COMMENTS**

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

**STATUTORY AUTHORITY**

The new section is proposed under §221.002, Human Resources Code, requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§343.261. Resident Supervision.

(a) Facility policy must prohibit the blocking of viewing windows that are used to observe residents. The policy must instruct staff of the actions to take if a viewing window is blocked.

(b) The refusal to remove an item obstructing the viewing window is considered a serious threat to facility safety and/or security.

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

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Jana Jones

General Counsel

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For further information, please call: (512) 490-7130



**CHAPTER 345. JUVENILE JUSTICE PROFESSIONAL CODE OF ETHICS FOR CERTIFIED OFFICERS**

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §345.100, Definitions; §345.200, Policy and Procedure; §345.300, Adherence and Reporting Violations; and §345.310, Code of Ethics.

**SUMMARY OF CHANGES**

The amended §345.100 will: 1) clarify the definitions for *juvenile*, *juvenile justice facility*, and *juvenile justice professional*; and 2) add a definition for *Non-Juvenile Justice Contract Facility*.

The amended §345.200 will clarify that departments, programs, and facilities must adopt and implement policies and procedures

to ensure that all code of ethics violations are reported to the administration of the department, program, or facility and to TJJD.

The amended §345.300 will clarify that juvenile justice professionals must report any unethical behavior or violations of the code of ethics to TJJD and to the administration of the department, program, facility, or non-juvenile justice contract facility where the juvenile justice professional is an employee, volunteer, or contractor.

The amended §345.310 will clarify that: 1) juvenile justice professionals must not engage in conduct constituting abuse, neglect, or exploitation as provided by Chapter 358, Administrative Code, and Chapter 261, Family Code; and 2) juvenile justice professionals must not interfere with or hinder *any investigation* (rather than *any abuse, neglect, or exploitation investigation*).

**FISCAL NOTE**

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

**PUBLIC BENEFITS/COSTS**

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed. No private real property rights are affected by adoption of the sections.

**GOVERNMENT GROWTH IMPACT**

TJJD has determined that, during the first five years the amended sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

**PUBLIC COMMENTS**

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).



SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §345.100

STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§345.100. Definitions.

The following terms, as used in this chapter, have the following meanings unless otherwise expressly defined within the chapter.

(1) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(2) Juvenile Justice Facility ("facility")--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

{(A) A facility, including the facility's premises and all affiliated sites whether contiguous or detached, that:}

{(i) serves juveniles under juvenile court jurisdiction; and}

{(ii) is operated:}

{(i) wholly or partly by or under the authority of the governing board or juvenile board; or}

{(ii) by a private vendor under a contract with the governing board, juvenile board, or governmental unit.}

{(B) The term includes, but is not limited to:}

{(i) public or private juvenile pre-adjudication secure detention facilities, as defined in §344.100 of this title, including short-term detention facilities (i.e., holdovers) as defined in §351.1 of this title;}

{(ii) public or private juvenile post-adjudication secure correctional facilities as defined in §344.100 of this title; and}

{(iii) public or private non-secure correctional facilities as defined in §355.100 of this title.}

(3) Juvenile Justice Professional--A person who is:

(A) certified by TJJD as a juvenile probation officer, community activities officer [youth activities supervisor], or juvenile supervision officer; or

(B) employed by, contracting with, or volunteering with a department, program, or facility or a non-juvenile justice contract facility [a juvenile probation department, juvenile justice program, or a juvenile justice facility as a juvenile probation officer, youth activities supervisor, or juvenile supervision officer].

(4) Juvenile Justice Program ("program")--Has the meaning assigned by §344.100 of this title.

(5) Juvenile Probation Department ("department")--Has the meaning assigned by §344.100 of this title.

(6) Non-Juvenile Justice Contract Facility--A facility in which a juvenile is placed pursuant to a contract with a department,

program, facility, or juvenile board, other than a facility registered with TJJD.

(7) [(6)] TJJD--The Texas Juvenile Justice Department.

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

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406320

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER B. POLICY AND PROCEDURE

37 TAC §345.200

STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§345.200. Policy and Procedure.

Department, programs, and facilities [Juvenile probation departments, juvenile justice programs, and juvenile justice facilities] must adopt and implement written policies and procedures to ensure that all code of ethics violations are reported to:

(1) the administration of the department, program, or facility [juvenile probation department, juvenile justice program, or juvenile justice facility]; and

(2) TJJD.

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



SUBCHAPTER C. CODE OF ETHICS

37 TAC §345.300, §345.310

STATUTORY AUTHORITY

The amended sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to gov-

ern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§345.300. *Adherence and Reporting Violations.*

(a) To ensure the safety, protection, and welfare of the juveniles and families served by the juvenile justice system, juvenile justice professionals must adhere to the code of ethics set forth in this chapter.

(b) Juvenile justice professionals must report ~~[to the appropriate authorities and/or entities]~~ any unethical behavior or violations of the code of ethics to TJJJ and the administration of the department, program, facility, or non-juvenile justice contract facility where the juvenile justice professional is an employee, volunteer, or contractor.

§345.310. *Code of Ethics.*

(a) The people of Texas expect juvenile justice professionals to exhibit honesty and respect for the dignity and individuality of human beings and display a commitment to professional and compassionate service.

(b) ~~In accordance with Chapter 349 of this title [As described by §344.810 and §349.307 of this title], TJJJ may take disciplinary action against a [the] certification of or deny a certification to [of] a juvenile justice professional who is found by TJJJ to have violated the code of ethics.~~

(c) Juvenile justice professionals must adhere to the following code of ethics principles:

(1) Juvenile justice professionals must:

(A) abide by all federal laws, federal guidelines and rules, state laws, and TJJJ administrative rules;

(B) respect the authority and follow the directives of the juvenile court and governing juvenile board;

(C) respect and protect the legal rights of all juveniles and their parents and/or guardians;

(D) serve each child with concern for the child's welfare and with no expectation of personal gain;

(E) respect the significance of all elements of the justice and human services systems and cultivate professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from the effects of juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all information that could contribute to sound decisions affecting a child or public safety;

(H) report without reservation any corrupt or unethical behavior that could affect a juvenile or the integrity of the juvenile justice system;

(I) maintain the integrity and confidentiality of juvenile information, not seek more information than needed to perform their duties, and not reveal information to any person who does not have authorized access to the information for a proper, professional use; and

(J) treat all juveniles and their families with courtesy, consideration, and dignity.

(2) Juvenile justice professionals must not:

(A) use their official position to secure privileges or advantages;

(B) permit personal interest to impair the impartial and objective exercise of professional responsibilities;

(C) accept gifts, favors, or other advantages that could give the appearance of impropriety or impair the impartial and objective exercise of professional responsibilities;

(D) maintain or give the appearance of maintaining an inappropriate relationship with a juvenile, including, but not limited to, bribery or solicitation or acceptance of gifts, favors, or services from juveniles or their families;

(E) discriminate against any employee, juvenile, parent, or guardian on the basis of race, ethnicity, gender, disability, national origin, religion, sexual orientation, political belief, or socioeconomic status;

(F) misuse government property or resources or use personal property or funds belonging to a juvenile;

(G) ~~engage in conduct constituting abuse, neglect, or exploitation as provided by Chapter 358 of this title and Chapter 261, Family Code [be designated as a perpetrator in an abuse, exploitation, and neglect investigation conducted by TJJJ under Chapter 350 of this title and Texas Family Code Chapter 261];~~

(H) ~~interfere with or hinder any [abuse, exploitation, and neglect] investigation, including a criminal investigation conducted by law enforcement or an investigation conducted under Chapter 350 and Chapter 358 of this title or [Texas Family Code] Chapter 261, Family Code;~~

(I) deliver into or remove from the grounds of a juvenile facility, program, or department any item of contraband or possess or control any item of contraband beyond the time period required to immediately report and deliver the item to the proper authority within the facility, program, or department;

(J) use violence or unnecessary force and must use only the amount and type of force reasonably necessary and appropriate when justified to ensure the security of juveniles or of the facility, program, or department; or

(K) falsify or make material omissions to governmental records.

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

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406322

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



## CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJJ) proposes to repeal 37 TAC §§349.100, 349.200, 349.300, 349.305, 349.307, 349.308, 349.310, 349.311, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360,

349.365, 349.370, 349.375, 349.380, 349.385, 349.400, 349.410, 349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570, 349.600, 349.650, 349.700, relating to General Administrative Standards.

#### SUMMARY OF REPEAL

The repeal of §§349.100, Definitions; 349.200, Waiver or Variance; 349.300, Requests for Disciplinary Action; 349.305, Commission Initiated Disciplinary Action; 349.307, Disciplinary Sanctions; 349.308, Disciplinary Guidelines; 349.310, Effect of Request for Disciplinary Action; 349.311, Disciplinary Sanctions; 349.315, Computation of Time; 349.320, Notice and Service; 349.325, Representation; 349.330, Preliminary Notice to Certified Officer in Disciplinary Matters; 349.335, Commencement of Disciplinary Proceedings; 349.340, Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default); 349.345, Discovery; 349.355, Subpoenas; 349.360, Informal Proceedings; 349.365, Agreed Dispositions; 349.370, Formal Disciplinary Proceedings; 349.375, Decision of the Board; 349.380, Judicial Review; 349.385, Mandatory Suspension for Failure to Pay Child Support; 349.400, Complaint Process; 349.410, Administrative Review of Investigation Findings; 349.500, Purpose; 349.510, Definitions; 349.520, Access to Confidential Information; 349.530, Redaction of Records Prior to Release; 349.540, Procedures for Requesting Access to Confidential Information; 349.550, Public Information; 349.560, Videotapes, Audiotapes, and Photographs; 349.570, Charges for Copies of Records; 349.600, Purpose; 349.650, Removal of Members; and 349.700, Access to Data Collected, will allow the content to be revised and republished as new §§349.100, 349.110, 349.120, 349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270, 349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390, 349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460, 349.500, 349.550, and 349.600.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of the repeals.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

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

(2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeals do not impact fees paid to TJJD.

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

(6) The proposed repeals do not expand, limit, or repeal an existing regulation.

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

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

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjtd.texas.gov](mailto:policy.proposals@tjtd.texas.gov).

### SUBCHAPTER A. DEFINITIONS

#### 37 TAC §349.100

##### STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

##### §349.100. *Definitions.*

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

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406331

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



### SUBCHAPTER B. WAIVER

#### 37 TAC §349.200

##### STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

##### §349.200. *Waiver or Variance.*

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

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General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



### SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS

**37 TAC §§349.300, 349.305, 349.307, 349.308, 349.310, 349.311, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360, 349.365, 349.370, 349.375, 349.380, 349.385**

#### STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

- §349.300. *Requests for Disciplinary Action.*
- §349.305. *Commission Initiated Disciplinary Action.*
- §349.307. *Disciplinary Sanctions.*
- §349.308. *Disciplinary Guidelines.*
- §349.310. *Effect of Request for Disciplinary Action.*
- §349.311. *Disciplinary Sanctions.*
- §349.315. *Computation of Time.*
- §349.320. *Notice and Service.*
- §349.325. *Representation.*
- §349.330. *Preliminary Notice to Certified Officer in Disciplinary Matters.*
- §349.335. *Commencement of Disciplinary Proceedings.*
- §349.340. *Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default).*
- §349.345. *Discovery.*
- §349.355. *Subpoenas.*
- §349.360. *Informal Proceedings.*
- §349.365. *Agreed Dispositions.*
- §349.370. *Formal Disciplinary Proceedings.*
- §349.375. *Decision of the Board.*
- §349.380. *Judicial Review.*
- §349.385. *Mandatory Suspension for Failure to Pay Child Support.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



### SUBCHAPTER D. COMPLAINTS AGAINST JUVENILE BOARDS

**37 TAC §349.400, §349.410**

#### STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.400. *Complaint Process.*

§349.410. *Administrative Review of Investigation Findings.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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### SUBCHAPTER E. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS

**37 TAC §§349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570**

#### STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.500. *Purpose.*

§349.510. *Definitions.*

§349.520. *Access to Confidential Information.*

§349.530. *Redaction of Records Prior to Release.*

§349.540. *Procedures for Requesting Access to Confidential Information.*

§349.550. *Public Information.*

§349.560. *Videotapes, Audiotapes, and Photographs.*

§349.570. *Charges for Copies of Records.*

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

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Jana Jones  
General Counsel  
Texas Juvenile Justice Department  
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For further information, please call: (512) 490-7130

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SUBCHAPTER F. ADVISORY COUNCIL ON  
JUVENILE SERVICES

**37 TAC §349.600, §349.650**

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.600. *Purpose.*

§349.650. *Removal of Members.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130

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SUBCHAPTER G. DATA

**37 TAC §349.700**

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.700. *Access to Data Collected.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130

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CHAPTER 349. GENERAL ADMINISTRATIVE  
STANDARDS

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §§349.100, 349.110, 349.120, 349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270, 349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390, 349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460, 349.500, 349.550, and 349.600, relating to General Administrative Standards.

SUMMARY

New §349.100, Definitions, will provide definitions for terms used in the chapter. Key additions and/or revisions will include: 1) removing terms *alleged perpetrator*, *designated perpetrator*, and *sustained perpetrator* and replacing them with the term *suspect*; 2) defining *abuse*, *neglect*, and *exploitation* by reference to 37 TAC Chapter 358; 3) adding definitions of *administrator* and *administrative designee* that are consistent with definitions in Chapter 358; 4) expanding the definition of *certification action* to include ineligibility for certification; 5) expanding the definition of *certified officer* to include a person with a provisional certification; 6) adding a definition of *non-juvenile justice contract facility*; 7) adding a definition of *de novo review*; 8) adding a definition of *juvenile* and expanding it to include juveniles at a non-juvenile justice contract facility; 9) expanding the definition of *juvenile facility* to refer to statutes; 10) replacing terms *juvenile probation officer* and *juvenile supervision officer* with the term *respondent*; and 11) adding a definition of *victim*.

New §349.110, Interpretation, will provide general guidelines for interpreting the chapter. Key additions and/or revisions will include adding: 1) standard interpretation language regarding headings; 2) the term *including*; and 3) calculations of time.

New §349.120, Authorized Delegation, will explain that the executive director may designate in writing another TJJD employee to perform the executive director's duties under this chapter. Key additions and/or revisions will include specifying that the executive director may designate another TJJD employee to perform the executive director's duties under the chapter and that such designation must be in writing.

New §349.200, Waivers and Variances, will provide information on waivers and variances as they apply to the requirements of this chapter. Key additions and/or revisions will include: 1) defining the distinct purposes of waivers and variances; 2) specifying the applicability of waivers and variances and that they may be conditional; 3) specifying how waivers and variances are to be requested and what information must be provided; 4) providing that either a waiver or variance may be granted by the executive director for up to 180 days and that the TJJD Board must approve any time frame longer than 180 days; 5) providing that, if executive director denies a waiver or variance, the requestor may ask the TJJD Board to review the denial; 6) providing that the department or facility requesting the waiver or variance is responsible for appearing at the Board meeting to explain the request and answer questions from the Board; and 7) providing that, when appropriate, TJJD staff will make a recommendation to the Board on whether or not to grant a waiver or variance.

New §349.210, Code of Ethics Violations, will provide guidelines related to the reporting of, notifications related to, and timelines

regarding code of ethics violations. Key additions and/or revisions will include: 1) providing that every person with a TJJJ certification is obligated to report to TJJJ when the person has reason to believe another certified officer has violated the Code of Ethics; 2) clarifying that a failure to report a code of ethics violation may result in disciplinary action; and 3) requiring that confirmed code of ethics violations must be reported to TJJJ Office of General Counsel except when conduct is subject of TJJJ investigation.

New §349.220, Complaints, will provide information about complaints regarding juvenile boards, certified officers, or employees of departments, facilities, or non-juvenile justice contract facilities. Key additions and/or revisions will include addressed how various complaints received by TJJJ are processed.

New §349.230, Violation by Juvenile Board, will provide instruction for times when TJJJ determines a juvenile board, including the department or facility under the juvenile board's jurisdiction, has violated rules, standards, or the terms of the State Financial Assistance Contract. Key additions and/or revisions will include adding the possibility of extending the deadline for compliance when there is a violation of standards or the state financial assistance contract.

New §349.240, Mandatory Suspension for Failure to Pay Child Support, will explain the process for suspending the certification of a certified officer when that officer fails to pay child support.

New §349.250, Administrative Review of Investigation Findings, will explain the process for an administrative review when a person is confirmed by TJJJ to have engaged in conduct meeting the definition of abuse neglect, or exploitation in an investigation conducted under Chapter 358 of this title. Key additions and/or revisions will include: 1) updating language due to removal of *designated perpetrator* term; 2) changing the timeline to request an administrative review from 20 days to 10 days; 3) allowing administrators to request administrative review on behalf of staff; 4) specifying that the attorney who does the administrative review is not the same attorney who advised or otherwise worked on the investigation; 5) specifying that the administrative review is a de novo review; 6) providing that an attorney may interview witnesses and gather additional evidence at the attorney's discretion and may request the assistance of TJJJ's Office of the Inspector General in doing so; 7) specifying that an attorney prepares a written report explaining the decision to confirm or revise the original findings; 8) providing a requirement to notify the suspect or administrative designee and provide estimated completion date if there is a need to extend 45-day completion date; and 9) specifying that administrative review does not apply to investigations conducted of TJJJ employees.

New §349.260, Representation, will explain that the subject of an investigation may elect to appear with legal representation during the administrative review process.

New §349.270, Temporary Suspension Order, will explain that TJJJ may temporarily suspend the certification of a certified office during the administrative review process.

New §349.300, Disciplinary Action, will explain that TJJJ may impose disciplinary action on a certified officer who has committed a code of ethics violation or engaged in abuse, neglect, or exploitation involving a juvenile.

New §349.302, Ineligibility for Certification, will outline TJJJ's authority to make a person ineligible for certification under certain circumstances. Key additions and/or revisions will include

adding the statutory authority to make a person ineligible for certification.

New §349.304, Guidelines, will provide parameters for those seeking, proposing, or making a decision under the standards given in this chapter.

New §349.310, Mandatory Revocation, will explain the circumstances under which a person's certification will be revoked or denied. Key additions and/or revisions will include: 1) clarifying that TJJJ staff shall seek revocation for certain conduct; 2) adding engaging in sexually-related or otherwise inappropriate relationship with a juvenile, whether or not sexual conduct occurred; and 3) adding the statutory provisions from Chapter 53 Occupations Code that mandate revocation.

New §349.320, Notice and Service, will explain the process by which a person is informed of a pending certification action against that person. Key additions and/or revisions will include: 1) adding a mechanism to provide service at an address other than the one on file with TJJJ, in the event the person has moved; 2) adding a provision that allows for notice by publication or any other legal means if necessary; and 3) updating the language that must be included in the notice to provide general content instead of specific terminology.

New §349.330, Answer, will explain the process by which a person may respond to a certification action.

New §349.340, Default, will explain the consequences for a person failing to respond to a certification action.

New §349.350, Agreed Orders, will explain the circumstances surrounding the resolution of certification matters through voluntary settlement processes.

New §349.360, State Office of Administrative Hearings, will explain, that under certain conditions, the matter of a certification action will be schedule for hearing at the State Office of Administrative Hearings. Key additions and/or revisions will include: 1) deleting process requirements for SOAH; and 2) referring to statutes and administrative rules that control.

New §349.370, Decision of the Board, will provide information concerning the various statutes related to TJJJ Board decisions and orders. Key additions and/or revisions will include: 1) deleting specific requirements for Board decisions; and 2) referring to statutes that control those decisions.

New §349.380, Representation, will explain that the respondent to a certification action may elect to appear with legal representation during the certification action process. Key additions and/or revisions will include clarifying that TJJJ is represented by an attorney from the agency's Office of General Counsel.

New §349.390, Costs, will explain that a party who appeals a final decision in a contested case is responsible for the costs related to preparing a copy of the agency proceeding and for any requested transcription.

New §349.400, Purpose, will explain that the purpose of subchapter D of this chapter is to clarify to whom and under what circumstances TJJJ may disclose confidential information related to investigations of abuse, neglect, and exploitation.

New §349.410, Definitions, will provide definitions for terms used in subchapter D.

New §349.420, Confidentiality of and Access to Information, will explain the extent to which records related to abuse, neglect, and exploitation investigations are confidential and accessible. Key

additions and/or revisions will include adding the ability to share information regarding investigation pursuant to a memorandum of understanding adopted under §810.009, Human Resources Code, related to the multiagency search engine for reportable conduct.

New §349.430, Redaction of Records Prior to Release, will explain the extent which TJJD will redact investigation records before their release.

New §349.440, Procedures for Requesting Access to Confidential Information, will provide information pertaining to the extent to which confidential information may be requested and provided.

New §349.450, Public Information, will explain that TJJD will compile statewide statistics on the incidence of abuse, neglect, and exploitation and provide those statistics to the public upon written request.

New §349.460, Video, Audio Recordings, and Photographs, will explain who has access to video, audio recordings, and photographs that are part of the records of investigations.

New §349.500, Purpose, will explain the purpose of the Advisory Council on Juvenile Services and describe various aspects of the council.

New §349.550, Removal of Members, will explain the grounds for removing a member of the Advisory Council.

New §349.600, Access to Data Collected, will explain that, for the purposes of planning and research, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any other participating departments have submitted through the case management system.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of the sections.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

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

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

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

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

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

### SUBCHAPTER A. DEFINITIONS AND GENERAL REQUIREMENTS

#### 37 TAC §§349.100, 349.110, 349.120

#### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

#### §349.100. Definitions.

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

(1) Abuse, Neglect, and Exploitation--These terms have the definitions provided in Chapter 358 of this title.

(2) Administrator--Regardless of title, the chief administrative officer of a juvenile probation department, juvenile justice program, juvenile justice facility, or non-juvenile justice contract facility.

(3) Administrative Designee--The role assigned to the administrator when a preponderance of evidence determines that the proximate cause of the abuse, neglect, or exploitation was based on policies and procedures under the direct control of the administrator.

(4) Attorney of Record--A person licensed to practice law in Texas who has provided TJJD with written notice of representation.

(5) Authorized Representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated by a party to represent the party.

(6) Board--The Texas Juvenile Justice Board, the governing board of TJJD.

(7) Certification Action--An action taken by TJJD with regard to a certification as a juvenile probation, supervision, or community activities officer, to include disciplinary action, designation of ineligibility, and temporary suspension.

(8) Certified Officer--An individual who holds a certification as a juvenile probation, supervision, or community activities officer from TJJD, including a provisional certification.

(9) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

(10) Code of Ethics--The Certified Officer Code of Ethics contained in Chapter 345 of this title.

(11) De Novo Review--A review that decides an issue without deference to a conclusion or assumption made by a prior review, finding, or holding; a review that decides the issue as though the decision is being made for the first time.

(12) Department--A juvenile probation department.

(13) Executive Director--The executive director of TJJD.

(14) Facility Administrator--An individual designated by the chief administrative officer or governing board of a juvenile justice facility as the on-site program director or superintendent of a secure facility.

(15) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, housed in a non-juvenile justice contract facility pursuant to an order of the juvenile court, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(16) Juvenile Justice Facility ("facility")--A facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

(17) Juvenile Justice Program ("program")--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; or

(B) is operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board. The term includes:

(i) a juvenile justice alternative education program;

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and

(iii) a juvenile probation department.

(18) Non-Juvenile Justice Contract Facility--A facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(19) Respondent--A person who is the subject of a certification action under this chapter.

(20) SOAH--State Office of Administrative Hearings.

(21) Subject--A person alleged or found to be responsible for the abuse, neglect, or exploitation of a juvenile through the person's actions or failure to act.

(22) TJJD--The Texas Juvenile Justice Department.

(23) Victim--A juvenile who is alleged or found to be a victim of abuse, neglect, or exploitation.

§349.110. Interpretation.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. Unless the context clearly indicates otherwise, the words "include," "includes," and "including," when following a general statement or term, are to be understood as introducing a non-exhaustive list.

(c) Time. Any period of days set forth in this chapter is computed as set forth in Section 311.014, Government Code. Unless otherwise specified, a period of "days" means "calendar days." When this chapter requires or allows an act by any party other than TJJD to be done at or within a specified time period, the executive director or Board may, for good cause shown, order the period extended or permit the act to be done after the expiration of the specified period.

§349.120. Authorized Delegation.

(a) The executive director may designate another TJJD employee to perform the executive director's duties under this chapter.

(b) The designation must be in writing.

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

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406338

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

**37 TAC §§349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270**

### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.200. Waivers and Variances.

(a) Purpose.

(1) The purpose of a waiver is to excuse a department or facility from the requirement to comply with a particular TJJD standard for a defined period of time when compliance with the standard is not possible due to an event outside of the department's or facility's control.

(2) The purpose of a variance is to provide a mechanism for a department or facility to comply with the intent of a TJJD standard in a different manner than is set out in the standard when compliance with the standard is not possible.

(b) Applicability.

(1) A waiver or variance may be granted for any standard, following this process, unless:

(A) another administrative rule prohibits or provides a different means for a waiver or variance; or

(B) the standard is required by state or federal law and the corresponding law does not expressly permit a waiver or variance.



(2) A waiver or variance may be conditioned on continued compliance with certain terms, as determined by TJJD or the Board, as applicable.

(c) Request.

(1) The juvenile board, chief administrative officer, or facility administrator may submit a request for waiver or variance to TJJD. If the chief administrator or facility administrator submits the request, approval from the juvenile board chair or designee must be included.

(2) A request for a waiver must be submitted on a form provided by TJJD, must state the length of time for which the waiver is requested, and must explain:

(A) why compliance with the standard(s) cannot be achieved;

(B) what undue hardship would be experienced by the department or facility if the waiver is not granted;

(C) what impact the waiver would have on compliance with other standards;

(D) how the health and safety of juveniles will be maintained during the duration of the waiver; and

(E) how issuing the waiver would not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(3) A request for a variance must be submitted on a form provided by TJJD, must state the length of time for which the variance is requested, and must explain:

(A) why compliance with the standard(s) cannot be achieved;

(B) what undue hardship would be experienced by the department or facility if the variance is not granted;

(C) what impact the variance would have on compliance with other standards;

(D) how substantial compliance with the intent and purpose of the standard for which a variance is requested would be achieved through alternative methods or means;

(E) how the health and safety of juveniles will be maintained if the variance is granted; and

(F) how issuing the variance would not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(d) Incomplete Requests.

(1) At the sole discretion of TJJD, any request for waiver or variance that does not include all required information will be deemed incomplete and returned to the requestor for completion.

(2) No timelines for response begin until the request is complete. An incomplete request will not be presented to the executive director or the Board.

(3) TJJD will inform the requestor regarding which parts of the request are incomplete and provide a minimum of 20 days for the requestor to complete the request. If the request is not completed by the date specified by TJJD, the request will be deemed withdrawn.

(4) TJJD will maintain records of incomplete and withdrawn requests.

(e) Executive Director Authority to Grant a Waiver or Variance.

(1) The executive director may grant a waiver for a period of up to 180 days, but only if the executive director makes the following affirmative findings:

(A) circumstances outside of the department's or facility's control make it impossible to comply with the standard without undue hardship on the requesting department or facility;

(B) the health and safety of juveniles will be maintained if the waiver is granted; and

(C) the waiver will not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(2) The executive director may grant a variance for a period of up to 180 days, but only if the executive director makes the following affirmative findings:

(A) the standard cannot be complied with without undue hardship on the requesting department or facility;

(B) the requesting department or facility will comply with the intent and purpose through alternative methods;

(C) the health and safety of juveniles will be maintained if the variance is granted; and

(D) the variance will not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(f) Process.

(1) The executive director will respond to a completed request for waiver or variance within 30 days. If unable to do so, TJJD will inform the requestor of the reasons for the delay.

(2) If the request for waiver or variance indicates that it is needed for more than 180 days and the executive director grants the request for any period up to 180 days, the requested waiver or variance will also be presented to the Board for review in accordance with subsection (g) of this section.

(3) If the request for waiver or variance, or extension thereof, is denied, the juvenile board, chief administrative officer, or facility administrator may request a review by the Board, in accordance with subsection (g) of this section.

(g) Board Review of Request for Waiver or Variance.

(1) Except as provided by paragraph (7) of this subsection, only the Board may grant a waiver or variance for a period in excess of 180 days. When appropriate, the Board may grant a permanent variance, with or without conditions. No permanent waivers will be granted.

(2) If the executive director has granted a waiver or variance for which the request indicated it was needed for more than 180 days, the request will be presented to the Board for review at the next Board meeting where waivers and variances will be considered, provided there is adequate time to place the item on the agenda.

(3) If the executive director denies a request for waiver or variance, the juvenile board, chief administrative officer, or facility administrator may request a review on a form provided by TJJD. If the chief administrative officer or facility administrator submits the request for review, approval from the juvenile board chair or designee must be included. If the approval is from the designee, that designation must be in writing and included with the request for review. The review will occur at the next Board meeting where waivers or variances will be

considered, provided there is adequate time to place the item on the agenda.

(4) The department or facility requesting the waiver or variance is responsible for appearing at the Board meeting to explain the request and answer any questions from the Board.

(5) When appropriate, TJJD staff will make a recommendation to the Board regarding whether or not to grant the waiver or variance.

(6) The Board may grant a waiver or variance only if it makes an affirmative finding that the criteria in subsection (c) exist.

(7) If the executive director grants a waiver or variance that will expire prior to the Board meeting at which the waiver or variance will be considered, the executive director may extend the existing waiver or variance until the Board meeting.

#### §349.210. Code of Ethics Violations.

(a) Duty to Report. Every person with a certification from TJJD is obligated to report to TJJD when the person has reason to believe that another certified officer has engaged in a violation of the Code of Ethics. Failure to report may result in disciplinary action against the certification.

(b) Notification to TJJD. The chief administrative officer, facility administrator, or juvenile board shall notify TJJD's Office of General Counsel when a Code of Ethics violation has been committed by a certified officer, except when the conduct is the subject of a TJJD investigation into an allegation of abuse, neglect, or exploitation.

(c) Timelines. If the investigation is conducted pursuant to a request by TJJD, the investigation must be provided to TJJD in accordance with the timelines in Section 349.220 of this chapter. Otherwise, the chief administrative officer, facility administrator, or juvenile board shall provide TJJD with a copy of the internal investigation into the Code of Ethics violation no later than 10 days after the investigation is completed. The chief administrative officer or facility administrator must also provide a copy of the internal investigation to the juvenile board.

#### §349.220. Complaints.

(a) When TJJD receives a complaint about a juvenile board, certified officer, or employee of a department, facility, or non-juvenile justice contract facility, TJJD staff shall review the circumstances surrounding the complaint to determine the most appropriate course of action.

(b) If the complaint involves an allegation of abuse, neglect, or exploitation of a juvenile, the complaint will be addressed in accordance with Chapter 358 of this title.

(c) Except as provided by subsection (d) of this section, if the complaint involves an allegation of conduct that, if true, would constitute a violation of the Code of Ethics, the complaint will be referred to the chief administrative officer or facility administrator, as appropriate, who must ensure that an investigation is completed and a report of the investigation provided to TJJD within 90 days of the referral.

(d) If the complaint involves conduct of the chief administrative officer that, if true, would constitute a violation of the Code of Ethics, the complaint will be referred to the juvenile board chair, who must ensure that an investigation is completed and a report of the investigation provided to TJJD within 90 days of the referral.

(e) If the complaint is about juvenile services within the discretion of the juvenile board and not otherwise addressed by this section, TJJD will forward the complaint to the juvenile board chair and

chief administrative officer or facility administrator, as appropriate. The complainant will be notified in writing of this referral.

(f) If the complaint involves an allegation that a juvenile board has violated TJJD rules or standards or the terms of a grant or contract with TJJD, TJJD staff shall investigate the matter and take appropriate action depending on the outcome of the investigation.

(g) If the complaint involves an individual with a license or certification from an entity other than TJJD, the complaint will be forwarded to the licensing entity. If TJJD conducts an investigation related to the complaint, the results of the investigation will be provided to the licensing entity.

#### §349.230. Violation by Juvenile Board.

(a) If TJJD determines the juvenile board, including the department or facility under the juvenile board's jurisdiction, has violated TJJD rules or standards or the terms of the State Financial Assistance Contract, TJJD shall notify the juvenile board in writing of the violation.

(b) Upon written notice of the violation, the juvenile board shall be given 90 days to achieve compliance or to propose a plan to achieve compliance that is acceptable to TJJD. TJJD may agree to extend this timeline.

(c) If TJJD and the juvenile board cannot reach an agreement, TJJD shall give the juvenile board written notice of its intent to refuse, reduce, or suspend state aid under §223.005, Human Resources Code. Upon receipt of the above notice, the juvenile board shall have 15 days to:

(1) provide written notice to the executive director of the juvenile board's compliance;

(2) propose in writing an alternate solution; or

(3) provide a written appeal of TJJD's action(s) to the executive director.

(d) The juvenile board's appeal must state specifically any difference of opinion with the TJJD staff concerning the facts in dispute and the solution necessary under the standards or rules of TJJD. The appeal shall state whether the juvenile board requests a hearing before the Board.

(e) TJJD will set the appeal on the agenda for its next regularly scheduled meeting, provided there is sufficient time to place the item on the agenda. The juvenile board and TJJD staff may appear and make oral presentations concerning the appeal.

(f) The complainant shall be notified in writing upon receipt of the complaint and upon resolution.

#### §349.240. Mandatory Suspension for Failure to Pay Child Support.

(a) Suspension. Upon receipt of an order suspending certification for failure to pay child support issued under §232.008 or §232.009, Family Code, TJJD shall suspend the certified officer's certification.

(b) Notice of Suspension.

(1) TJJD shall notify the individual subject to a suspension order received under subsection (a) of this section that the agency has formally suspended the individual's certification.

(2) The notice shall also instruct that the individual may not perform the duties of a certified officer while the suspension order is in effect.

(3) TJJD shall also notify the chief administrative officer or facility administrator and the juvenile board of the employing department, facility, or program of the suspension.

(c) Length of Suspension. A certification suspension under this section shall remain in effect until TJJD receives an order issued under §232.013, Family Code, that either vacates or stays the suspension.

(d) Employment. An individual subject to a suspension order issued under subsection (a) of this section may not be employed in a position requiring certification, granted certification, or have the certification renewed while the suspension order remains in effect.

(e) Appeal. An order under this section is not subject to appeal.

(f) Waiver or Variance. This provision is not subject to a waiver or variance.

§349.250. Administrative Review of Investigation Findings.

(a) Any person confirmed by TJJD to have engaged in conduct meeting the definition of abuse, neglect, or exploitation in an investigation conducted under Chapter 358 of this title, including a person named as an administrative designee as a result of an investigation, may request an administrative review of the investigation findings. An administrator may make the request on behalf of the individual.

(b) The request must be made in writing no later than the 10th day after receiving TJJD's written notice of the investigation findings.

(c) If civil or criminal proceedings related to an allegation that TJJD has investigated are pending when the administrative review is requested, or if such proceedings are initiated before TJJD begins the review, TJJD may postpone the review until the proceedings are completed.

(d) If, as part of the administrative review, TJJD chooses to interview a subject or administrative designee who does not speak English or is hearing impaired, TJJD will provide a certified translator or interpreter unless the subject or administrative designee chooses to provide one, in which case the subject or administrative designee is responsible for all translation or interpretation costs incurred in connection with the review.

(e) The administrative review is conducted by an attorney in the TJJD Office of General Counsel. The attorney may not have advised or otherwise worked on the investigation that is the subject of the administrative review.

(1) The administrative review is a de novo review. The purpose of the review is to determine if there is a preponderance of evidence to establish that the subject or administrative designee engaged in conduct meeting the definition of abuse, neglect, or exploitation, as set out in Chapter 358 of this title.

(2) The attorney may interview witnesses and gather additional evidence at the attorney's discretion. The attorney may request the assistance of the TJJD Office of Inspector General in doing so.

(3) The attorney confirms or revises TJJD's original investigation findings based on TJJD's administrative rules and policies and prepares a written report explaining the decision.

(4) Within 45 days after receiving the request for review, TJJD notifies the subject or administrative designee of the outcome of the review. If necessary, the time period may be extended. If there is an extension, TJJD will notify the subject or administrative designee and provide an estimated completion date.

(f) If the administrative review results in changes to the original findings, TJJD will:

(1) enter the revised findings into the investigation record; and

(2) notify each person who was notified of the original findings that the findings have been revised.

(g) This section does not apply to an investigation conducted under Section 380.9333 of this title.

§349.260. Representation.

(a) A subject or administrative designee may choose to appear with or without an attorney or other authorized representative throughout the administrative review process. The subject or administrative designee is responsible for the costs of representation.

(b) A party's attorney of record shall remain the attorney of record unless the attorney submits a formal request to withdraw to the TJJD attorney involved in the matter except that, if SOAH has acquired jurisdiction, the attorney must comply with SOAH's rules to withdraw.

§349.270. Temporary Suspension Order.

(a) TJJD may issue an order temporarily suspending the certification, including a provisional certification, of a certified officer or temporarily making a former TJJD employee ineligible for certification in accordance with Sections 222.053 and 222.054, Human Resources Code.

(b) Section 2001.054, Government Code, applies to a suspension under this provision.

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

Filed with the Office of the Secretary of State on December 28, 2024.

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Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



## SUBCHAPTER C. CERTIFICATION ACTIONS AND HEARINGS

**37 TAC §§349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390**

### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.300. Disciplinary Action.

(a) TJJD may impose disciplinary action when a certified officer has committed a violation of the Code of Ethics or has engaged in conduct that meets the definition of abuse, neglect, or exploitation involving a juvenile in a department, program, facility, or non-juvenile justice contract facility.

(b) TJJD may impose any of the following disciplinary actions, including a combination of disciplinary actions:

- (1) written reprimand;
- (2) revocation of certification;
- (3) suspension of certification; or
- (4) probated suspension of certification.

(c) A certified officer is entitled to a hearing before SOAH if revocation, suspension, or probated suspension of the certification is the disciplinary action sought.

(d) A majority vote of the Board is required to impose revocation, suspension, or probated suspension as disciplinary action on the certification.

(e) Subject to Board approval, a certified officer may voluntarily surrender the certification in lieu of the imposition of disciplinary action. The acceptance may include a condition that the person is ineligible for future certification.

§349.302. Ineligibility for Certification.

(a) TJJD may make a person who is a former or current employee, volunteer, or contractor with TJJD ineligible for certification if the person engaged in conduct meeting the definition of abuse, neglect, or exploitation or that is a violation of the Code of Ethics in TJJD's personnel policy (PRS.02.03).

(b) TJJD may make a person who is a former or current employee, volunteer, or contractor with a department, program, facility, or non-juvenile justice contract facility ineligible for certification if the person engaged in conduct meeting the definition of abuse, neglect, or exploitation or that is a violation of the Code of the Ethics in Chapter 345 of this title.

(c) Except as provided by Section 349.270 of this chapter, an individual is entitled to a hearing before SOAH before the person may be deemed ineligible for certification.

(d) A majority vote of the Board is required to make a person ineligible for certification.

§349.304. Guidelines.

(a) The purpose of these guidelines is to:

(1) provide a framework for analysis by staff members, administrative law judges, and the Board in making decisions regarding certification and disciplinary matters;

(2) promote consistency in the exercise of sound discretion in certification and disciplinary matters; and

(3) provide guidance in the resolution of potentially contested matters.

(b) The following factors may be considered in seeking, proposing, or making a decision under this chapter:

- (1) the seriousness of the violation, which may include:
  - (A) whether the conduct was in violation of a law;
  - (B) the nature and extent of the harm caused; and/or
  - (C) the frequency of and time period covered by the violation(s);

- (2) the nature of the violation, which may include:
  - (A) the relationship between the respondent and the person harmed;
  - (B) the vulnerability of the person harmed;
  - (C) the degree to which the actions showed lack of good judgment; and/or

(D) the culpability of the respondent, such as whether the violation:

- (i) was intentional or premeditated;
- (ii) was due to blatant disregard or gross neglect;
- (iii) resulted from simple error or negligence; and/or
- (iv) evidences lack of integrity, trustworthiness, or honesty;

(3) the degree of personal accountability taken by the respondent, which may include:

- (A) admission of wrongdoing and acceptance of responsibility;
- (B) showing appropriate remorse or concern;
- (C) making efforts to ameliorate the harm or make restitution;
- (D) cooperation with an investigation or request for information; and
- (E) attempts to deny or conceal the misconduct or falsify documents; and

(4) any other relevant factors, which may include:

- (A) the respondent's record of training, length of service, position, job responsibilities, and performance history;
- (B) the presence or absence of prior or subsequent violations;
- (C) any other relevant circumstances, including aggravating or mitigating factors, such as environmental factors that may have contributed to the respondent's actions;
- (D) disciplinary action taken in similar incidents; and
- (E) disciplinary action taken by the employer and the employer's recommendation to TJJD regarding certification action.

§349.310. Mandatory Revocation.

(a) TJJD staff shall seek to revoke or to deny the certification of any person who:

- (1) engaged in or solicited any sexual conduct with a juvenile;
- (2) engaged in a sexually related or otherwise inappropriate relationship with a juvenile, whether or not sexual conduct occurred;
- (3) possessed or distributed child pornography; or
- (4) was convicted of or placed on deferred adjudication for any offense requiring revocation under Chapter 53, Occupations Code.

(b) Subsection (a) of this section does not limit the Board's authority to revoke or deny certification in accordance with this chapter.

§349.320. Notice and Service.

(a) Notice and service in a contested case must comply with §2001.052, Government Code, and any relevant administrative rules adopted by SOAH.

(b) Preliminary notice of a certification action must be in writing and personally delivered to the respondent or sent via certified mail, return receipt requested, and regular mail to the respondent at the most recent address on file with TJJD.

(c) A document sent by regular or certified mail is presumed received no later than three days after mailing. Service is presumed effected if the wrapper containing the document is not returned to TJJD.

(d) If notice is not effected at the address on record with TJJD, TJJD may use any reasonable resources to locate an accurate address and may effectuate service there, following this section.

(e) Service may be made by publication or any other alternate legal means, if necessary.

(f) If TJJD seeks to take any certification action, other than written reprimand for a certified officer, TJJD shall provide the respondent with written notice that includes:

(1) the name of the respondent;  
(2) the certification number if the respondent is a certified officer;

(3) a short, plain statement of the facts or conduct alleged to warrant certification action;

(4) a statement of the legal authority and jurisdiction under which the action is to be taken;

(5) a reference to the particular sections of statute, administrative rule, or policy that the respondent officer is alleged to have violated;

(6) a description of the certification action TJJD is recommending be imposed; and

(7) an invitation for the respondent to show compliance with all requirements of the law for retention of the certification or eligibility for the certification.

(g) The notice shall also include language in 12-point, bold-face type that provides the respondent with notice that:

(1) failure to file a written answer to this notification within 20 days may result in the Texas Juvenile Justice Board taking a default order;

(2) the written answer must include an admission or denial of each and every allegation included in the petition and must include any other matter, whether of law or fact, upon which respondent intends to rely for defense;

(3) a failure to admit or deny each allegation will result in the allegation being deemed true and may result in a default order;

(4) a default order means the Board will find the allegations in the attached petition to be true and will grant the action requested in the attached petition.

§349.330. Answer.

(a) The respondent in a certification action matter has until 20 days after the service of the notice in §349.320 of this chapter to file a written response to TJJD and send it to the address provided in the notice.

(b) The answer must admit or deny each of the allegations in the notice. If the respondent intends to deny only a part of an allegation, the certified officer must specify the portion that is not being challenged and deny only the remainder. Failure to deny an allegation will result in the allegation being deemed true.

(c) If the answer fails to admit or deny each of the allegations and instead only challenges the recommended action, the allegations will be deemed true and the action pursued. The answer must also include any other matter, whether of law or fact, upon which the respondent intends to rely for defense.

§349.340. Default.

(a) If the respondent fails to file a response to the notice or the response fails to comply with the requirements in §349.330, the matter will be considered as a default case.

(b) In a case of default, the respondent will be deemed to have:

(1) admitted the factual allegations in the notice that respondent did not deny;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the matter; and

(4) waived objection to the certification action recommended in the notice.

(c) The executive director may recommend that the Board enter a default order based upon the allegations set out in the notice provided in §349.320 of this chapter and impose the certification action recommended in that notice.

(d) Upon consideration of the case, the Board may:

(1) enter a default order and impose the recommended certification action;

(2) enter a default order and impose a certification action that is less than what was recommended;

(3) refuse to enter a default order and instruct staff to reissue the notice with different allegations and/or different recommended certification action;

(4) instruct staff to dismiss the matter and close the file with no certification action; or

(5) order the matter set for hearing before SOAH.

(e) A motion for rehearing that requests the Board vacate its default order under this section shall be granted if the respondent proves by a preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference but instead was due to accident or mistake, provided that the respondent has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will not cause delay or otherwise create a hardship for the Board.

§349.350. Agreed Orders.

(a) The Board's policy is to encourage the resolution of certification matters through voluntary settlement processes. Any matter within the Board's jurisdiction may be resolved informally by agreed order after the respondent has provided a response in accordance with §349.330.

(b) Communication during the settlement process may be conducted in any manner, including in-person, electronic, telephonic, video, or written communication.

(c) Participation by the respondent and TJJD in any settlement process is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case.

(d) An agreed order may contain such terms as the executive director deems reasonable and necessary.

(e) An agreed order may be made at any time, even after formal proceedings have been initiated.

(f) An agreed order is not final until the Board approves it in a Board meeting in compliance with Texas Open Meeting laws.

(g) If the respondent fails to comply with the terms of an agreed order, formal disciplinary proceedings may be initiated or resumed.

§349.360. State Office of Administrative Hearings.

(a) If a respondent provides a written response as required in §349.330 of this chapter and no agreed order is entered as provided in §349.350 of this chapter, the matter will be set for hearing at SOAH.

(b) Chapter 2001, Government Code, and SOAH administrative rules and procedures, as relevant, apply to all parts of the proceeding.

§349.370. Decision of the Board.

(a) The Board issues orders in compliance with relevant statutes, including Sections 2001.058 and 2001.141, Government Code.

(b) TJJD shall provide notice of the Board's decision in accordance with Section 2001.142, Government Code.

(c) Board orders become final in accordance with timelines established in Section 2001.144, Government Code.

(d) A summary of final board orders in which certification action is taken, including the name of the individual, certification number(s), if any, and action taken, are maintained by TJJD and are public.

(e) Motions for rehearing and appeals of final orders are governed by Chapter 2001, Government Code.

§349.380. Representation.

(a) A respondent may choose to appear with or without an attorney or other authorized representative throughout the certification action process. Respondent is responsible for the costs of representation.

(b) A respondent's attorney of record shall remain the attorney of record unless the attorney submits a formal request to withdraw to the TJJD attorney involved in the matter except that, if SOAH has acquired jurisdiction, the attorney must comply with SOAH's rules to withdraw.

(c) TJJD is represented by an attorney from the Office of General Counsel throughout the certification action process.

§349.390. Costs.

(a) A party who appeals a final decision in a contested case shall pay all of the cost of preparing an original or certified copy of the agency proceeding that is required to be sent to the reviewing court. A charge imposed under this provision is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

(b) A party who requests that any part of the proceedings be transcribed is responsible for paying the cost of the transcription.

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## SUBCHAPTER D. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION, AND NEGLECT INVESTIGATION RECORDS

**37 TAC §§349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460**

### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.400. Purpose.

The purpose of this subchapter is to clarify to whom and under what circumstances TJJD may disclose information made confidential under §261.201, Family Code.

§349.410. Definitions.

The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Investigation Records--That portion of the records described in §261.201, Family Code, which were generated by TJJD or submitted to TJJD during the course of an abuse, neglect, or exploitation investigation.

(2) Parent--Biological or adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the juvenile, provided that the requestor's parental or other legal relationship to the juvenile has not been terminated at the time the request for information is made.

(3) Report--Formal notification to TJJD of an alleged incident of abuse, neglect, or exploitation of a juvenile in a juvenile justice program and/or under the jurisdiction of the juvenile court.

(4) Reporter--An individual who makes a report to TJJD alleging the abuse, neglect, or exploitation of a juvenile. If more than one individual makes a report alleging abuse, neglect, or exploitation of the same juvenile, all such individuals shall have the designation of reporter.

§349.420. Confidentiality of and Access to Information.

(a) A report of subjected abuse, neglect, or exploitation and the files, reports, records, communications, audio recordings, videos, and working papers used or developed in an investigation or in providing services as a result of an investigation are confidential and may be disclosed only for purposes consistent with Chapter 261, Family Code, applicable federal or state law, and in accordance with this chapter.

(b) The identity of the person making the report of alleged abuse, neglect, or exploitation is confidential and may be disclosed only:

(1) if waived in writing by the person making the report;

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report; or

(3) in accordance with Section 261.201, Family Code.

(c) The identity of all juveniles in the investigation report is confidential and will not be released except as authorized by law.

(d) A copy of the investigation report, appropriately redacted in accordance with law and Section 349.430 of this chapter, may be provided to the following upon request:

(1) juvenile board, chief administrative officer, and facility administrator;

(2) the subject in the report;

(3) the juvenile victim and/or the juvenile's parents;

(4) law enforcement officials for the purpose of investigating allegations of abuse, neglect, or exploitation or criminal activity;

(5) a physician who suspects a juvenile may be the victim of abuse, neglect, or exploitation and requires this information for diagnosis, prognosis, or treatment of the juvenile;

(6) a government official when specifically required by law;

(7) a grand jury;

(8) an attorney, attorney ad litem, guardian ad litem, or court-appointed special advocate of a victim;

(9) a court in a criminal or civil case arising in connection with an investigation of abuse, neglect, or exploitation;

(10) SOAH in a case seeking to impose discipline on a certification or make an individual ineligible for certification;

(11) the attorney general of the state, or a county or district attorney, when such attorney represents the state in a proceeding in connection with an investigation;

(12) a member of the state legislature when necessary to carry out that member's official duties;

(13) pursuant to a Memorandum of Understanding adopted under Section 810.009, Health and Safety Code; and

(14) any other person or entity, including other licensing agencies, other government agencies, and law enforcement and prosecutors, when, in the discretion of TJJD, such information is necessary to aid in the protection of juveniles.

(e) An individual not otherwise entitled to have access to records under this section, but who participated in, cooperated with, or otherwise contributed to an investigation, may have access only to that portion of the investigation records obtained directly from or pertaining directly to that individual.

(f) TJJD shall withhold the release of any investigation records obtained from another source if the release of those records to the requestor is specifically prohibited under state or federal law. Information that may be withheld under this section includes:

(1) all medical records subject to the Medical Practices Act, Chapter 159, Occupations Code, unless release to the requestor is authorized under that Act;

(2) HIV information unless release to the requestor is authorized under Chapter 81, Health and Safety Code;

(3) offense reports, criminal history information, and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law; and

(4) adult or juvenile probation records, as well as records related to the taking into custody of a juvenile, unless release to the requestor is specifically authorized under state or federal law.

(g) Notwithstanding any other provision in this chapter, TJJD may withhold any information in the investigation records if TJJD determines the release of that information would endanger the life or safety of any individual, including the juvenile, the reporter, and any other person who participates in the investigation. TJJD will keep a

record of any information so withheld and will document the specific factual basis for its belief that the release of the information would be likely to endanger the life or safety of an individual.

(h) Information withheld from a requestor under this subsection, as well as the documented basis for withholding information under subsection (g) of this section, may be released only upon a court order.

§349.430. Redaction of Records Prior to Release.

(a) Unless otherwise permitted by law, prior to the release of investigation records, TJJD shall redact the name, address, and any other information in the record that tends to reveal the identity of the reporter.

(b) In the event the reporter also provided a witness statement or other evidence, the reporter's identity as a witness and the information provided in the role of witness will be released. Any information that might identify the individual as the reporter shall be redacted from the record prior to its release.

(c) TJJD may, in its discretion, redact personally identifiable information about any person other than the reporter who is referenced in a report. Identifying information includes names, social security numbers, home and work addresses, telephone numbers, and driver's license numbers.

§349.440. Procedures for Requesting Access to Confidential Information.

(a) Subject to the exception in §349.460 of this chapter, upon written request for copies of records and a determination that the requestor is entitled to have access to those records pursuant to either these rules or a court order issued in accordance with the provisions in §261.201, Family Code, the TJJD will provide copies of the requested records.

(b) Notwithstanding any other provision in this chapter, TJJD may not disclose any information that, if released to the requestor, would interfere with a criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, neglect, and exploitation is complete unless TJJD determines that release prior to completion of the investigation is necessary to aid in the protection of juveniles.

(d) Notwithstanding any other provision in this chapter, if TJJD has been sued and determines that the release of the requested records might interfere with the defense of that litigation, TJJD may require that a requestor seek access to records under the appropriate rules of civil procedure rather than under this chapter.

§349.450. Public Information.

TJJD shall compile statewide statistics on the incidence of abuse, neglect, and exploitation as required by §261.402, Family Code.

(1) The following statistical data, which contains no case-specific identifiers, is available to the public upon written request:

(A) the number of reported allegations of abuse, neglect, and exploitation;

(B) the classifications assigned to reported allegations of abuse, neglect, and exploitation; and

(C) the dispositions assigned to investigations of reported allegations of abuse, neglect, and exploitation.

(2) Upon written request and when necessary to cross-reference statistical data with individual allegations of abuse, neglect, and exploitation reported from an individual county, or for purposes of compliance with §§51.12, 51.125, or 51.126, Family Code, the department, facility, or juvenile board may be entitled to specific case

numbers assigned to allegations of abuse, neglect, and exploitation that were reported by the county requesting the data. A county may only request specific case numbers related to allegations of abuse, neglect, and exploitation pertaining to juvenile justice programs and facilities in its own county.

(3) No exceptions to disclosure under the Public Information Act, Chapter 552, Government Code, are waived by the exchange, disclosure, or dissemination of juvenile justice information under this rule.

§349.460. Video, Audio Recordings, and Photographs.

(a) Individuals authorized under §349.420 of this chapter to have access to investigation records may review, in accordance with this section, any video, audio recordings, or photographs that are a part of those records.

(1) Access will be permitted only in areas designated by TJJD and at a time mutually convenient to the requestor and TJJD.

(2) When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless the participation of this individual is deemed by TJJD to be appropriate under the circumstances surrounding the request.

(b) Copies of video, audio recordings, and photographs may be provided to the individuals or entities identified in §349.420 of this chapter only if TJJD determines that the provision of a copy is essential to the investigation, prosecution, or resolution of a case.

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## SUBCHAPTER E. ADVISORY COUNCIL ON JUVENILE SERVICES

### 37 TAC §349.500, §349.550

#### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.500. Purpose.

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

(1) the needs and problems of juvenile boards and juvenile probation departments;

(2) long-range strategic planning;

(3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;

(4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;

(5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and

(6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.550. Removal of Members.

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.



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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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## SUBCHAPTER F. DATA

### 37 TAC §349.600

#### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.600. Access to Data Collected.

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

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

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Jana Jones

General Counsel

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## CHAPTER 350. INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH AND SERIOUS INCIDENTS

### 37 TAC §§350.100, 350.110, 350.120, 350.200, 350.210, 350.300, 350.400, 350.500, 350.600, 350.610, 350.620, 350.700, 350.800, 350.900 - 350.904

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC Chapter 350, Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents, and all of its sections, including §§350.100, Definitions; 350.110, Interpretation; 350.120, Applicability; 350.200, Assessment; 350.210, Prioritization, Activation and Initiation; 350.300, Investigations; 350.400, Notification and Referral; 350.500, Requests for Dis-

ciplinary Action; 350.600, Retention, Release and Redaction of Commission Records; 350.610, Release of Confidential Information; 350.620, Redaction of Records; 350.700, Call Line; 350.800, Serious Incidents; 350.900, Training and Quality Assurance; 350.901, Pre-Service Training; 350.902, Competency Testing; 350.903, Continuing Education; and 350.904 Quality Assurance.

#### SUMMARY OF CHANGES

Chapter 350 and its sections are proposed for repeal so that their content can be revised and included in a revision of 37 TAC Chapter 358.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repealed sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repealed sections are in effect, the public benefit anticipated as a result of administering the repeals will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repealed sections as proposed. No private real property rights are affected by the repeal of the sections.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

- (1) The proposed repeals do not create or eliminate a government program.
- (2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed repeals do not impact fees paid to TJJD.
- (5) The proposed repeals do not create a new regulation.
- (6) The proposed repeals do not expand, limit, or repeal an existing regulation.
- (7) The proposed repeals do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed repeals will not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

#### STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile

boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

- §350.100. *Definitions.*
- §350.110. *Interpretation.*
- §350.120. *Applicability.*
- §350.200. *Assessment.*
- §350.210. *Prioritization, Activation and Initiation.*
- §350.300. *Investigations.*
- §350.400. *Notification and Referral.*
- §350.500. *Requests for Disciplinary Action.*
- §350.600. *Retention, Release and Redaction of Commission Records.*
- §350.610. *Release of Confidential Information.*
- §350.620. *Redaction of Records.*
- §350.700. *Call Line.*
- §350.800. *Serious Incidents.*
- §350.900. *Training and Quality Assurance.*
- §350.901. *Pre-Service Training.*
- §350.902. *Competency Testing.*
- §350.903. *Continuing Education.*
- §350.904. *Quality Assurance.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## CHAPTER 358. IDENTIFYING, REPORTING, AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH, AND SERIOUS INCIDENTS

**37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, 358.620**

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, and 358.620, relating to Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents.

### SUMMARY OF REPEAL

The repeal of §§358.100, Definitions; 358.120, Interpretation; 358.140, Applicability; 358.200, Policy and Procedure; 358.220,

Data Reconciliation; 358.240, Signage; 358.300, Identifying and Reporting Abuse, Neglect, Exploitation, and Death; 358.320, Parental Notification; 358.340, Reporting of Allegations by Juveniles; 358.360, Allegations Occurring Outside the Juvenile Justice System; 358.400, Internal Investigation; 358.420, Reassignment or Administrative Leave During the Internal Investigation; 358.440, Cooperation with TJJD Investigation; 358.460, Corrective Measures; 358.500, Internal Investigation Report; 358.520, Required Components of an Internal Investigation Report; 358.540, Submission of Internal Investigation Report; 358.600, Serious Incidents; and 358.620, Medical Documentation for Serious Incidents will allow the content to be revised and republished as new §§358.100, 358.110, 358.120, 358.130, 358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340, 358.400, 358.410, 358.420, 358.430, 358.440, 358.450, and 358.460, .

### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of the repeals.

### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

- (1) The proposed repeals do not create or eliminate a government program.
- (2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed repeals do not impact fees paid to TJJD.
- (5) The proposed repeals do not create a new regulation.
- (6) The proposed repeals do not expand, limit, or repeal an existing regulation.
- (7) The proposed repeals do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed repeals will not positively or adversely affect this state's economy.

### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjtd.texas.gov](mailto:policy.proposals@tjtd.texas.gov).

## STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

- §358.100. *Definitions.*
- §358.120. *Interpretation.*
- §358.140. *Applicability.*
- §358.200. *Policy and Procedure.*
- §358.220. *Data Reconciliation.*
- §358.240. *Signage.*
- §358.300. *Identifying and Reporting Abuse, Neglect, Exploitation, and Death.*
- §358.320. *Parental Notification.*
- §358.340. *Reporting of Allegations by Juveniles.*
- §358.360. *Allegations Occurring Outside the Juvenile Justice System.*
- §358.400. *Internal Investigation.*
- §358.420. *Reassignment or Administrative Leave During the Internal Investigation.*
- §358.440. *Cooperation with TJJD Investigation.*
- §358.460. *Corrective Measures.*
- §358.500. *Internal Investigation Report.*
- §358.520. *Required Components of an Internal Investigation Report.*
- §358.540. *Submission of Internal Investigation Report.*
- §358.600. *Serious Incidents.*
- §358.620. *Medical Documentation for Serious Incidents.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## CHAPTER 358. IDENTIFYING, REPORTING, AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH, AND SERIOUS INCIDENTS

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §§358.100, 358.110, 358.120, 358.130, 358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340, 358.400, 358.410, 358.420, 358.430, 358.440, 358.450, 358.460, relating to Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents.

### SUMMARY

New §358.100, Definitions, will provide definitions for terms used in the chapter. Key additions and/or revisions will include: 1) removing terms *alleged perpetrator*, *designated perpetrator*, and

*sustained perpetrator* and replacing them with the term *suspect*; 2) adding the term *non-juvenile justice contract facility*; 3) adding *abscond from nonsecure facility* to *serious incident*; 4) ensuring definitions related to sexual abuse are consistent with PREA, particularly related to juvenile contact with other juveniles; 5) adding definitions of *reasonable cause to believe* and *preponderance of the evidence*; 6) modifying definitions of *abuse*, *neglect*, and *exploitation* to remove reference to changed statute; and 7) adding definition of *emotional harm* and *physical injury*.

New §358.110, Interpretation, will provide general guidelines for interpreting the chapter. Key additions and/or revisions will include adding the calculation of time and a reference to applicable statute.

New §358.120, Applicability, will explain the circumstances to which this chapter will apply. Key additions and/or revisions will include expanding applicability to include abuse, neglect, exploitation, serious incidents, and death that involve juvenile at non-juvenile justice contract facilities.

New §358.130, Toll-Free Call Center, will explain that TJJD operates a call center for the specific purpose of reporting alleged abuse, neglect, exploitation, death, and serious incidents.

New §358.200, Policy and Procedure, will describe the types of policies and procedures required of departments, programs, and facilities. Key additions and/or revisions will include: 1) clarifying that all contracts with non-juvenile justice contract facilities will require the placement to report abuse, neglect, exploitation, death, or serious incident to the juvenile probation department, program, or facility and to TJJD; to conduct an internal investigation in accordance with this chapter or allow the department, program, or facility to do so; and to cooperate with all assessments and investigations; and 2) modifying the reporting requirement to be when there is *reasonable cause* to believe abuse, neglect, or exploitation has occurred.

New §358.210, Information on Reporting, will explain how and when youth and parents are made aware of the process for reporting alleged abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions will include adding that facilities or programs provide a youth's parents with information on reporting suspected abuse, neglect, or exploitation to TJJD and the TJJD toll-free number as soon as practicable after child is taken into custody or placed in the facility.

New §358.220, Data Reconciliation, will explain the information TJJD requires for all allegations of abuse, neglect, exploitation, death, and serious incidents.

New §358.230, Reporting Abuse, Neglect, and Exploitation, will explain a person's duty to report abuse, neglect, and exploitation and will present timeframes and methods of reporting. Key additions and/or revisions will include: 1) expanding duty to report to include non-juvenile justice contract facility and changing duty to be when there is reasonable cause to believe; and 2) modifying reporting methods to remove *fax* as an option.

New §358.240, Reporting Serious Incidents, will explain a person's duty to report serious incidents and will present timeframes and methods of reporting. Key additions and/or revisions will include: 1) expanding duty to report to include non-juvenile justice contract facility; and 2) modifying reporting methods to remove *fax* as an option.

New §358.250, Reporting Deaths, will explain a person's duty to report a death and will present timeframes and methods of

reporting. Key additions and/or revisions will include expanding duty to report to include non-juvenile justice contract facility.

New §358.260, Parental Notification, will explain the requirements regarding notifying parents or guardians when a youth has died or is the alleged victim of abuse, neglect, exploitation, or serious incident. Key additions and/or revisions will include adding a requirement to report to a parent that their child was involved in a serious incident using the same timeframes as the requirements to report abuse, neglect, and exploitation.

New §358.270, Reporting of Allegations by Juveniles, will specify a youth's right to report allegations of abuse, neglect, exploitation, and death. Key additions and/or revisions will include adding a requirement to report to a parent that their child was involved in a serious incident using the same timeframes as the requirements to report abuse, neglect, exploitation, and death.

New §358.280, Internal Investigation, will explain the specifics for the mandatory investigations that must be undertaken in every case when a youth has died or is the victim of alleged abuse, neglect, or exploitation. Key additions and/or revisions will include: 1) clarifying that a delay in starting an internal investigation in order to protect the integrity of potential evidence occurs only after consultation with local law enforcement or TJJJ's Office of Inspector General; 2) clarifying that policies and procedures related to internal investigations must be provided to TJJJ upon request; and 3) providing that the burden of proof in an internal investigation is a preponderance of the evidence and that the burden of proof cannot be lowered or raised.

New §358.290, Corrective Measures, will explain the scope of the corrective measures that may be taken at the conclusion of an internal investigation. Key additions and/or revisions will include clarifying that corrective measures that must be taken, if warranted, also apply to persons found to have engaged in misconduct not classified as abuse, neglect, or exploitation.

New §358.300, Internal Investigative Report, will explain that a report must be completed at the conclusion of every internal investigation and will provide the items that must be included in the report. Key additions and/or revisions will include adding a requirement to notify TJJJ within five calendar days if disciplinary action is imposed after the submission of the internal investigation report.

New §358.310, Submission of Internal Investigative Report, will explain what TJJJ requires to be submitted as part of the internal investigative report.

New §358.320, Reassignment or Administrative Leave during the Internal Investigation, will explain the options for addressing the work status of personnel alleged to have abuse, neglected, or exploited a youth

New §358.330, Cooperation with TJJJ Investigation, will explain that all persons must cooperate fully with a TJJJ investigation into allegations of abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions will include adding serious incident to the types of investigations all persons are required to fully cooperate with.

New §358.340, Cooperation with Other Agencies, will explain that all persons must also cooperate with other agencies that have the authority to investigate allegations of abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions will include adding a requirement to fully cooperate with other state agencies or licensing entities with authority to inves-

tigate, such as an agency that holds the occupational license of a person who is the subject of an investigation.

New §358.400, TJJJ Assessment and Referral, will explain that TJJJ will complete assessments on all reports of alleged abuse, neglect, exploitation, death, and serious incidents to determine the authority under which the alleged conduct falls. Key additions and/or revisions will include: 1) adding serious incidents to the things TJJJ can assess to determine if an investigation is warranted or if a referral to another TJJJ division, the juvenile probation department or facility, or another state agency is appropriate; 2) clarifying that TJJJ may conduct an assessment when there is a reasonable cause to believe one is warranted; 3) clarifying that the purpose of an assessment is to determine if the conduct falls under TJJJ's investigative or other regulatory authority and if action or investigation is warranted; and 4) providing that TJJJ may request information as part of the assessment and the requested information must be provided.

New §358.410, TJJJ Investigations, will provide the parameters for how investigations will be conducted. Key additions and/or revisions will include: 1) clarifying that an investigation may be conducted based on a report or may be initiated by TJJJ when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJJ was made aware of the matter; 2) removing detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures; 3) adding that a person who obtains employment in another jurisdiction while an investigation is pending may not be in a position having contact with juveniles until the investigation is finalized by TJJJ or TJJJ approves.

New §358.420, Findings in Abuse, Neglect, and Exploitation Investigations, will explain the burden of proof required in findings of abuse, neglect, exploitation, death, and serious incidents and will provide specific definitions for certain behaviors. Key additions and/or revisions will include: 1) clarifying that a finding of abuse, neglect, or exploitation requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state; 2) defining *intentionally*, *knowingly*, and *recklessly* according to definitions in the Penal Code; 3) defining *negligence* using the definition in civil law negligence cases; and 4) defining the required findings for abuse, neglect, and exploitation allegations.

New §358.430, Abuse, Neglect, and Exploitation Investigative Report, will explain that an investigative report must include certain elements and may include others. Key additions and/or revisions will include: 1) providing that the investigator in an abuse, neglect, and exploitation report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish ANE occurred; 2) providing that a TJJJ attorney will review the investigation for legal sufficiency and make findings as to whether the evidence establishes that abuse, neglect, or exploitation occurred; and 3) adding that the attorney may request additional information or investigation by TJJJ's Office of Inspector General if necessary.

New §358.440, Notification of Findings, will explain who is notified of the findings of an investigation. Key additions and/or revisions will include providing who will be notified of the findings and the notice for administrative review.

New §358.450, Other Actions by TJJJ, will provide other courses of action that TJJJ might take as a result of an investigation.

New §358.460, Maintenance of Records and Data, will explain the process for maintaining records and data related to investigations into abuse, neglect, exploitation, death, and serious incidents.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of the sections.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

### SUBCHAPTER A. DEFINITIONS, APPLICABILITY, AND GENERAL REQUIREMENTS

#### 37 TAC §§358.100, 358.110, 358.120, 358.130

#### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

#### §358.100. Definitions.

Terms used in this chapter have the following meanings unless otherwise expressly defined within the chapter.

(1) Abuse--an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a juvenile served by the juvenile justice facility or program. Abuse also includes the definition in Section 261.001, Family Code.

(2) Administrator--the chief administrative officer of a juvenile probation department, juvenile justice program, juvenile justice facility, or non-juvenile justice contract facility.

(3) Administrative Designee--the role assigned to the administrator when a preponderance of evidence determines that the proximate cause of the abuse, neglect, or exploitation was based on policies and procedures under the direct control of the administrator.

(4) Department--a juvenile probation department.

(5) Emotional harm--an impairment in the juvenile's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, regardless of whether evaluation or treatment is actually received. Sexual conduct between employees, volunteers, or contractors and juveniles is presumed to cause substantial emotional harm.

(6) Exploitation--the illegal or improper use of a juvenile or the resources of a juvenile for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program.

(7) Incident Report Form--the form used to report to TJJD allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.

(8) Internal Investigation--a formalized and systematic inquiry conducted in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(9) Internal Investigative Report--the written report submitted to TJJD that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.

(10) Investigative Report--the written report prepared by TJJD detailing its investigation and findings.

(11) Juvenile--a person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, housed in a non-juvenile justice contract facility pursuant to an order of the juvenile court, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(12) Juvenile Justice Facility ("facility")--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

(13) Juvenile Justice Program ("program")--a program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; or

(B) is operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board. The term includes:

- (i) a juvenile justice alternative education program;
- (ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and
- (iii) a juvenile probation department.

(14) Medical Treatment--medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless intervention beyond basic first aid is required.

(15) Neglect--a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a juvenile served by the facility or program. Neglect also includes the definition in Section 261.001, Family Code.

(16) Non-Juvenile Justice Contract Facility--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(17) Physical Injury--an injury that normally requires examination or treatment by a trained health care professional, regardless of whether examination or treatment is actually received.

(18) Preponderance of the Evidence--a standard of proof meaning the credible and reliable evidence establishes that it is more likely than not that conduct meeting the definition of abuse, neglect, or exploitation occurred.

(19) Reasonable Cause to Believe--a reasonable ground to suspect that a juvenile has been or may be abused, neglected, or exploited or that a juvenile's physical or mental health or welfare has been adversely affected by abuse or neglect.

(20) Report--formal notification to TJJD of alleged abuse, neglect, or exploitation, the death of a juvenile, or a serious incident.

(21) Serious Incident--an incident that meets one of the following definitions:

(A) escape--the unauthorized departure of a juvenile who is in custody or the failure of a juvenile to return to custody following an authorized temporary leave for a specific purpose or specific, limited time period;

(B) attempted escape--committing an act that amounts to more than mere planning but that fails to effect an escape;

(C) abscond from a nonsecure facility--the unauthorized departure of a juvenile who has been placed in a nonsecure facility by the juvenile court or the failure of a juvenile to return to a nonsecure facility following an authorized temporary leave for a specific purpose or specific, limited time period;

(D) attempted suicide--any voluntary and intentional action that could likely result in taking one's own life;

(E) reportable injury--any physical injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:

(i) does not result from a personal, mechanical, or chemical restraint and requires medical treatment; or

(ii) results from a personal, mechanical, or chemical restraint and is a substantial injury.

(F) juvenile sexual conduct--conduct between two or more juveniles, regardless of age, that is conduct described in paragraphs (25) and (28) of this section, regardless of whether the juveniles consented to the conduct; or

(G) juvenile-on-juvenile physical assault--a physical altercation involving two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment.

(22) Serious Physical Abuse--bodily harm or a condition that:

(A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and

(B) requires medical treatment.

(23) Sexual Abuse--includes sexual abuse (by contact or by non-contact) of a juvenile by an employee, contractor, or volunteer or by another juvenile.

(24) Sexual Abuse by Contact (employee, volunteer, or contractor)--any physical contact between an employee, contractor, or volunteer and a juvenile, with or without the consent of the juvenile that includes:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part where the employee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and

(F) any attempt by an employee, contractor, or volunteer to engage in the activities described in subparagraphs (a) - (e) of this paragraph.

(25) Sexual Abuse by Contact (by another juvenile)--any of the following acts between juveniles, if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse, either actually or legally:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(26) Sexual Abuse by Non-Contact (by employee, volunteer, or contractor)--any sexual behavior, conduct, harassment, or actions by an employee, contractor, or volunteer, which are exhibited,

performed, or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile but do not meet the definition of sexual abuse by contact, including but not limited to:

(A) any threat or request for a juvenile to engage in the activities described in paragraph (24) of this section;

(B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;

(C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and

(D) sexual harassment.

(27) Sexual Harassment (by employee, contractor, or volunteer)--repeated verbal comments or gestures of a sexual nature to a juvenile, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(28) Sexual Harassment (by another juvenile)--any of the following directed by one juvenile to another juvenile: repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one juvenile directed toward another.

(29) Substantial Injury--an injury that is significant in size, degree, or severity.

(30) Subject--a person alleged or found to be responsible for the abuse, neglect, or exploitation of a juvenile through the person's actions or failure to act.

(31) TJJJ OIG--TJJJ Office of Inspector General.

(32) Victim--a juvenile who is alleged or found to be a victim of abuse, neglect, or exploitation.

§358.110. Interpretation.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. Unless the context clearly indicates otherwise, the words "include," "includes," and "including," when following a general statement or term, are to be understood as introducing a non-exhaustive list.

(c) Time. Any period of days set forth in this chapter is computed as set forth in Section 311.014, Government Code. Unless otherwise specified, a period of "days" means "calendar days." When this chapter requires or allows an act by any party other than TJJJ to be done at or within a specified time period, the executive director or Board may, for good cause shown, order the period extended or permit the act to be done after the expiration of the specified period.

§358.120. Applicability.

(a) Unless otherwise expressly stated, this chapter applies to:

(1) allegations of abuse, neglect, or exploitation involving a juvenile and an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility, regardless of the physical location of the alleged abuse, neglect, or exploitation;

(2) serious incidents involving a juvenile that:

(A) occur on the premises of a program, facility, or non-juvenile justice contract facility; or

(B) regardless of the physical location, occur while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility; and

(3) a death of a juvenile that:

(A) occurs on the premises of a program, facility, or non-juvenile justice contract facility;

(B) results from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program, facility, or non-juvenile justice contract facility; or

(C) regardless of the physical location, occurs while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility.

(b) For purposes of this chapter, "working under the auspices of a facility, program, or non-juvenile justice contract facility" includes providing a service to juveniles when that service is authorized by the juvenile board or pursuant to a contract for placement.

§358.130. Toll-Free Call Center.

TJJJ maintains a staffed incident reporting center with a toll-free number to facilitate the reporting of alleged abuse, neglect, exploitation, death, and serious incidents. Additionally, TJJJ maintains alternative forms of contact for the continuity of operations, including email and secondary phone numbers.

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

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406344

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



## SUBCHAPTER B. RESPONSIBILITIES OF DEPARTMENTS, PROGRAMS, AND FACILITIES

**37 TAC §§358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340**

### STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§358.200. Policy and Procedure.

(a) Departments, programs, and facilities shall have written policies and procedures that require, in accordance with this chapter:

(1) reporting allegations of abuse, neglect, or exploitation of a juvenile to local law enforcement, TJJD, and other appropriate governmental units when there is reasonable cause to believe that abuse, neglect, or exploitation has occurred;

(2) reporting death of a juvenile to local law enforcement and TJJD; and

(3) reporting serious incidents to TJJD.

(b) Departments, programs, and facilities shall include the following in all contracts with non-juvenile justice contract facility:

(1) a requirement for the non-juvenile justice contract facility to report allegations of abuse, neglect, exploitation, the death of a juvenile, or a serious incident to the department, program, or facility and to TJJD in accordance with this chapter;

(2) a requirement for the non-juvenile justice contract facility to conduct an internal investigation or allow the department, program, or facility to do so and to cooperate with such investigation; and

(3) a requirement to cooperate with TJJD with any assessment or investigation.

#### §358.210. Information on Reporting.

(a) As soon as practicable after a child is taken into custody or placed in a facility or program, the facility or program shall provide the child's parents with:

(1) information regarding the reporting of suspected abuse, neglect, or exploitation of a juvenile in a facility or program to TJJD; and

(2) the TJJD toll-free number for this reporting.

(b) Departments, programs, and facilities must prominently display signage provided by TJJD regarding a zero-tolerance policy concerning abuse of juveniles. The signage must be in English and Spanish and be displayed in each of the following places:

(1) lobby or visitation areas of the department, program, or facility to which the public has access;

(2) juvenile housing and common areas;

(3) common medical treatment areas;

(4) common educational areas; and

(5) other common areas.

#### §358.220. Data Reconciliation.

(a) For all allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period, the department or facility must provide the data listed in subsection (b) to TJJD in the electronic format requested or supplied by TJJD.

(b) The data must include:

(1) name and Personal Identification Number (PID) of each alleged victim;

(2) name and date of birth of each subject of investigation;

(3) date and time of alleged incident;

(4) date the alleged incident was reported to TJJD;

(5) type of alleged incident (i.e., abuse, neglect, exploitation, death, or serious incident);

(6) type of injury, if applicable;

(7) whether the alleged incident was restraint-related and, if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);

(8) disposition of internal investigation (i.e., founded, unfounded, or inconclusive); and

(9) county-generated case identification number.

(c) The data must be supplied at least annually or more frequently if required by TJJD. The data must include any additional information not listed in this section if specifically requested by TJJD.

#### §358.230. Reporting Abuse, Neglect, and Exploitation.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report an allegation of abuse, neglect, or exploitation to TJJD and local law enforcement if the person has reasonable cause to believe a juvenile has been or may be abused, neglected, or exploited or that a juvenile's physical or mental health or welfare has been adversely affected by abuse or neglect.

(b) Non-Delegation of Duty to Report. In accordance with Chapter 261, Family Code, the duty to report cannot be delegated to another person.

(c) Other than Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting. A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made no later than 24 hours after the time the person gains knowledge of or has reasonable cause to believe that abuse, neglect, or exploitation has occurred.

(2) Methods for Reporting.

(A) The report to TJJD may be made by phone or by emailing a completed Incident Report Form.

(B) If the report to TJJD is made by phone, a completed Incident Report Form must be submitted by email within 24 hours after the phone report.

(C) The report to law enforcement must be made by phone.

(d) Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting.

(A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(B) A report of alleged sexual abuse or serious physical abuse must be made to TJJD immediately, but no later than four hours, after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) Methods for Reporting.

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the initial phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by email.

(C) The initial report to law enforcement must be made by phone.



§358.240. Reporting Serious Incidents.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report a serious incident to TJJD if the person:

(1) witnesses, learns of, or receives an oral or written statement from a juvenile or other person with knowledge of a serious incident; or

(2) has reasonable cause to believe that a serious incident has occurred.

(b) Time Frame for Reporting. A report of a serious incident must be made within 24 hours from the time a person gains knowledge of or has reasonable cause to believe that a serious incident occurred.

(c) Methods for Reporting Serious Incidents.

(1) The report may be made by phone or by emailing a completed Incident Report Form to TJJD.

(2) If the report is made by phone, a completed Incident Report Form must be submitted to TJJD by email within 24 hours after the phone report.

(d) Medical Documentation. A treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident must be submitted to TJJD within 24 hours after receipt by the department, program, facility, or non-juvenile justice contract facility.

§358.250. Reporting Deaths.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report to local law enforcement and to TJJD OIG if the person has reasonable cause to believe a juvenile has died and the death:

(1) occurred on the premises of a program, facility, or non-juvenile justice contract facility;

(2) resulted from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program, facility, or non-juvenile justice contract facility; or

(3) occurred while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility, regardless of where the death occurred.

(b) Time Frames for Reporting.

(1) A report of a death must be made to local law enforcement immediately upon, and no later than one hour after, the discovery or notification of the death.

(2) A report of a death must be made to TJJD OIG immediately upon, and no later than four hours after, the discovery or notification of the death.

(3) A written report of the cause of death must be submitted to the Office of the Attorney General no later than 30 days after the juvenile's death if required by Article 49.18, Code of Criminal Procedure.

(4) A copy of the death investigative report must be submitted to TJJD no later than 10 days after completion.

(c) Methods for Reporting.

(1) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(2) Within 24 hours after the phone report to TJJD, the completed Incident Report Form must be submitted to TJJD OIG by email.

(3) The initial report to law enforcement must be made by phone.

§358.260. Parental Notification.

(a) Requirement to Notify. Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation or was involved in a serious incident.

(b) Time of Notification. The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours, from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred or that a serious incident has occurred.

(c) Method of Notification. The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person.

(d) Documentation of Notification. The notice or efforts to notify required by subsection (a) of this section must be documented on TJJD's Incident Report Form and in the internal investigative report.

§358.270. Reporting of Allegations by Juveniles.

(a) Right to Report. Juveniles have the right to report to TJJD allegations of abuse, neglect, or exploitation and the death of a juvenile. During orientation to a facility or program, juveniles must be advised in writing of:

(1) their right to report allegations under this subsection; and

(2) TJJD's toll-free number available for reporting allegations under this subsection.

(b) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures that provide a juvenile with reasonable, free, and confidential access to telephones for reporting allegations to TJJD.

(c) Access to TJJD. Upon the request of a juvenile, staff must facilitate the juvenile's reasonable, free, and confidential access to a telephone for reporting allegations to TJJD.

§358.280. Internal Investigation.

(a) Investigation Requirement. In every case in which a report of the death of a juvenile or of an allegation of abuse, neglect, or exploitation has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) Initiation of Investigation. The internal investigation must be initiated immediately upon the chief administrative officer or the private facility administrator or their respective designees gaining knowledge of the death of a juvenile or the allegation of abuse, neglect, or exploitation. However, the initiation of the internal investigation will be postponed if:

(1) directed by local law enforcement;

(2) requested by TJJD OIG; or

(3) after consultation with local law enforcement or TJJD OIG, it is determined that the integrity of potential evidence could be compromised.

(c) Burden of Proof. The burden of proof in an internal investigation is preponderance of the evidence. A higher or lower burden of proof may not be implemented.

(d) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures for conducting internal investigations under this chapter. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility. The policies and procedures must be provided to TJJD upon request.

(e) Juvenile Board Responsibilities. If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must:

(1) conduct the internal investigation; or

(2) appoint an individual to conduct the internal investigation who is not one of the following:

(A) the person alleged to have abused, neglected, or exploited the juvenile(s);

(B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or

(C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation of the juvenile(s).

(f) Time Frame for Internal Investigation. The internal investigation must be completed within 30 business days after the initial report to TJJD. TJJD may extend this time frame upon request. TJJD may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(g) Written and Electronically Recorded Statements. During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

#### §358.290. Corrective Measures.

Corrective measures must be taken at the conclusion of the internal investigation, if warranted, that may include:

(1) a review of the policies and procedures pertinent to the alleged incident;

(2) revision of any policies or procedures as needed;

(3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile or to have otherwise engaged in misconduct; and

(4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

#### §358.300. Internal Investigative Report.

(a) An internal investigative report must be completed at the conclusion of each internal investigation resulting from an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(b) The internal investigative report must include:

(1) the date the internal investigation was initiated;

(2) the date the internal investigation was completed;

(3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;

(4) a summary of the original allegation;

(5) relevant policies and procedures related to the incident;

(6) a summary or listing of the steps taken during the internal investigation;

(7) a written summary of the content of all oral interviews conducted;

(8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings and polygraph examinations;

(9) relevant findings of the investigation that support the disposition;

(10) one of the following dispositions:

(A) founded, which means the evidence indicates that it is more likely than not that the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred or that other conduct constituting abuse, neglect, or exploitation occurred;

(B) unfounded, which means the evidence indicates the conduct that formed the basis of an allegation of abuse, neglect, or exploitation did not occur and no other conduct constituting abuse, neglect, or exploitation occurred; or

(C) inconclusive, which means the evidence does not clearly indicate whether or not the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred or other conduct constituting abuse, neglect, or exploitation occurred.

(11) the date the internal investigative report was completed;

(12) the names of all persons who participated in conducting the internal investigation;

(13) the name and signature of the person who submitted the internal investigative report; and

(14) the administrative action, disciplinary action, or corrective measures taken to date, if applicable (e.g., terminated, suspended, retrained, returned to duty, or none).

(c) If disciplinary action is imposed after the submission of the internal investigative report, the administrator or designee must notify TJJD of the disciplinary action no later than five calendar days after the disciplinary action is imposed.

#### §358.310. Submission of Internal Investigative Report.

(a) A copy of the internal investigative report must be submitted to TJJD no later than five calendar days following its completion.

(b) The following documentation collected during the internal investigation must be submitted to TJJD with the internal investigative report:

(1) written statements;

(2) relevant medical documentation;

(3) training records, if applicable; and

(4) any other documentation used to reach the disposition of the internal investigation.

#### §358.320. Reassignment or Administrative Leave during the Internal Investigation.

(a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the person alleged to have abused, neglected, or exploited a

juvenile must be placed on administrative leave or reassigned to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(b) If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place the chief administrative officer or private facility administrator on administrative leave or reassign that person to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(c) If, during the internal investigation, the subject of the investigation resigns or is terminated from employment, the department or facility must notify TJJD no later than the second business day after the resignation or termination.

(d) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.330. Cooperation with TJJD Investigation.

(a) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation, the death of a juvenile, or a serious incident. A failure to do so may result in an action involving the person's certification or provisional certification pursuant to Chapter 349 of this title.

(b) A diligent effort must be made to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation, serious incident, or the death of a juvenile that is the subject of a TJJD investigation.

(c) Upon request by TJJD, all evidence must be provided to TJJD in the format requested.

§358.340. Cooperation with Other Agencies.

All persons must fully cooperate with any investigation of alleged abuse, neglect, or exploitation, serious incident, or death of a juvenile by another state agency or licensing entity with authority to investigate, such as an agency that holds the occupational license of a person who is the subject of the investigation.

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## SUBCHAPTER C. TJJD ASSESSMENT AND INVESTIGATION

**37 TAC §§358.400, 358.410, 358.420, 358.430, 358.440, 358.450, 358.460**

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§358.400. TJJD Assessment and Referral.

(a) TJJD OIG will complete an assessment on all reports of alleged abuse, neglect, or exploitation of a juvenile, the death of a juvenile, or serious incidents. TJJD may conduct an assessment when there is reasonable cause to believe that one is warranted.

(b) The purpose of an assessment is to determine if conduct or alleged conduct falls under:

(1) TJJD's investigative authority and, if so, if an investigation is necessary; or

(2) TJJD's other regulatory authority and, if so, if other action is warranted.

(c) TJJD may request information from the juvenile probation department or facility making the report or where the alleged incident occurred, which may include requests for records, digital media, video, audio, and other related information or items. The entity to which the request is made must provide the requested information or, if it does not exist, an explanation that it does not exist, no later than two business days after the request is made unless a later time is agreed upon between TJJD and the entity.

(d) After assessment, TJJD OIG will conduct an investigation if it determines the matter is within TJJD OIG's jurisdiction to investigate or will refer the matter as appropriate to another TJJD division, the appropriate juvenile probation department or facility, or another governmental entity.

§358.410. TJJD Investigations.

(a) Investigations may be conducted based on a report to TJJD or may be initiated by TJJD when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJD is made aware of the matter.

(b) Investigations will be conducted by TJJD in accordance with TJJD policies and procedures for investigations.

(c) Investigations must be prompt, thorough, and directed at resolving all relevant issues.

(d) The primary objective of each investigation under this chapter is to ensure the health, safety, and well-being of the alleged victim(s) and other juveniles.

(e) Only a person qualified by experience and training may be assigned to conduct an investigation.

(f) If a subject of a TJJD abuse, neglect, and exploitation investigation obtains employment in another jurisdiction before the disposition of the investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the investigation is finalized by TJJD or TJJD otherwise approves.

§358.420. Findings in Abuse, Neglect, and Exploitation Investigations.

(a) In order to find that a person engaged in abuse, neglect, or exploitation, there must be a preponderance of evidence to establish the person engaged in conduct that meets the definition of abuse, neglect, or exploitation, including having done so with the required mental state.

(b) A person acts intentionally, or with intent, with respect to the nature of the person's conduct or the result of the conduct when it

is the person's conscious objective or desire to engage in the conduct or to cause the result.

(c) A person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or the result of the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

(d) A person acts recklessly, or is reckless, with respect to circumstances surrounding the person's conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(e) A person acts with negligence when the person does something that an ordinarily prudent person exercising ordinary care would not have done under the same circumstances or fails to do something that an ordinarily prudent person in the exercise of ordinary care would have done.

(f) An investigation of potential abuse requires a finding of whether the subject intentionally, knowingly, or recklessly acted or failed to act and, if so, whether the act caused emotional harm or physical injury to the juvenile or posed a significant and foreseeable risk of emotional harm or physical injury.

(g) An investigation of potential neglect requires a finding of whether the subject engaged in a negligent act or omission and, if so, whether the action or failure to act was a substantial factor in bringing about a substantial emotional harm or physical injury to the juvenile or posed a significant and foreseeable risk of emotional harm or physical injury.

(h) An investigation of potential exploitation requires a finding of whether a juvenile or the resources of a juvenile were used for monetary or personal benefit, profit, or gain of the subject and, if so, whether the use was illegal or improper.

(i) In determining if a person's conduct is the cause of any emotional harm or physical injury, there must be a finding of whether the resulting emotional harm or physical injury would not have occurred but for the person's conduct, either alone or concurrently with another cause.

(j) Investigations may include findings of misconduct other than abuse, neglect, or exploitation if the misconduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the subject or others as to violations of the code of ethics indicated by the evidence.

§358.430. Abuse, Neglect, and Exploitation Investigative Report.

(a) Each investigation requires a written investigative report with the investigator's recommendations regarding whether the evidence is sufficient to establish that abuse, neglect, or exploitation occurred. The report must include a summary and analysis of the evidence relied upon in reaching the recommendations. Anything considered in the investigation, including, but not limited to, copies of relevant documents and photographs, must be attached to the investigative report.

(b) Investigations may include recommendations that findings of a violation of the Code of Ethics other than abuse, neglect, or exploitation be made if the conduct is established by the evidence. However, the absence of such findings should not be regarded as exonera-

tion of the subject or other individuals as to violations indicated by the evidence.

(c) An attorney in TJJJ's Office of General Counsel shall review the recommendations of each investigative report for legal sufficiency and, based on the evidence, shall make findings as to whether or not abuse, neglect, or exploitation occurred. The attorney may request additional information or investigation by TJJJ OIG if necessary to make a finding. The findings must be made before the results of the investigative report are finalized.

§358.440. Notification of Findings.

(a) The following persons are notified of the findings of an investigation:

- (1) the juvenile victim and the juvenile's parents or guardian;
- (2) the subject; and
- (3) the administrator.

(b) If the investigation results in a finding that abuse, neglect, or exploitation occurred, the subject will be provided notice of the opportunity for an administrative review as provided in Chapter 349 of this title.

§358.450. Other Actions by TJJJ.

(a) TJJJ may provide notification of an investigation to the local prosecutor if warranted.

(b) TJJJ may issue a non-compliance citation report (NCCR) for any violation of standards discovered as a result of an investigation.

(c) TJJJ may issue a notice of technical assistance (NTA) for any violation of standards discovered as a result of an investigation.

§358.460. Maintenance of Records and Data.

(a) TJJJ prepares and keeps on file a complete written report of each investigation conducted by the agency. The report is retained in accordance with the TJJJ records retention schedule.

(b) TJJJ compiles, maintains, and makes available statistics on the incidence of abuse, neglect, and exploitation investigated by the agency.

(c) TJJJ maintains an electronic database containing information regarding all reports of alleged abuse, neglect, exploitation, death, and serious incidents.

(d) Investigation files are confidential and releasable only as provided in Chapter 349 of this title.

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER B. TREATMENT  
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8701

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8701, Case Planning.

SUMMARY OF CHANGES

Amendments to the section will include: (1) adding a definition for integrated treatment plan; (2) adding that an integrated treatment plan may serve as the youth's case plan; (3) adding that references throughout TJJD's rules to case plans may be understood to mean integrated treatment plans for agency departments using integrated treatment plans; (4) removing statements specifying which staff members develop and update the case plan; (5) adding that case plan objectives are reviewed and progress is documented monthly, rather than at least once every 30 days; (6) adding that objectives in the case plan help the youth to develop *skillful behaviors*, rather than develop *skills to reduce individual risk factors and increase individual protective factors*; (7) replacing a reference to *the orientation and assessment unit with an orientation and assessment program*; and (8) consolidating some redundant statements.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the adoption of an integrated treatment plan that addresses a youth's individualized risk factors, treatment and rehabilitative needs, and plan for community reentry.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended section is also proposed under §244.001, Human Resources Code, which requires the board to establish rules for the periodic review and reevaluation of a child's written treatment plan.

No other statute, code, or article is affected by this proposal.

§380.8701. *Case Planning.*

(a) Purpose. The purpose of this rule is to ensure the case management of each youth is individualized and flexible and is based on the youth's risk and protective factors, abilities, and need for services.

(b) Applicability. This rule applies to youth committed to the Texas Juvenile Justice Department.

(c) Definitions.

(1) Except as noted below, definitions [Definitions] for terms used in this rule are in §380.8501 of this chapter [title].

(2) Integrated Treatment Plan--a collaborative case plan addressing a youth's individualized risk factors, treatment and rehabilitative needs, and plan for community reentry.

(d) General Provisions.

(1) An individualized case plan is developed for each youth. [An Individual Case Plan (ICP) is developed with and for each youth by the case manager in consultation with the multi-disciplinary team. The ICP is individualized for each youth and identifies objectives with specific strategies to address development of skills to reduce individual risk factors and increase individual protective factors.]

(2) The case plan [ICP] is developed in accordance with an [the] assessment of the youth's risk and protective factors, abilities, and progress in the rehabilitation program and includes objectives with specific strategies to address development of skillful behaviors.

(3) The case plan [ICP] specifies measurable objectives, expected outcomes, and a means to evaluate progress.

(4) Objectives in the case plan [ICP objectives] are reviewed and progress is documented monthly [at least once every 30 days].

(5) At least once every 90 days, the youth's case plan is updated [a multi-disciplinary team updates each youth's ICP] following an integrated and comprehensive assessment of the youth's progress in the rehabilitation program. This assessment includes:

(A) re-assessment of the youth's risk and protective factors;

(B) development of objectives and treatment recommendations that reflect the youth's specialized needs and individual abilities; and

(C) when appropriate, development of a plan for transitioning the youth to the community.

~~[(6) The ICP is developed with individualized strategies to facilitate youth progress through the rehabilitation program.]~~

~~(6) [(7)] An assessment and treatment summary, which forms the basis of the case plan [ICP], is developed during the youth's time in an [while the youth is at the] orientation and assessment program [unit].~~

~~(7) [(8)] The case plan [ICP development includes a review of youth progress and objectives and] is developed with the youth and the youth's parent/guardian when possible.~~

~~(8) An integrated treatment plan may serve as the case plan. For agency departments using an integrated treatment plan, references in this chapter to the case plan or individual case plan mean the integrated treatment plan.~~

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

Filed with the Office of the Secretary of State on December 27, 2024.

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



## SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

### 37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC §380.9333, relating to Investigation of Alleged Abuse, Neglect, and Exploitation.

#### SUMMARY OF REPEAL

The repeal of §380.9333 will allow the content to be revised and republished as new §380.9333.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeal is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeal.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of the repeal.

## GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeal is in effect, the repeal will have the following impacts.

(1) The proposed repeal does not create or eliminate a government program.

(2) The proposed repeal does not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeal does not impact fees paid to TJJD.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not expand, limit, or repeal an existing regulation.

(7) The proposed repeal does not increase or decrease the number of individuals subject to the section's applicability.

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

## PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

## STATUTORY AUTHORITY

The repeal is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

*§380.9333. Investigation of Alleged Abuse, Neglect, and Exploitation.*

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

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Jana Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7130



### 37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §380.9333, relating to Investigation of Alleged Abuse, Neglect, and Exploitation.

#### SUMMARY OF CHANGES

New §380.9333 modifies and republishes information currently contained in the former §380.9333, which is simultaneously proposed for repeal. Key additions and revisions will include: 1) clarifying that an investigation may be conducted based on a report or may be initiated by TJJD when there is reasonable cause

to believe that an incident may require investigation, regardless of how TJJD was made aware of the matter; 2) removing detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures; 3) detailing that a finding of abuse, neglect, or exploitation requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state; 4) defining *intentionally, knowingly, and recklessly* using the Penal Code definitions; 5) defining negligence using definition in civil law negligence cases; 6) defining the required findings for abuse, neglect, and exploitation allegations; 7) providing that the investigator in an abuse, neglect, or exploitation report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish abuse, neglect, or exploitation occurred; 8) providing that a TJJD attorney will review the investigation for legal sufficiency and make findings as to whether the evidence establishes that abuse, neglect, or exploitation occurred; and 9) clarifying that the attorney may request additional information or investigation by TJJD's Office of Inspector General if necessary.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of the section.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

#### STATUTORY AUTHORITY

The new section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9333. Investigation of Alleged Abuse, Neglect, and Exploitation.

(a) Purpose. This rule provides for the administrative investigation of allegations of abuse, neglect, or exploitation in programs and facilities operated by Texas Juvenile Justice Department (TJJD) or in which TJJD youth are placed. This rule also provides standards for investigations and for the compilation and sharing of investigation information. The purpose of all provisions in this rule is the protection of youth.

(b) Applicability.

(1) This rule applies to administrative investigations involving abuse, neglect, or exploitation allegedly committed by employees, volunteers, or other individuals working in TJJD programs or facilities, including institutions, halfway houses, and parole services, and in facilities and programs with which TJJD contracts for the provision of services to youth.

(2) Except as specifically noted, this rule does not apply to criminal investigations conducted by the TJJD Office of Inspector General under §242.102, Human Resources Code.

(c) Definitions. As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or the death of, a youth committed to TJJD. Abuse also includes the definition in §261.001, Family Code.

(2) Board--the Texas Juvenile Justice Board, the governing board of TJJD.

(3) Chief local administrator--the person employed in a TJJD facility or district office who is responsible for overseeing the operations of a facility, contract program, or parole services.

(4) Emotional harm--an impairment in the youth's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, regardless of whether evaluation or treatment is actually received. Sexual conduct involving individuals included in subsection (b)(1) of this section and youth is presumed to cause substantial emotional harm.

(5) Exploitation--the illegal or improper use of a youth or the resources of a youth committed to TJJD for monetary or personal benefit, profit, or gain.

(6) Neglect--a negligent act or omission, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a youth committed to TJJD. Neglect also includes the definition in §261.001, Family Code.

(7) Physical injury--an injury that normally requires examination or treatment by a trained health care professional, regardless of whether examination or treatment is actually received.

(8) Preponderance of the evidence--a standard of proof meaning the credible and reliable evidence establishes that it is more likely than not that conduct meeting the definition of abuse, neglect, or exploitation occurred.

(9) Report--notification that alleged or suspected abuse, neglect, or exploitation of a child has occurred or may occur.

(10) Sexual conduct--includes sexual-related conduct that is harmful to a child's mental, emotional, or physical welfare, including, but not limited to, conduct that constitutes the offense of continuous sexual abuse of a child or children under §21.02, Penal Code; indecency with a child under §21.11, Penal Code; sexual assault under §22.011, Penal Code; aggravated sexual assault under §22.021, Penal Code; improper sexual activity with person in custody or under supervision under §39.04, Penal Code; indecent exposure under §21.08, Penal Code; sexual performance by a child under §43.25, Penal Code; and trafficking of persons under §20A.02, Penal Code.

(d) Reporting Requirements.

(1) Under state law, any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation must report the matter to a law enforcement agency or to the Department of Family and Protective Services. The TJJD Office of Inspector General is an appropriate law enforcement agency for reports of suspected abuse, neglect, or exploitation of youth subject to the jurisdiction of TJJD. Any TJJD employee, volunteer, or contractor working in a program or facility operated by or under contract with TJJD who has reasonable cause to believe a youth committed to TJJD has been or may have been the victim of abuse, neglect, or exploitation or receives such a report must immediately report the matter to law enforcement in accordance with the TJJD's reporting policies and procedures.

(2) The person making a report must provide as much detailed information as possible, including the identity of the persons involved, the location and time of relevant events, and the identity of others who may provide further information.

(3) The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.

(4) Except for investigation purposes, the identity of a person making a report is confidential.

(e) Actions Taken upon Receipt of the Report. Upon receipt of a report of alleged abuse, neglect, or exploitation, TJJD:

(1) in coordination with the appropriate law enforcement entity, immediately takes any action necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter;

(2) notifies the following people of the report:

(A) the youth's parents or guardian;

(B) the youth, if the report was not made by the youth;

and

(C) the chief juvenile probation officer for the committing court;

(3) determines whether the person accused of wrongdoing must be suspended, temporarily reassigned, or temporarily barred from

assignment to TJJD facilities pending the outcome of the investigation; and

(4) takes any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth and witnesses are protected from retaliation or improper influence.

(f) Assignment for Investigation.

(1) The TJJD Office of the Inspector General (OIG) promptly reviews each report of alleged abuse, neglect, or exploitation. Each report is entered into a centralized database and assigned for investigation if the report alleges conduct that, if true, appears to meet the definition of abuse, neglect, or exploitation. The report may also be assigned for criminal investigation.

(2) Whether to assign a report for criminal investigation by a peace officer from the Office of Inspector General or appropriate law enforcement is determined on a case-by-case basis considering all relevant factors, including the severity and immediacy of potential harm.

(3) An OIG investigator must provide an initial response within 24 hours after OIG receives the report if the report presents an immediate risk of physical or sexual abuse of a youth that could result in death or serious harm to the youth.

(4) If deemed to be warranted by the chief inspector general or the executive director, a report of abuse, neglect, or exploitation may be referred to appropriate outside law enforcement for investigation.

(g) Standards for Investigations.

(1) Investigations may be conducted based on a report to the OIG or may be initiated by the OIG when there is reasonable cause to believe that an incident may require investigation, regardless of how OIG is made aware of the matter.

(2) The investigation must be prompt, thorough, and directed at resolving all the relevant issues raised by the report. The primary objective of each investigation under this section is to ensure the health, safety, and well-being of the alleged victim(s) and other juveniles.

(3) Only a person qualified by experience and training may be assigned to conduct an investigation under this section.

(4) All evidence that is relevant and reasonably available must be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.

(5) For any report of alleged abuse, neglect, or exploitation, a preliminary investigation may be conducted to determine whether there is any evidence to corroborate the report or to provide cause to believe that any abuse, neglect, or exploitation has occurred.

(h) Abuse, Neglect, or Exploitation Findings.

(1) In order to find that a person engaged in abuse, neglect, or exploitation, there must be a preponderance of evidence to establish the person engaged in conduct that meets the definition of abuse, neglect, or exploitation, including having done so with the required mental state.

(2) A person acts intentionally, or with intent, with respect to the nature of the person's conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or to cause the result.

(3) A person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or the result of the conduct



when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with the respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

(4) A person acts recklessly, or is reckless, with respect to circumstances surrounding the person's conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(5) A person acts with negligence when the person does something that an ordinarily prudent person exercising ordinary care would not have done under the same circumstances or fails to do something that an ordinarily prudent person in the exercise of ordinary care would have done.

(6) An investigation of potential abuse requires a finding of whether the subject intentionally, knowingly, or recklessly acted or failed to act; and, if so, whether the act caused emotional harm or physical injury to the youth or posed a significant and foreseeable risk of emotional harm or physical injury.

(7) An investigation of potential neglect requires a finding of whether the subject engaged in a negligent act or omission and, if so, whether the action or failure to act was a substantial factor in bringing about substantial emotional harm or physical injury to the youth or posed a significant and foreseeable risk of emotional harm or physical injury.

(8) An investigation of potential exploitation requires a finding of whether a youth or the resources of a youth were used for monetary or personal benefit, profit, or gain of the suspect and, if so, whether the use was illegal or improper.

(i) Investigative Report.

(1) Each investigation requires a written investigative report with the investigator's recommendations regarding whether the evidence is sufficient to establish that abuse, neglect, or exploitation occurred. The report must include a summary and analysis of the evidence relied upon in reaching the recommendations. Anything considered in the investigation, including, but not limited to, copies of relevant documents and photographs, must be attached to the investigative report.

(2) Investigations may include recommendations that findings of misconduct other than abuse, neglect, or exploitation be made if the misconduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the subject or other employees as to policy violations or other misconduct indicated by the evidence.

(3) An attorney in the Office of General Counsel shall review the recommendations of each investigative report for legal sufficiency and, based on the evidence, shall make findings as to whether or not abuse, neglect, or exploitation occurred. The Office of General Counsel may request additional information or investigation by OIG if necessary to make a finding. The findings must be made before the results of the investigative report are finalized.

(j) Actions in Response to a Closed Investigative Report.

(1) Upon receipt of a closed investigative report, the chief local administrator must review the investigative report and:

(A) notify the youth, the youth's parents or guardian, and the person accused of wrongdoing of the results of the investigation; and

(B) notify the youth and the youth's parents of the right to appeal the investigation findings or to file a complaint regarding the conduct of the investigation under §380.9353 of this chapter.

(2) If the chief local administrator disagrees with the findings, the chief local administrator may appeal in accordance with PRS.35.11.

(3) If the investigative finding confirms abuse, neglect, exploitation, or other wrongdoing occurred, the chief local administrator must take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances, which may include disciplinary action.

(4) If the investigative findings indicate wrongdoing by a person no longer employed by TJJD, the chief local administrator must contact HR to determine if the person's rehire eligibility status should be changed.

(k) Standards for Compiling Investigation Information.

(1) The Office of Inspector General compiles information related to the number and nature of reports filed, case closure dispositions, the dates and locations of reported incidents, the average length of time required for investigations, and any significant trends. This information must be compiled at least twice each year and be available for public inspection.

(2) Additional information, including a summary of the findings and corrective actions taken with regard to all confirmed reports, is prepared for periodic review and analysis by the TJJD executive staff and the Board.

(3) Periodic summaries of complaints and appeals regarding investigations conducted under this rule and the final decisions regarding the complaints or appeals are provided to the Board for review. The TJJD executive director or Board will take whatever action is determined to be appropriate with regard to the complaint to ensure the investigations are conducted properly.

(l) Confidentiality of Reports and Investigation Information.

(1) A report of suspected abuse, neglect, or exploitation and the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation or in providing services as a result of an investigation are confidential and may be disclosed only for purposes consistent with Chapter 261, Family Code, applicable federal or state law, and in accordance with this section.

(2) To the extent required by state or federal law, TJJD will release to the public, upon request, a report of alleged or suspected abuse, neglect, or exploitation if:

(A) the report relates to a report of abuse, neglect, or exploitation involving a child committed to TJJD during the period that the child is committed to TJJD; and

(B) TJJD is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(3) Any information concerning a report of alleged or suspected abuse, neglect, or exploitation that is disclosed will be edited to protect the identity of:

(A) a child who is the subject of the report of alleged or suspected mistreatment;

(B) any other youth committed to TJJD who is named in the report;

(C) the person who made the report; and

(D) any other person whose life or safety may be endangered by the disclosure.

(4) Notwithstanding any other provision permitting the release of information, TJJD will not disclose any record or information that, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(5) An investigative report regarding an investigation of an allegation of abuse, neglect, or exploitation will be provided to:

(A) a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution, upon request; and

(B) a parent, guardian, managing conservator, or attorney representing a youth, upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

(6) An investigative report and evidence gathered in the course of an investigation may be provided to appropriate TJJD staff for the determination of corrective actions, to the State Office of Administrative Hearings for the purpose of a certification action pursuant to Chapter 349 of this title, and pursuant to a Memorandum of Understanding adopted under §810.009, Health and Safety Code.

(7) An investigative report and evidence gathered in the course of an investigation may be provided to or made available to the subject of the investigation for use in an appeal of the investigation findings or to defend against a disciplinary action or other action arising from the investigation findings, including a certification action under Chapter 349 of this title.

(A) Investigative reports are confidential under Chapter 261, Family Code, and may be used by the subject of the investigation only for the appeal of investigation findings or to defend against a disciplinary action or certification action arising from an investigation.

(B) Names of individuals contained in the investigative report or related evidence will be redacted if the names are not necessary for the fair resolution of contested facts. Any information that is confidential by law will be redacted prior to delivery to the subject of the investigation.

(8) Copies of videotapes, audiotapes, and photographs may be provided to individuals or entities identified in paragraphs (5)-(7) of this subsection only if TJJD determines that the provision of a copy is essential to the investigation, prosecution, or resolution of a case. Otherwise, the individual will be provided access to review videotapes, audiotapes, and photographs only in areas designated by TJJD and at a time mutually convenient to TJJD and the requestor. When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records unless the participation of this individual is deemed by TJJD to be appropriate under the circumstances surrounding the request.

(9) TJJD shall withhold the release of any investigation records obtained from another source if the release of those records to the requestor is specifically prohibited under state or federal law. Information that may be withheld under this section includes, but is not limited to:

(A) all medical records subject to the Medical Practices Act, Chapter 159, Occupations Code, unless release to the requestor is authorized under that Act;

(B) HIV information unless release to the requestor is authorized under Chapter 81, Health and Safety Code;

(C) offense reports, criminal history information, and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law; and

(D) adult or juvenile probation records, as well as records related to the taking into custody of a juvenile, unless release to the requestor is specifically authorized under state or federal law.

(m) Complaints. All complaints relating to investigations under this section shall be referred to the Board, as required by §261.403, Family Code.

(n) Periodic Audit of Investigations. Pursuant to Family Code §261.403, the Board ensures there is a periodic internal audit of procedures related to administrative investigations of alleged abuse, neglect, and exploitation.

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

Filed with the Office of the Secretary of State on December 27, 2024.

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Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



## SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

### DIVISION 1. BEHAVIOR MANAGEMENT

#### 37 TAC §380.9503

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9503, Rules and Consequences for Residential Facilities.

#### SUMMARY OF CHANGES

Amendments to the section will include revising the due process procedure that is required to prove an allegation in cases where a Level II hearing is not required. Specifically, the changes will include: (1) assigning the name *rule-violation review* to this level of due process; (2) adding that the standard of proof is a preponderance of evidence; (3) adding that a rule-violation review may be held even if no disciplinary consequence is sought; (4) adding that the youth will be notified, rather than told, about which rule was allegedly violated and which consequence staff is considering, if any; (5) removing the statement that required staff to describe the information staff has that establishes the youth committed the alleged violation; (6) adding that the youth must be given the opportunity to review relevant evidence considered by staff and to present the youth's own evidence; and (7) adding that the results of a rule-violation review are not grievable through the

youth grievance system, but they may be appealed to the facility administrator or designee on various grounds.

Amendments in other areas of the rule will include: (1) removing the statement that allowed a rule violation to be proven only via a Level I or Level II due process hearing and that limited a youth's disciplinary record to consist only of allegations proven in these types of hearings; (2) clarifying that, in addition to an incident report, any other document that describes conduct is also something that cannot be appealed or grieved; (3) adding that the *results* of hearings or rule-violation reviews, and not just disciplinary consequences, can be appealed; and (4) clarifying that the statement requiring appropriate due process before imposing consequences applies to *disciplinary* consequences.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be updated and streamlined procedures for addressing youth behaviors that constitute violations of the rules of conduct for residential facilities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

#### STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

#### §380.9503. *Rules and Consequences for Residential Facilities.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing disciplinary consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

- (A) a youth communicates with another youth;
- (B) the communication is intended to cause the other youth to commit a rule violation; and
- (C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. An [Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal] incident report or other document describing conduct is not something that can be appealed or grieved [appealable or grievable]; only the results of a hearing or rule-violation review [disciplinary consequences] may be appealed [or grieved], as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth

shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJJ's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJJ's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJJ facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJJ's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) This paragraph applies only to youth in high-restriction facilities. To impose a disciplinary consequence that does not require a Level II hearing, a rule-violation review is required. A rule-violation review is a process by which staff review evidence to determine whether a rule violation occurred. A rule-violation review results in a finding that the alleged violation is proven, the alleged violation is not proven, or a different rule was violated than the one alleged. A rule violation is proven if a preponderance of the evidence proves behavior meeting the definition of a rule violation occurred. The following steps are to be taken for every rule-violation review, regardless of whether a consequence is sought: [If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:]

(A) a written description of the incident must be prepared;

(B) staff must notify [tell] the youth which rule violation the youth allegedly committed [and describe the information staff has that establishes the youth committed it];

(C) staff must notify [tell] the youth which [what] disciplinary consequence(s) staff is considering imposing, if any; [and]

(D) the youth must be given the opportunity to review the relevant evidence considered by staff and to present the youth's own relevant evidence; and

(E) ~~[(D)]~~ the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) The findings and disposition from a rule-violation review are not grievable, but they may be appealed to the facility administrator or designee on the grounds that the youth did not commit the rule violation found proven during the review, that the consequence is not appropriate, or that the youth was not provided with the requisite notice or opportunity to be heard. If the result of a rule-violation review is overturned, that fact shall be documented appropriately.

~~[(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter.]~~

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJ staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(17) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) Refusing a Search--refusing to submit to an authorized search of person or area.

(22) Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) Stealing--intentionally taking property with an estimated value of \$100 or more from another without permission.

(25) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) Vandalism--intentionally causing \$100 or more in damage to state property or personal property of another.

(31) Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under \$100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) Vandalism--intentionally causing less than \$100 in damage to state or personal property.

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

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406316

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



# 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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Texas Ethics Commission

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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.

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

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Wesley Shackelford

Deputy Director

Texas Judicial Council

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For further information, please call: (737) 279-9208



## 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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Scott Freshour

General Counsel

Texas Medical Board

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

## CHAPTER 160. GENERAL PROVISIONS SUBCHAPTER A. GENERAL

### 22 TAC §§160.1 - 160.7

The new rules are 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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Scott Freshour

General Counsel

Texas Medical Board

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



## SUBCHAPTER B. RULEMAKING

### 22 TAC §160.10, §160.11

The new rules are 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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Scott Freshour

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Texas Medical Board

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



## 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 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

General Counsel

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## 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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## 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

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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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## 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.

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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.

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## 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.

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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.

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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.

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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.

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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.

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 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.

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. 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.

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 §§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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## 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.

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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.

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. 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.

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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.

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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 re-adoption, re-adoption 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.

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. 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.

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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.

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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.

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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 re-adoption, re-adoption 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.

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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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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.

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. 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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## 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.

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. 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.

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. 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.

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 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.

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. 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.



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. 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.

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. 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.

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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, 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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## 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 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 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 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. 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 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 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.

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 §§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

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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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## 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);

(ii) Test of English for International Communication (TOEIC);

(iii) Occupational English Test (OET); or

(iv) other examination of English competency considered acceptable to the board.

§184.14. *Procedural Rules for Licensure Applicants.*

(a) Applications will be processed in accordance with §205.202 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§184.15. *Relicensure.*

(a) For a license holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be relicensed, the following is required:

- (1) all statutory requirements for licensure must be met;
- (2) application must be submitted and the required fee of \$320.00, and additional fees and surcharges, as applicable, must be paid;
- (3) the requirements of §184.10 of this chapter (relating to General Requirement for Licensure) must be met;
- (4) competency to resume practice must be demonstrated; and
- (5) other remediation required by the board must be completed.

(b) In accordance with §205.3522 of the Act, applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§184.16. *License Registration and Renewal.*

(a) Within 90 days of a license being issued, it must be registered by:

- (1) completing a board registration form;
- (2) submitting payment of the initial registration fee of \$671.00, and additional fees and surcharges, as applicable;
- (3) providing requested information related to their online verification; and
- (4) providing other relevant information requested by the board staff.

(b) Subsequent registration will be biennially by:

- (1) completing a board renewal form;
- (2) submitting payment of a biennial registration fee of \$667.00, and additional fees and surcharges, as applicable;
- (3) verifying and updating information related to their 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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## 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.

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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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## 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.

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

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Scott Freshour

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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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Scott Freshour

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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 readoption, readoption 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.

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. 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.

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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.

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 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.

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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.

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## 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 re-adoption, re-adoption 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.

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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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General Counsel

Texas Medical Board

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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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Scott Freshour

General Counsel

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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.

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. 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.

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. 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.

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 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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## 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.

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 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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## 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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General Counsel

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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  
General Counsel  
Texas Parks and Wildlife Department  
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Proposal publication date: October 4, 2024  
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.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406363  
James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
Effective date: January 19, 2025  
Proposal publication date: October 4, 2024  
For further information, please call: (512) 389-4775



## 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.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406364

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: January 19, 2025

Proposal publication date: October 4, 2024

For further information, please call: (512) 389-4775



# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

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## Department of State Health Services

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 133, Hospital Licensing, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 505, Hospital Licensing.

The rules will be transferred in the Texas Administrative Code effective January 31, 2025.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 133

TRD-202406365

## Health and Human Services Commission

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 133, Hospital Licensing, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 505, Hospital Licensing.

The rules will be transferred in the Texas Administrative Code effective January 31, 2025.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 133

TRD-202406366

Figure: 25 TAC Chapter 133

<b>Current Rules</b>	<b>Move to</b>
<b>Title 25. Health Services</b>	<b>Title 26. Health and Human Services</b>
<b>Part 1. Department of State Health Services</b>	<b>Part 1. Health and Human Services Commission</b>
<b>Chapter 133. Hospital Licensing</b>	<b>Chapter 505. Hospital Licensing</b>
<b>Subchapter A. General Provisions</b>	<b>Subchapter A. General Provisions</b>
§133.1. Purpose.	§505.1. Purpose.
§133.2. Definitions.	§505.2. Definitions.
<b>Subchapter B. Hospital License</b>	<b>Subchapter B. Hospital License</b>
§133.21. General.	§505.21. General.
§133.22. Application and Issuance of Initial License.	§505.22. Application and Issuance of Initial License.
§133.23. Application and Issuance of Renewal License.	§505.23. Application and Issuance of Renewal License.
§133.24. Change of Ownership.	§505.24. Change of Ownership.
§133.25. Time Periods for Processing and Issuing Hospital Licenses.	§505.25. Time Periods for Processing and Issuing Hospital Licenses.
§133.26. Fees.	§505.26. Fees.
<b>Subchapter C. Operational Requirements</b>	<b>Subchapter C. Operational Requirements</b>
§133.41. Hospital Functions and Services.	§505.41. Hospital Functions and Services.
§133.42. Patient Rights.	§505.42. Patient Rights.
§133.43. Discrimination or Retaliation Standards.	§505.43. Discrimination or Retaliation Standards.
§133.44. Hospital Patient Transfer Policy.	§505.44. Hospital Patient Transfer Policy.
§133.45. Miscellaneous Policies and Protocols.	§505.45. Miscellaneous Policies and Protocols.
§133.46. Billing Requirements.	§505.46. Billing Requirements.
§133.47. Abuse and Neglect Issues.	§505.47. Abuse and Neglect Issues.
§133.49. Reporting Requirements.	§505.49. Reporting Requirements.
§133.50. Caregiver Designation.	§505.50. Caregiver Designation.
§133.51. In-Person Visitation During a Public Health Emergency or Disaster.	§505.51. In-Person Visitation During a Public Health Emergency or Disaster.
§133.52. Hospital-Owned or Hospital-Operated Freestanding Emergency Medical Care Facilities.	§505.52. Hospital-Owned or Hospital-Operated Freestanding Emergency Medical Care Facilities.
§133.53. Hospital Price Transparency Reporting and Enforcement.	§505.53. Hospital Price Transparency Reporting and Enforcement.
§133.54. Hospital at Home Program Application and Operational Requirements.	§505.54. Hospital at Home Program Application and Operational Requirements.
§133.55. Workplace Violence Prevention.	§505.55. Workplace Violence Prevention.
<b>Subchapter D. Voluntary Agreements</b>	<b>Subchapter D. Voluntary Agreements</b>
§133.61. Hospital Patient Transfer Agreements.	§505.61. Hospital Patient Transfer Agreements.

§133.62. Cooperative Agreements.	§505.62. Cooperative Agreements.
<b>Subchapter E. Waiver Provisions</b>	<b>Subchapter E. Waiver Provisions</b>
§133.81. Waiver Provisions.	§505.81. Waiver Provisions.
<b>Subchapter F. Inspection And Investigation Procedures</b>	<b>Subchapter F. Inspection And Investigation Procedures</b>
§133.101. Integrity of Inspections and Investigations.	§505.101. Integrity of Inspection and Investigation.
§133.102. Inspections.	§505.102. Inspections.
§133.103. Complaint Investigations.	§505.103. Complaint Investigations.
§133.104. Notice.	§505.104. Notice.
§133.105. Professional Conduct.	§505.105. Professional Conduct.
§133.106. Complaint Against an HHSC Representative.	§505.106. Complaint Against an HHSC Representative.
<b>Subchapter G. Enforcement</b>	<b>Subchapter G. Enforcement</b>
§133.121. Enforcement.	§505.121. Enforcement.
<b>Subchapter H. Fire Prevention And Safety Requirements</b>	<b>Subchapter H. Fire Prevention And Safety Requirements</b>
§133.141. Fire Prevention and Protection.	§505.141. Fire Prevention and Protection.
§133.142. General Safety.	§505.142. General Safety.
§133.143. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.	§505.143. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.
<b>Subchapter I. Physical Plant And Construction Requirements</b>	<b>Subchapter I. Physical Plant And Construction Requirements</b>
§133.161. Requirements for Buildings in Which Existing Licensed Hospitals Are Located.	§505.161. Requirements for Buildings in Which Existing Licensed Hospitals Are Located.
§133.162. New Construction Requirements.	§505.162. New Construction Requirements.
§133.163. Spatial Requirements for New Construction.	§505.163. Spatial Requirements for New Construction.
§133.164. Elevators, Escalators, and Conveyors.	§505.164. Elevators, Escalators, and Conveyors.
§133.165. Building with Multiple Occupancies.	§505.165. Building with Multiple Occupancies.
§133.166. Mobile, Transportable, and Relocatable Units.	§505.166. Mobile, Transportable, and Relocatable Units.
§133.167. Preparation, Submittal, Review and Approval of Plans, and Retention of Records.	§505.167. Preparation, Submittal, Review and Approval of Plans, and Retention of Records.
§133.168. Construction, Inspections, and Approval of Project.	§505.168. Construction, Inspections, and Approval of Project.
§133.169. Tables.	§505.169. Tables.

## Department of State Health Services

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 140, Health Professions Regulation, Subchapter I, Licensed Chemical Dependency Counselors, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 562, Licensed Chemical Dependency Counselors.

The rules will be transferred in the Texas Administrative Code effective January 31, 2025.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 140, Subchapter I  
TRD-202406367

## Health and Human Services Commission

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 140, Health Professions Regulation, Subchapter I, Licensed Chemical Dependency Counselors, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 562, Licensed Chemical Dependency Counselors.

The rules will be transferred in the Texas Administrative Code effective January 31, 2025.

The following table outlines the rule transfer:

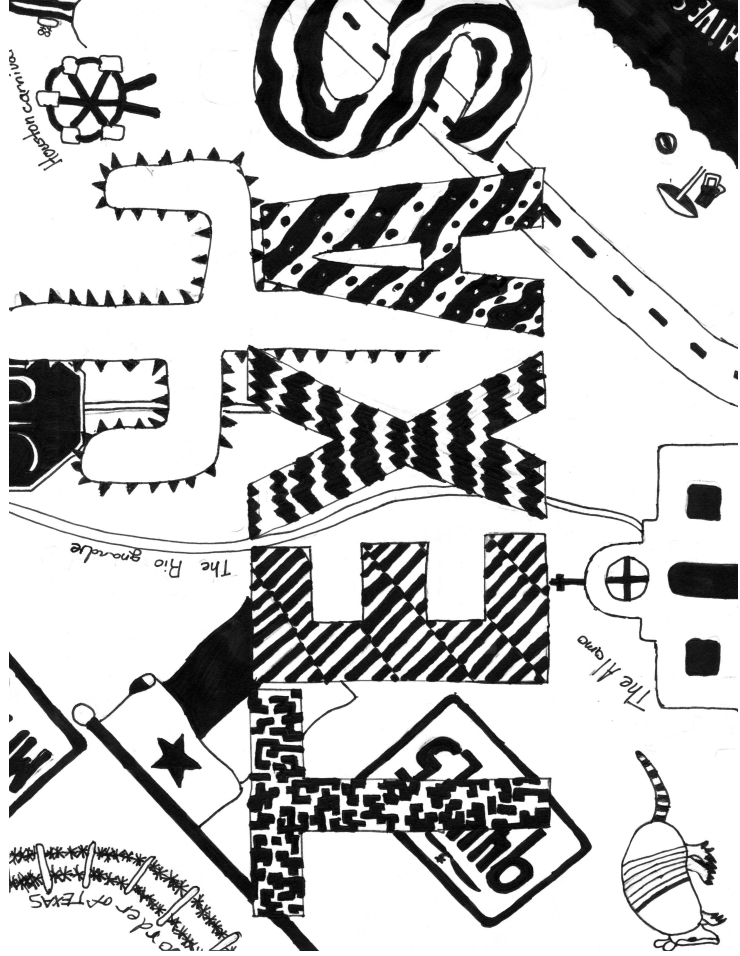
Figure: 25 TAC Chapter 140, Subchapter I  
TRD-202406368

Figure: 25 TAC Chapter 140, Subchapter I

<b>Current Rules</b> <b>Title 25. Health Services</b> <b>Part 1. Department of State Health Services</b> <b>Chapter 140. Health Professions Regulation</b> <b>Subchapter I. Licensed Chemical Dependency Counselors</b>	<b>Move to</b> <b>Title 26. Health and Human Services</b> <b>Part 1. Health and Human Services Commission</b> <b>Chapter 562. Licensed Chemical Dependency Counselors</b>
§140.400. Definitions.	§562.1. Definitions.
§140.401. License Required.	§562.2. License Required.
§140.402. Scope of Practice.	§562.3. Scope of Practice.
§140.403. Fees.	§562.4. Fees.
§140.404. LCDC Licensure Application Standards and Counselor Intern Registration.	§562.5. LCDC Licensure Application Standards and Counselor Intern Registration.
§140.405. Requirements for Counselor Intern Registration.	§562.6. Requirements for Counselor Intern Registration.
§140.406. Standards for 270 Educational Hours.	§562.7. Standards for 270 Educational Hours.
§140.407. Practicum Standards.	§562.8. Practicum Standards.
§140.408. Requirements for LCDC Licensure.	§562.9. Requirements for LCDC Licensure.
§140.409. Standards for Supervised Work Experience.	§562.10. Standards for Supervised Work Experience.
§140.410. Clinical Training Institution (CTI) Registration.	§562.11. Clinical Training Institution (CTI) Registration.
§140.411. Certified Clinical Supervisor (CCS) Certification Requirements.	§562.12. Certified Clinical Supervisor (CCS) Certification Requirements.
§140.412. LCDC Licensure Examination.	§562.13. LCDC Licensure Examination.
§140.413. Counselor Intern Registration Expiration.	§562.14. Counselor Intern Registration Expiration.
§140.414. LCDC Licensure Through Reciprocity.	§562.15. LCDC Licensure Through Reciprocity.
§140.415. Issuing Licenses.	§562.16. Issuing Licenses.
§140.416. LCDC License Expiration, Renewal, and Continuing Education Requirements.	§562.17. LCDC License Expiration, Renewal, and Continuing Education Requirements.
§140.418. Continuing Education Standards.	§562.18. Continuing Education Standards.
§140.419. Inactive Status.	§562.19. Inactive Status.
§140.420. Peer Assistance Programs.	§562.20. Peer Assistance Programs.
§140.421. Standards for the Training and Supervision of Counselor Interns.	§562.21. Standards for the Training and Supervision of Counselor Interns.
§140.422. Direct Supervision of Interns.	§562.22. Direct Supervision of Interns.
§140.423. Professional and Ethical Standards for all License Holders.	§562.23. Professional and Ethical Standards for all License Holders.

§140.424. Standards for Private Practice.	§562.24. Standards for Private Practice.
§140.425. Complaint and Investigation Procedures.	§562.25. Complaint and Investigation Procedures.
§140.426. Disciplinary Actions.	§562.26. Disciplinary Actions.
§140.427. Administrative Penalties.	§562.27. Administrative Penalties.
§140.428. Informal Disposition.	§562.28. Informal Disposition.
§140.429. Voluntary Surrender of License, Certification, or Registration In Response to a Complaint.	§562.29. Voluntary Surrender of License, Certification, or Registration In Response to a Complaint.
§140.430. Procedures for Contested Cases.	§562.30. Procedures for Contested Cases.
§140.431. Criminal History Standards.	§562.31. Criminal History Standards.
§140.432. Request for Criminal History Evaluation Letter.	§562.32. Request for Criminal History Evaluation Letter.
§140.433. Licensing, Certification, or Registration of Military Service Members, Military Spouses, and Military Veterans.	§562.33. Licensing, Certification, or Registration of Military Service Members, Military Spouses, and Military Veterans.
§140.434. Prohibition related to Child Custody and Adoption Evaluations.	§562.34. Prohibition related to Child Custody and Adoption Evaluations.
§140.435. Miscellaneous Policies and Protocols.	§562.35. Miscellaneous Policies and Protocols.

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# REVIEW OF AGENCY RULES

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This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Reviews

Texas Judicial Council

### Title 1, Part 8

The Texas Indigent Defense Commission (TIDC) is a permanent Standing Committee of the Texas Judicial Council. TIDC adopts the review of Texas Administrative Code, Title 1, Part 8, Chapter 174, including Subchapter C, concerning Policy Monitoring Requirements and Subchapter D, concerning Indigent Defense Procedure Requirements, pursuant to Texas Government Code §2001.039. TIDC proposed the review of Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapters C and D in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8177).

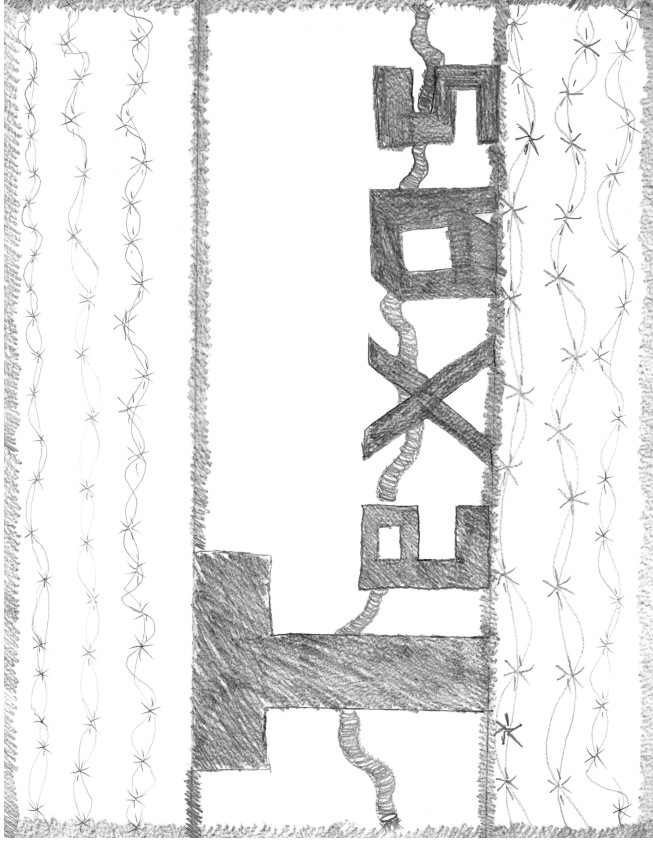
TIDC received no comments related to the review of the subchapters. Relating to the review of Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapters C and D, TIDC finds that the reasons for

adopting the rules contained in this chapter continue to exist. As a result of internal review, TIDC has determined that certain revisions are appropriate and necessary. The adopted changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, TIDC finds that the reasons for initially adopting the rules in Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapters C and D, continue to exist, and readopts these subchapters in accordance with the requirements of Texas Government Code §2001.039.

TRD-202406348  
Wesley Shackelford  
Deputy Director  
Texas Judicial Council  
Filed: December 30, 2024





# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §97.1002(b)

## Accountability Ratings Appeals Process and Timeline

The commissioner of education is required to provide a process for school districts (districts) and open-enrollment charter schools (charter schools) to challenge an agency decision relating to an academic rating that affects the district or school, including a determination of consecutive school years of unacceptable performance ratings (Texas Education Code [TEC], §39.151). **This figure supersedes the timelines referenced in Chapter 8 of the 2023 and 2024 Accountability Manuals and applies to all Accountability Rating Appeals from 2023 and beyond until otherwise updated.**

### Appeals Process Overview and General Timeline

While districts and charter schools may appeal for any reason, the accountability system framework limits the likelihood that a single indicator or measure will result in a reduced rating. For this reason, a successful accountability appeal is usually limited to such rare cases as a data or calculation error attributable to the testing contractor(s), a regional education service center (ESC), or the Texas Education Agency (TEA). Online applications provided by TEA and the testing contractors ensure that districts and charter schools are aware of data correction opportunities, particularly through TSDS PEIMS data submissions and the Test Information Distribution Engine (TIDE). District and charter schools' responsibility for data quality is the cornerstone of a fair and uniform rating determination.

District and charter school appeals that challenge the agency's determination of the accountability rating and/or determination of consecutive school years of unacceptable performance ratings are carefully reviewed by an external panel. District superintendents and chief operating officers of charter schools may appeal accountability ratings by following the guidelines in this figure. Local Accountability System (LAS) districts that wish to appeal LAS campus ratings must follow the LAS appeals process in the *Local Accountability System Technical Guide*.

The following is the annual timeline for appealing ratings. The appeals timeline follows this pattern each year. The calendar dates for the accountability year will be announced in conjunction with the release of preliminary accountability ratings in [TEA Login](#) (TEAL). Late appeals are denied to maintain a fair appeal process.

Timeline	Appeal Process
Appeal Window Opens	<i>Ratings Release on TEAL.</i> No appeals will be resolved before the public release of ratings.
2 days after the appeal window opens	<i>Preliminary Ratings and Preliminary Count of Consecutive Years of Unacceptable Performance Release on TEA Public Website.</i> Ratings and counts of consecutive years are subject to change due to the results of an audit, compliance review, investigation, or appeal.
30 calendar day period	<i>Appeals Window.</i> Appeals may be submitted by the superintendent or chief operating officer once ratings and year counts are released. Districts and charter schools register their intent to appeal using the TEA Login (TEAL) Accountability application, and mail (e-mail or postal mail) their appeal letter with supporting documentation. Appeals not signed by the district superintendent or chief operating officer of the charter school are denied.

Timeline	Appeal Process
Day 30 of appeal window	<i>Appeals Deadline.</i> Appeals must be uploaded in the TEAL Accountability Appeals system, postmarked, or hand-delivered by 5pm no later than the date shared by TEA in conjunction with the preliminary ratings release into the TEAL Accountability application.
90 calendar days after appeal window closes	<i>Decisions Released.</i> Commissioner’s decisions are provided in the form of response letters to each district and charter school that filed an appeal by the submission deadline. Letters are posted to the TEAL Accountability application.
90 calendar days after appeal window closes	<i>Final Ratings and Count of Consecutive Years of Unacceptable Performance Release.</i> The outcomes of all appeals are reflected in the final ratings and year counts update. The TEAL and public websites are updated. Ratings and year counts are subject to change due to the results of an audit, compliance review, or investigation.

Figure: 19 TAC Chapter 231, Subchapter F - Preamble

SBEC Meetings	SBEC Discussion
December 2023	<ul style="list-style-type: none"> <li>• Overview of federal and state requirements</li> <li>• Core challenges related to current rule text</li> <li>• Initial set of recommendations shared by Texas Education Agency (TEA) staff</li> <li>• Directive to TEA staff to explore development of a Texas-specific worksheet to replace current High Objective Uniform State Standard of Evaluation (HOUSSE) worksheet</li> </ul>
February 2024	<ul style="list-style-type: none"> <li>• Additional context around federal requirements, current rule text, and HOUSSE provisions</li> <li>• Texas-specific worksheet development update</li> </ul>
July 2024	<ul style="list-style-type: none"> <li>• Directive to TEA staff to move forward with content competency requirements for special education teachers of record only and allow worksheet flexibilities for elementary and secondary special education teachers of record</li> </ul>
September 2024	<ul style="list-style-type: none"> <li>• Updated draft of the Texas Content Competency Worksheet for Special Education Teachers of Record (Grades EC-12)</li> </ul>

ATTACHMENT II  
Text of

**Figure: 19 TAC §231.701(d)**

**TEXAS CONTENT COMPETENCY WORKSHEET FOR SPECIAL EDUCATION TEACHERS OF RECORD  
(GRADES EC-12)**

FOR USE BEGINNING IN THE 2025-2026 SCHOOL YEAR

**Directions: The following sections of the Texas Content Competency Worksheet for Special Education Teachers of Record (Grades EC-12) must be completed only for those educators who do not hold the appropriate grade-banded, content area certification for their current role, per 19 TAC §231.701.**

**Note: A copy of the Texas Content Competency Worksheet for Special Education Teachers of Record (Grades EC-12) should be filed in the educator's Human Resources file and provided to the educator for their records. A copy of this worksheet completed by a special education teacher's previous administration should be considered valid and re-filed by the receiving district in the event the educator transitions to a new district within the State of Texas.**

<b><u>Table of Contents</u></b>	<b><u>Section A: General Information</u></b>
	<b><u>Section B: Special Educators Utilizing Previous Subject Matter Competency Provisions</u></b>
	<b><u>Section C: Elementary Special Education Teachers of Record Content Competency Requirements</u></b>
	<b><u>Section D: Secondary Special Education Teachers of Record Content Competency Requirements</u></b>
	<b><u>Section E: For First-Year Special Education Teachers of Record Only</u></b>
	<b><u>Section F: Administrator Attestation</u></b>
	<b><u>Section G: Appendix (PACT Alignment Chart, Closely Related Fields, Residency Information, and Definitions)</u></b>

**SECTION A: GENERAL INFORMATION**

**Teacher Name:**

**TEA ID #:**

**Date Completed:**

- Administrator has verified the teacher holds a valid, SBEC-approved special education certification appropriate for the grade level of assignment and instruction.**

**SECTION B: SPECIAL EDUCATORS UTILIZING PREVIOUS SUBJECT MATTER COMPETENCY PROVISIONS**

**For those educators utilizing previous subject matter competency provisions through state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers (HOUSSE) prior to 9/1/2025, campus administration attests to the following:**

- **Administrator attests that the special education teacher met previous HOUSSE provisions prior to 9/1/2025 at either the Elementary or Secondary Level**
- **Administrator attests that the special education teacher has demonstrated the required subject matter content knowledge to continue to serve in their assigned placement**

**NOTE: ADMINISTRATOR ATTESTATION CAN BE FOUND BELOW IN SECTION F OF THIS DOCUMENT**

**SECTION C: ELEMENTARY SPECIAL EDUCATION TEACHER OF RECORD CONTENT COMPETENCY REQUIREMENTS (GRADES EC-5)**

**An elementary special education teacher of record must demonstrate competency in each core content area. Teachers must reach a combined total of at least 24 points across all content areas with no areas having less than 3 points. The following may be combined to reach the required points:**

	<b><u>Math</u></b>	<b><u>Science</u></b>	<b><u>Social Studies</u></b>	<b><u>ELAR</u></b>
<b><u>Obtained a passing score on an aligned PACT exam (See Section G of this document)</u></b>	___ pts	___ pts	___ pts	___ pts
<b><u>College credit hours in the content area (1 point for each credit hour)</u></b>	___ pts	___ pts	___ pts	___ pts
<b><u>Elementary and/or secondary teaching experience in the content area (3 points for each year of experience)</u></b>	___ pts	___ pts	___ pts	___ pts
<b><u>Documented relevant professional development aligned to the content area completed within the last three years at the elementary level that meet standard for CPE credit, outside of development required for successful completion of Texas Reading Academies (1 point for 3 hours of qualifying professional development)</u></b>	___ pts	___ pts	___ pts	___ pts
<b><u>Completed an approved residency placement* under the supervision of a special education teacher of record in the content area* (3 points)</u></b>	___ pts	___ pts	___ pts	___ pts

<b><u>Experience as a paraprofessional under the supervision of a special education teacher of record in the content area (1 point per year)</u></b>	_____ pts	_____ pts	_____ pts	_____ pts
<b><u>Science of Teaching Reading Exam and Texas Reading Academies:</u></b> <ul style="list-style-type: none"> <li>• <b><u>Passing score on Science of Teaching Reading Exam and Documented completion of Texas Reading Academies (12 Points)</u></b></li> <li>• <b><u>Passing score on Science of Teaching Reading Exam or Documented completion of Texas Reading Academies (9 points)</u></b></li> </ul>				_____ pts
<b><u>Totals Per Content Area:</u></b>				
				<b><u>Total Combined Points: /24</u></b>

**SECTION D: SECONDARY SPECIAL EDUCATION TEACHERS OF RECORD CONTENT COMPETENCY REQUIREMENTS (GRADES 6-12)**

**A secondary special education teacher of record must demonstrate competency in each core content area for which they are assigned. The following may be combined to reach the required 18 points in each area:**

	<b><u>Math</u></b>	<b><u>Science</u></b>	<b><u>Social Studies</u></b>	<b><u>ELAR</u></b>
<b><u>Holds a minor or major in the content area (18 points)</u></b>	_____ pts	_____ pts	_____ pts	_____ pts
<b><u>Obtained a passing score on an aligned PACT exam (See Section G of this document)</u></b>	_____ pts	_____ pts	_____ pts	_____ pts
<b><u>College credit hours in the content area assigned or closely related field (1 point for each credit hour)</u></b>	_____ pts	_____ pts	_____ pts	_____ pts
<b><u>Secondary teaching experience in the content area or closely related field (3 points for each year of experience)</u></b>	_____ pts	_____ pts	_____ pts	_____ pts
<b><u>Documented relevant professional development aligned to the content area or closely related field completed within the last three years at the secondary level that meet standard for CPE credit, outside of development required for successful completion of Texas Reading Academies (1 point for 3 hours of qualifying professional development)</u></b>	_____ pts	_____ pts	_____ pts	_____ pts



<u>Completed an approved residency placement under the supervision of a special education teacher of record in the content area or closely related field (3 points)</u>	_____ pts	_____ pts	_____ pts	_____ pts
<u>Experience as a paraprofessional under the supervision of a special education teacher of record in the content area or closely related field (1 point per year)</u>	_____ pts	_____ pts	_____ pts	_____ pts
<u>Science of Teaching Reading Exam and Texas Reading Academies:</u> <ul style="list-style-type: none"> <li>• <u>Passing score on Science of Teaching Reading Exam and Documented completion of Texas Reading Academies (12 Points)</u></li> <li>• <u>Passing score on Science of Teaching Reading Exam or Documented completion of Texas Reading Academies (9 points)</u></li> </ul>				_____ pts
<b>Totals:</b>	/18	/18	/18	/18

**Section E: FOR FIRST YEAR SPECIAL EDUCATION TEACHERS OF RECORD ONLY**

**For the purposes of the Texas Core Content Competency Worksheet a first-year teacher:**

- **holds a standard, intern, or probationary certificate,**
- **is a teacher for whom the applicable year is the first year of providing instruction, AND**
- **who does not hold the appropriate grade-banded, content area certification for their current role OR does not meet the content competency requirements detailed above for the grade band of their assignment.**

**Authorized administrators must provide teachers considered to be a first-year teacher with the following year-long runway to meet the content requirements as outlined in Sections C or D (e.g., professional development, passing score on an aligned PACT exam, seeking content certification, etc.):**

**Start Date: / /**

**End Date: / /**

**ADMINISTRATOR ATTESTATION CAN BE FOUND BELOW IN SECTION F OF THIS DOCUMENT**

**Section F: ADMINISTRATOR ASSURANCES**

**The administrator completing this worksheet assures that the teacher identified above has met the following requirements as specified in the appropriate section(s) above (Mark the assurance that applies):**

- The teacher meets subject matter competency provisions via HOUSSE prior to 9/1/25 through the attestation in Section B of this document.**
- The teacher meets the minimum point threshold for content competency in each area in which the teacher is assigned in Section C or Section D of this document.**
- The teacher meets provisions for first year teachers in Section E of this document.**

**In addition to the assurances above, the administrator also attests:**

- The teacher's campus administration will assist the teacher in seeking out continuing professional education (CPE), as required by 19 TAC §232.11, that addresses both the CPE requirements for the teacher's special education certificate renewal and education related specifically to the content area(s) for which the teacher is assigned to support or teach.**

**AUTHORIZED ADMINISTRATOR SIGNATURE:**

**AUTHORIZED ADMINISTRATOR NAME (PRINTED):**

**DATE:**

**Section G: Appendix**

**I. PACT Alignment**

**PACT Core Subjects Exams**

**If a special education teacher of record obtains a passing score on the 701/702/703 TX PACT Essential Academic Skills (Reading, Writing, and Mathematics) and**

- serves in an EC-5 placement, the teacher may count 12 points each for both math and ELAR, for a total of 24 points**
- serves in a 6<sup>th</sup> grade placement, the teacher may count 18 points each for ELAR and Math**
- There is no point value assigned for a passing score on the 701/702/703 TX PACT Essential Academic Skills for teachers serving in grade 7-12 placements.**

**If a special education teacher of record obtains a passing score on the 790 TX PACT Core Subjects: 4-8 exam and**

- serves in a 4-8 placement, the teacher has satisfied the content requirement in all four core content areas for that assignment.**
- and serves in an EC-3<sup>rd</sup> grade placement, the teacher may count 9 points each for math, science, social studies, and ELAR.**
- There is no point value assigned for a passing score on the 790 Core Subjects:4-8 exam for those special education teachers of record serving in grade 9-12 assignments.**

	<u>Math</u>	<u>Science</u>	<u>Social Studies</u>	<u>English Language Arts and Reading</u>
<b><u>Elementary PACT Alignment (EC-5)</u></b>	<u>715 TX PACT Mathematics: Grades 4-8</u>	<u>716 TX PACT Science: Grades 4-8</u>	<u>718 TX PACT Social Studies: Grades 4-8</u>	<u>717 TX PACT English Language Arts and Reading: Grades 4-8</u>
	<b><u>EC-5 Placement: 9 pts</u></b> <b><u>6<sup>th</sup>-8<sup>th</sup> Placement: 18 pts</u></b>	<b><u>EC-5 Placement: 9 pts</u></b> <b><u>6<sup>th</sup>-8<sup>th</sup> Placement: 18 pts</u></b>	<b><u>EC-5 Placement: 9 pts</u></b> <b><u>6<sup>th</sup>-8<sup>th</sup> Placement: 18 pts</u></b>	<b><u>EC-5 Placement: 9 pts</u></b> <b><u>6<sup>th</sup>-8<sup>th</sup> Placement: 18 pts</u></b>
<b><u>Secondary PACT Alignment (6-12)</u></b>	<u>715 TX PACT Mathematics: Grades 4-8</u>	<u>736 TX PACT Science: Grades 7-12</u>	<u>732 TX PACT Social Studies: Grades 7-12</u>	<u>731 TX PACT English Language Arts and Reading: Grades 7-12</u>
	<b><u>(6<sup>th</sup>-8<sup>th</sup> Placement: 18 pts)</u></b>	<u>738 TX PACT Life Science: Grades 7-12</u>	<u>733 TX PACT History: Grades 7-12</u>	
	<u>735 TX PACT Mathematics: Grades 7-12</u>	<u>737 TX PACT Physical Science: Grades 6-12</u>		
	<b><u>(6<sup>th</sup>-12<sup>th</sup> Placement: 18 pts)</u></b>	<u>739 TX PACT: Physics Grades 7-12</u>		
		<u>740 TX PACT Chemistry: Grades 7-12</u>		
	<b><u>6-12 Placement: 18 pts</u></b>	<b><u>6-12 Placement: 18 pts</u></b>	<b><u>6-12 Placement: 18 pts</u></b>	

**II. Closely Related Fields**

The following list is not exhaustive, and school districts may consider additional fields but must maintain documentation to support the determination.

Note: One foreign language is not closely related to another foreign language.

<u>Math</u>	<u>ELAR</u>	<u>Science</u>	<u>Social Studies and Social Sciences</u>
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<u>Engineering</u>	<u>English</u>	<u>Life or Physical Science</u>	<u>History</u>
<u>Statistics</u>	<u>Communication</u>	<u>Biology</u>	<u>Economics</u>
<u>Accounting</u>	<u>Speech</u>	<u>Chemistry</u>	<u>Geography</u>
<u>Finance</u>	<u>Journalism</u>	<u>Physics</u>	<u>Political Science, Civics,</u>
<u>Economics</u>	<u>Reading</u>		<u>or Government</u>
			<u>Philosophy</u>
			<u>Sociology</u>
			<u>Psychology</u>

**III. Residency Information\***

If a teacher at either the elementary or secondary level completes an approved residency program under the supervision of a special education teacher of record in a self-contained setting where the supervising teacher of record is responsible for one or more content areas, each content area will be worth 3 points in the residency row.

**IV. Definitions**

<u>Teacher of Record</u>	<u>Per 19 TAC §230.1 (24) a teacher serving as teacher of record is “An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting not less than an average of four hours each day and is responsible for evaluating student achievement and assigning grades.”</u>
<u>CPE</u>	<u>More information regarding the types of acceptable continuing professional education (CPE) activities can be found in 19 TAC §232.15.</u>
<u>Approved Residency Program</u>	<u>A residency completed by the candidate at an EPP approved to offer a teacher residency preparation route per 19 TAC §228.15.</u>

Figure: 19 TAC Chapter 235-Preamble

<b>Standards</b>	<b>Current Subchapter and Section</b>	<b>Proposed Action</b>	<b>Proposed Subchapter and Section</b>
PPR Standards, Early Childhood: Pre-k-Grade 3	Subchapter B. §235.11	Repeal and replace with updated Classroom Teacher Standards Early Childhood-Grade 12	New Subchapter C. New §235.21
Content Standards, Early Childhood: Pre-k-Grade 3	Subchapter B. §235.13	No change to standards	New Subchapter B. New §235.11
PPR Standards, Early Childhood-Grade 6	Subchapter B. §235.21	Repeal and replace with updated Classroom Teacher Standards Early Childhood-Grade 12	New Subchapter C. New §235.21
PPR Standards, Grades 4-8	Subchapter C. §235.41	Repeal and replace updated Classroom Teacher Standards Early Childhood-Grade 12	New Subchapter C. New §235.21
PPR Standards, Grades 7-12	Subchapter D. §235.61	Repeal and replace updated Classroom Teacher Standards Early Childhood-Grade 12	New Subchapter C. New §235.21
PPR Standards, Grades 6-12, Trade and Industrial Workforce Training	Subchapter D. §235.63	No change to standards	New Subchapter D. New §235.61

**DISCLOSURE AND CONSENT FORM  
ABORTION AND RELATED PROCEDURES PERFORMED  
ON AN UNEMANICIPATED MINOR**

This Form is available for downloading on the Texas Medical Board website at [www.tmb.state.tx.us](http://www.tmb.state.tx.us).

**Unemancipated Minor** is a patient who is under 18 years old, unmarried, and has not had the disabilities of minority removed by court order.

**PATIENT NAME:** \_\_\_\_\_ **DATE OF BIRTH:** \_\_\_\_\_ **AGE:** \_\_\_\_\_

**NOTICE:** When performing an abortion on an unemancipated minor a physician must obtain informed consent as required Chapter 33 of the Texas Family Code and Chapter 171 of the Texas Health and Safety Code.

This consent must be written consent obtained from one of the patient's parents, legal guardian, or managing conservator before we can perform an abortion on an unemancipated minor.

This consent is not required if the unemancipated minor has a court order waiving the parental consent requirement (a "judicial bypass order").

**REQUIRED DISCLOSURES AND SPECIFIC CONSENT**

The patient's parent, legal guardian, or managing conservator must initial each page only after the physician performing the abortion provides information and answers all questions about the procedure and consent. This Form must also be signed by a witness present during the disclosure and consent process.

This process should be done in the presence of the unemancipated minor to ensure full understanding of the procedure in addition to the individual consenting.

\_\_\_\_\_  
Initials of parent, guardian, or conservator

**DISCLOSURES**

1. The physician performing the procedures is \_\_\_\_\_.
2. I have been told specifically:
  - (1) the probable gestational age of the fetus;
  - (2) the medical risks associated with carrying the child to term;

- (3) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
- (4) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;
- (5) public and private agencies provide pregnancy prevention counseling and media referrals for obtaining pregnancy medications or devices, including emergency contraception for victims of rape or incest; and
- (6) the woman has the right to review the printed materials provided by the Department of State Health Services.

3. The following list is not meant to scare the patient, but to give her and her parent, legal guardian, or managing conservator adequate information to be used in making their decisions to have the physician perform the particular procedures listed and the **Risks and Hazards** of the procedure.

The patient and consenting individual must initial the following blanks indicating their understanding of the information.

General Risks with any Surgical Procedure:

- (A) Potential for infection.
- (B) Blood clots in veins and lungs.
- (C) Hemorrhage.
- (D) Allergic reactions.
- (E) Death.

\_\_\_\_\_  
Initials of Parent,  
Guardian, or Conservator

\_\_\_\_\_  
Patient Initials

Surgical Abortion Procedures:

\_\_\_\_\_ Dilation and Curettage (D&C)

\_\_\_\_\_ Dilation and Evacuation (D&E)

\_\_\_\_\_ Manual Vacuum Aspiration

\_\_\_\_\_ Machine Vacuum Aspiration

Risks with Surgical Abortion Procedures:

- (A) Hemorrhage (heavy bleeding).
- (B) A hole in the uterus (uterine perforation) or other damage to the uterus.
- (C) Sterility.
- (D) Injury to the bowel and/or bladder.

- (E) A possible hysterectomy as a result of complication or injury during the procedure.
- (F) Failure to remove all products of conception that may result in an additional procedure.

Medical Abortion Procedures:

\_\_\_\_\_Methotrexate

\_\_\_\_\_Misoprostol

Risks with Medical Abortion Procedures:

- (A) Hemorrhage (heavy bleeding)
- (B) Failure to remove all products of conception that may result in an additional procedure.
- (C) Sterility.
- (D) Possible continuation of pregnancy.

\_\_\_\_\_  
Initials of parent, guardian, or conservator

\_\_\_\_\_  
Patient initials

Risks with any Abortion Procedure:

- (A) Cramping of the uterus or pelvic pain.
- (B) Infection of the female organs: uterus, tubes, and ovaries.
- (C) Cervical laceration, incompetent cervix.
- (D) Emergency treatment for any of the above-named complications.
- (E) Other as written:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Initials of parent, guardian, or conservator

\_\_\_\_\_  
Patient Initials

**Specific Consent and Acknowledgement**

**Each line must be initialed by the patient and the individual consenting:**

\_\_\_\_\_, \_\_\_\_\_ I understand that the physician listed above is going to perform an abortion on me, which will end my pregnancy and will result in the death of the fetus.

\_\_\_\_\_, \_\_\_\_\_ I am not being forced by anyone including the consenting individual to have this abortion and have the choice on whether to have this procedure.

\_\_\_\_\_, \_\_\_\_\_ I give my permission to this doctor and such other associates, technical assistants, and other health providers as the doctor thinks is needed to perform the abortion on me using the surgical and medical procedures checked above.



\_\_\_\_\_, \_\_\_\_\_ I understand that my physician may discover other or different conditions that require additional or different procedures than those planned.

\_\_\_\_\_, \_\_\_\_\_ I give my permission to my physician and such associates, technical assistants and other health care providers to perform such other procedures that are advisable in their professional judgment.

\_\_\_\_\_, \_\_\_\_\_ I  **do**  **do not** give my permission for the use of blood and blood products as deemed necessary.

\_\_\_\_\_, \_\_\_\_\_ I understand that my doctor cannot make any promise regarding the end results of the abortion or my care.

\_\_\_\_\_, \_\_\_\_\_ I understand that there are risks and hazards that could affect me if I have the surgical or medical procedures checked above.

\_\_\_\_\_, \_\_\_\_\_ I have been given an opportunity to ask questions about my condition, alternative forms of treatment, risk of nontreatment, the procedures to be used, and the risks and hazards involved.

\_\_\_\_\_, \_\_\_\_\_ I understand that information about abortion that is included in the law as the Woman's Right to Know Act has been made available to me as required by §171.001, *et seq.*, Texas Health and Safety Code, specifically the "Women's Right to Know Informational Brochure" and the "Women's Right to Know Resource Directory."

PATIENT ACKNOWLEDGEMENT: This Form has been fully explained to me. I have read it or have had it read to me, the blank spaces have been filled in, and I understand what it says.

\_\_\_\_\_  
Printed Name of Patient

\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Date

**CONSENTING PARTY ATTESTATION:**

I state and affirm that I am the patient's:

Father  Mother  Legal Guardian  Managing Conservator

By my signature below, I give permission for \_\_\_\_\_ (print the name of the patient), who is an unemancipated female, to have the surgical or medical procedure set out above.

\_\_\_\_\_  
Printed Name of Parent, Legal Guardian,  
or Managing Conservator

\_\_\_\_\_  
Signature of Parent, Legal Guardian,  
or Managing Conservator

\_\_\_\_\_  
Date

**Physician Declaration:**

I and/or my assistant have explained the procedure and the contents of this Form to the patient and her parent, legal guardian, or managing conservator as required and have answered all questions. To the best of my knowledge, the patient and her parent, legal guardian, or managing conservator have been adequately informed and have consented to the above-described procedure.

\_\_\_\_\_  
Signature of Physician

\_\_\_\_\_  
Date

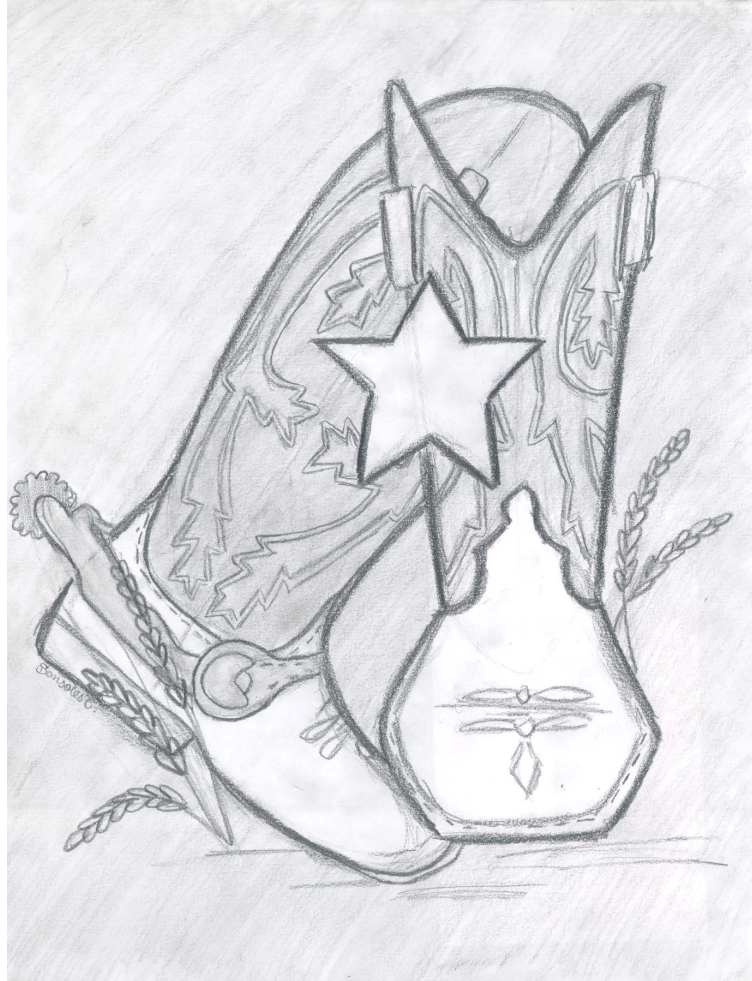
**Authentication of Parent, Legal Guardian, or Managing Conservator.**

The signature of the parent, legal guardian, or managing conservator must be authenticated. This means that the parent, legal guardian, or managing conservator must sign this Form in front of

- (1) a person who is a notary public; or
- (2) a person, other than the physician or their assistant, who was present at the time the procedure and the contents of this Form were explained to the patient and her parent, legal guardian, or managing conservator.

The signing in front of a notary public can occur at any time and at any place prior to the procedure. The signed and initialed form with the notary statement then can be brought to the physician's office or clinic by the patient.





The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 11, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **February 11, 2025**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Arrowhead Ranch Utility Company LLC; DOCKET NUMBER: 2022-0302-MWD-E; IDENTIFIER: RN105309165; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014824001, Effluent Limitations and Monitoring Requirements A and B, and Standard Permit Conditions Number 1.a, by failing to properly calculate the daily average flow; 30 TAC §305.125(1) and TPDES Permit Number WQ0014824001, Special Provisions Number 9, by failing to maintain Bermuda grass overseeded with rye grass on the disposal site; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014824001, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limitations; 30 TAC §222.45 and §305.125(1) and TPDES Permit Number WQ0014824001, Special Provisions Number 27, by failing to submit a copy of the issued water quality permit to the health department with jurisdiction in the area where the system is located before commencing operation of the proposed subsurface drip irrigation system, and retain proof of deliv-

ery; 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0014824001, Effluent Limitations and Monitoring Requirements B, by failing to collect and analyze effluent samples at the intervals specified in the permit; 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0014824001, Effluent Limitations and Monitoring Requirements B, by failing to monitor effluent flow from the treatment system at the intervals specified in the permit; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014824001, Operational Requirements Number 1 and Special Provisions Number 14, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, and failing to ensure effluent is not applied for irrigation when the ground is saturated; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014824001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: \$53,643; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: Benjamin Dominguez dba Bayou Shadows Water System and Beau Ray, Incorporated; DOCKET NUMBER: 2024-0182-PWS-E; IDENTIFIER: RN103953956; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; and 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$315; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (512) 239-2510; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: City of The Colony; DOCKET NUMBER: 2023-1544-MWD-E; IDENTIFIER: RN105292783; LOCATION: The Colony, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011570001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$26,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$20,900; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2021-0818-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1) - (3), 113.100, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.18(c)(3)(ii) and §63.11(b)(6)(ii), New Source Review (NSR) Permit Numbers 95 and PSDTX854M2, Special Conditions (SC) Numbers 7.A. and 12.A., Federal Operating Permit (FOP) Number O2327, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A., 20, and 26, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the

net heating value of the gas being combusted at 300 British thermal units per standard cubic foot or greater if the flare is steam-assisted or air-assisted; 30 TAC §§101.20(1) - (3), 116.115(c), and 122.143(4), 40 CFR §60.18(c)(1) and §63.11(b)(4), NSR Permit Numbers 95 and PSDTX854M2, SC Numbers 7.C. and 12.C., FOP Number O2327, GTC and STC Numbers 1.A., 3.A.(i), and 26, and THSC, §382.085(b), by failing to operate a flare with no visible emissions except periods not to exceed a total of five minutes during any two consecutive hours; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.354(a)(2), FOP Number O2327, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to continuously monitor and record a process parameter for the treatment process or wastewater treatment system unit; 30 TAC §§101.20(2), 113.120, 113.890, 116.115(c), 117.310(c)(2)(A) and (B) and 122.143(4), 40 CFR §63.138(b)(1)(i) and §63.2450(a), NSR Permit Numbers 123117 and 97769, SC Numbers 5, 5.F., and 7, FOP Numbers O2327 and 03966, PSDTX1460 and GHGPSDTX135, GTC and STC Numbers 1.A. and 7, and THSC, §382.085(b), by failing to comply with the concentration limit; 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 CFR §63.6650(b)(3), FOP Number O2327, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to submit the 40 CFR Part 63 Subpart ZZZZ compliance reports no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period; 30 TAC §§101.20(3), 116.115(b)(2)(E)(i), and 122.143(4), NSR Permit Numbers 95 and PSDTX854M2, General Conditions Number 7, FOP Number O2327, GTC and STC Number 20, and THSC, §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 95, 101, 97769, and 123117, and PSDTX854M2, PSDTX1460, and GHGPSDTX135, SC Numbers 1 and 2, FOP Numbers O2327 and 03966, GTC and STC Numbers 7 and 20, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §§101.20(3), 116.115(c), 117.310(c)(2)(B), and 122.143(4), NSR Permit Numbers 123117, PSDTX1460, and GHGPSDTX135, SC Numbers 4 and 7, FOP Number 03966, GTC and STC Numbers 1.A. and 7, and THSC, §382.085(b), by failing to comply with the emissions and concentration limits; 30 TAC §§101.20(3), 116.115(c), 117.345(c), and 122.143(4), NSR Permit Numbers 123117, PSDTX1460, and GHGPSDTX135, SC Number 20.H., FOP Number 03966, GTC and STC Numbers 1.A. and 7, and THSC, §382.085(b), by failing to submit a copy of the testing and sampling reports within 60 days after the completion of the testing and sampling; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 95 and PSDTX854M2, SC Number 61.C.(1), FOP Number O2327, GTC and STC Number 20, and THSC, §382.085(b), by failing to maintain records for the calibration of the lower explosive limit (LEL) detector; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 95 and PSDTX854M2, SC Number 61.C.(2), FOP Number O2327, GTC and STC Number 20, and THSC, §382.085(b), by failing to maintain records for the functionality test of the LEL detector; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 95 and PSDTX854M2, SC Numbers 65.A. and 65.C., FOP Number O2327, GTC and STC Number 20, and THSC, §382.085(b), by failing to maintain records to support planned maintenance, startup, or shutdown activities; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 95 and 123117, PSDTX854M2, PSDTX1460, and GHGPSDTX135, SC Numbers 1 and 2, FOP Numbers O2327 and 03966, GTC and STC Numbers 7, 20, and 26, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O2327, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30

TAC §101.201(b) and §122.143(4), FOP Number O2327, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to create a final record for a non-reportable emissions event no later than two weeks after the end of an emissions event; 30 TAC §101.201(b)(1)(G) and §122.143(4), FOP Number O2327, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §106.8(c)(2) and (4) and §122.143(4), FOP Number O2327, GTC and STC Number 22, and THSC, §382.085(b), by failing to provide records upon request and maintain records containing sufficient information to demonstrate compliance with all applicable Permits by Rules; 30 TAC §115.725(a)(2)(D) and §122.143(4), FOP Number O2327, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to comply with the operating parameter limit; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 101, SC Numbers 3.(A)(1) and 3.B.(2), FOP Number O2327, GTC and STC Number 20, and THSC, §382.085(b), by failing to comply with the emissions limit; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 101, SC Number 3.B.(3), FOP Number O2327, GTC and STC Number 26, and THSC, §382.085(b), by failing to comply with the firing rate limit; 30 TAC §117.340(a) and §122.143(4), FOP Number 03966, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to maintain and operate a totalizing fuel flow meter to individually and continuously measure the gas and liquid fuel usage; 30 TAC §117.340(j) and §122.143(4), FOP Number O2327, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to record the operating time for stationary internal combustion engines with a non-resettable elapsed run-time meter; 30 TAC §122.121 and §122.210(a) and THSC, §382.054 and §382.085(b), by failing to obtain a revision for an FOP prior to operating emission units at the site; 30 TAC §122.210(a) and THSC, §382.085(b), by failing to submit an application for a revision to an FOP for those activities at a site which change, add, or remove one or more permit terms or conditions; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2327, GTC and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.210(a) and THSC, §382.085(b), by failing to submit an application for a revision to an FOP at a site to change, add, or remove one or more permit terms and conditions; PENALTY: \$224,672,900; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$898,692; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: J&L Imperium Industries, LLC; DOCKET NUMBER: 2024-0571-WQ-E; IDENTIFIER: RN11081162; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System General Permit Number TXG113175, Part III, Section A, Permit Requirements Number 1 and Part IV, Standard Permit Conditions Number 7.f, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$12,500; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Maple Energy Holdings, LLC; DOCKET NUMBER: 2022-1169-AIR-E; IDENTIFIER: RN110681939; LOCATION: Pecos, Reeves County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §106.4(c) and §106.359(c)(1), Permit by Rule Registration Number 162349, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all facilities with the potential to emit air contaminants in good working order and operated properly; and 30 TAC §106.6(b) and (c) and 116.110(a), and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$23,437; ENFORCEMENT COORDINATOR: Danielle

Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: MELROSE Water Supply Corporation; DOCKET NUMBER: 2022-0753-MLM-E; IDENTIFIER: RN102689346; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and (c) and TWC, §11.1272(c), by failing to review and update the drought contingency plan at least every five years to include all elements for municipal use by a retail public water supplier; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution for testing for chlorine leakage which is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent, and a fan switch outside, for enclosures containing more than one 150-pound cylinder of chlorine; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(f)(2)(D), by failing to use a chemical feed system designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning; 30 TAC §290.42(I), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.43(c)(3), by failing to ensure the discharge opening of the overflows of the facility's storage tanks are above the surface of the ground and were not subject to submergence; 30 TAC §290.43(c)(4), by failing to provide all ground storage tanks with a liquid level indicator; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for all tanks greater than 1,000-gallon capacity; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per minute per connection; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(II), (IV), and (iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good

working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(p)(2), by failing to provide the ED with a list of all the operators and operating companies that the public water system uses on an annual basis; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent levels of greater than 7.0 for pH or receive written approval from the ED to use the water source for public drinking water; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; PENALTY: \$100,788; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: Mike Stephens; DOCKET NUMBER: 2024-0632-PST-E; IDENTIFIER: RN102713997; LOCATION: Bangs, Brown County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §§37.815(a) and (b) and 334.49(c)(4)(C) and 334.54(b)(3) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years, and failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: \$7,580; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: RestorationCity; DOCKET NUMBER: 2024-0655-PWS-E; IDENTIFIER: RN101261592; LOCATION: Hungerford, Wharton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that the valves and mains can be easily located during emergencies; 30 TAC §290.110(e) and (f)(1)(A), by failing to include all samples collected at sites designated in the monitoring plan as microbiological and residual monitoring sites in the compliance determination calculations; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$400; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2023-1737-MWD-E; IDENTIFIER: RN102075918; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012024001, Effluent Limitations and

Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$16,312; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,050; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: TRI-CON, INCORPORATED dba Exxpress Mart 14; DOCKET NUMBER: 2023-0790-PST-E; IDENTIFIER: RN102469095; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(h)(1)(B)(ii) and TWC, §26.3475(c)(2), by failing to conduct the annual walkthrough inspection of the underground storage tank (UST) system's containment sumps; and 30 TAC §334.48(c)(1) and §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect releases at a frequency of at least once every 30 days, and failing to conduct a test of the proper operation of the release detection equipment at least annually; PENALTY: \$11,451; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: Trinity River Authority of Texas; DOCKET NUMBER: 2022-1152-MWD-E; IDENTIFIER: RN106317308; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: wastewater collection system and associated manhole; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §319.303(c), by failing to include all the precautionary statements in the Public Notice for a spill of 100,000 gallons or more; PENALTY: \$11,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Trinity River Authority of Texas; DOCKET NUMBER: 2024-0563-MWD-E; IDENTIFIER: RN102004355; LOCATION: Roanoke, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), Texas Pollutant Discharge Elimination System Permit Number WQ001345700, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$24,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$24,750; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: W.R. GRACE and COMPANY - CONN; DOCKET NUMBER: 2022-0653-AIR-E; IDENTIFIER: RN100223379; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical processing and manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Numbers 19344 and 21140, Special Conditions (SC) Number 6.H, Federal Operating Permit (FOP) Number O1473, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to repair a leaking component during the next scheduled unit shutdown; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19344, SC Number 7.B, FOP Number O1473, GTC and STC Number 16, and THSC, §382.085(b), by failing to sample the natural gas for heaters every six months to determine total sulfur and net heating value; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1473, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$19,378; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL

OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: West Texas Commercial Properties LLC; DOCKET NUMBER: 2023-0997-PWS-E; IDENTIFIER: RN101215127; LOCATION: Amherst, Lamb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$1,150; ENFORCEMENT COORDINATOR: Tessa Bond, (512) 239-1269; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: WINDFERN PARK OWNER'S ASSOCIATION; DOCKET NUMBER: 2023-0756-PWS-E; IDENTIFIER: RN102877776; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(d)(2)(B)(ii) and Texas Health and Safety Code (THSC), §341.0135(c), by failing to provide ground storage capacity equal to 50% of the maximum daily demand (MDD); 30 TAC §290.45(d)(2)(B)(iii) and THSC, §341.0135(c), by failing to provide at least one service pump with a total capacity of three times the MDD; 30 TAC §290.46(f)(2) and (3)(B)(v), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$3,350; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202406347

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 30, 2024



### Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the



release detection, spill, and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 11, 2025**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 11, 2025**. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Laila Quick Stop LLC; DOCKET NUMBER: 2021-0699-PST-E; TCEQ ID NUMBER: RN101888469; LOCATION: 2900 South Western Street, Amarillo, Randall County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.606, by failing to maintain required operator training certification documentation on-site and provide it upon request to a TCEQ or TCEQ-authorized investigator; 30 TAC §334.7(d)(1)(B) and (3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, also, by failing to provide release detection for the piping associated with the USTs; PENALTY: \$11,250; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-202406311  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: December 27, 2024



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 11, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 11, 2025**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: 4283929 Delaware, LLC; DOCKET NUMBER: 2023-1717-AIR-E; TCEQ ID NUMBER: RN104271523; LOCATION: 511 New Hope Road West, McKinney, Collin County; TYPE OF FACILITY: pet crematorium; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §116.115(b)(2)(E)(i) and (c), New Source Review (NSR) Permit Number 152484, General Condition (GC) Number 7, and Special Condition (SC) Number 20.C, by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; THSC, §382.085(b), 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Number 152484, GC Number 7 and SC Number 19.A, by failing to maintain a copy of the Permit; and THSC, §382.085(b), 30 TAC §116.115(c), NSR Permit Number 152484, and SC Number 10.C, by failing to certify the scale annually to the National Institute of Standards and Technology Compound Handbook 44 standards by a third party; PENALTY: \$4,703; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: HAQUE SALMA ENTERPRISE INC; DOCKET NUMBER: 2021-0193-PST-E; TCEQ ID NUMBER: RN101444651; LOCATION: 5407 San Pedro Avenue, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing

to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C for the facility; 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$11,347; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: KUCHURI LLC dba BM Cigarette Mart; DOCKET NUMBER: 2022-0969-PST-E; TCEQ ID NUMBER: RN102375052; LOCATION: 1013 South Blue Mound Road, Blue Mound, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.606, by failing to maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel; PENALTY: \$8,355; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Michael Ruff dba Premium Sandstone, LLC and Premium Sandstone, LLC; DOCKET NUMBER: 2020-1302-WQ-E; TCEQ ID NUMBER: RN106222235; LOCATION: the northside of Interstate Highway 20, two miles east of the intersection of Interstate Highway 20 and State Highway 193, Gordon, Palo Pinto County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; 30 TAC §311.74(a) and §311.75, and TWC, §26.121(c) and §26.553, by failing to maintain authorization to discharge water associated with quarry activities to water in the State located in a water quality protection area in the John Graves Scenic Riverway; PENALTY: \$21,250; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart; DOCKET NUMBER: 2020-1267-PST-E; TCEQ ID NUMBER: RN109830588; LOCATION: 8922 Airport Boulevard, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements were met; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously is-

sued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; PENALTY: \$8,688; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: NORTHWEST PETROLEUM LP dba Veterans QMart; DOCKET NUMBER: 2021-0584-PST-E; TCEQ ID NUMBER: RN100527506; LOCATION: 4450 Farm-to-Market Road 1960 West, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(B), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$15,124; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202406312  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: December 27, 2024

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## Supreme Court of Texas

Order Amending the Texas Plan for Recognition and Regulation of Specialization in the Law; Amending Part I of the Texas Board of Legal Specialization Standards for Attorney Certification; and Adopting Standards for Attorney Certification in Judicial Administration

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the January 10, 2025, issue of the Texas Register.)*

TRD-202406235  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: December 20, 2024

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## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 50 (2025) is cited as follows: 50 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “50 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 50 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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