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§161.1. Introduction.
(a) The Texas Medical Board, referred to as the "board" or the "Medical Board", is an agency of the executive branch of state government statutorily empowered to regulate the practice of medicine in Texas. Any reference in these rules to the former Texas State Board of Medical Examiners means the Texas Medical Board. The Medical Board also provides oversight and support for the Texas Physician Assistant Board, referred to as the "Physician Assistant Board," and the Texas State Board of Acupuncture Examiners, referred to as the "Acupuncture Board."
(b) The board may adopt rules as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in Texas, and enforce applicable law.
(c) The board may act under its statute and rules through the Executive Director, Executive Committee, or another committee of the board.

Source Note: The provisions of this §161.1 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective January 25, 2006, 31 TexReg 382.

§161.2. Purpose and Functions.
(a) The purpose of the board is to protect the public's safety and welfare through the regulation of the practice of medicine. The board fulfills its purpose primarily through the licensure and discipline of physicians and other allied health care providers as mandated by law.
(b) The board's functions include but are not limited to the following:
   (1) Establish standards for the practice of medicine by physicians.
   (2) Regulate the practice of medicine through the licensure and discipline of physicians.
   (3) Provide oversight of the Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners as specified by law.
   (4) Interpret the Medical Practice Act and applicable sections of the Physician Assistant Licensing Act, the Acupuncture Act, the Surgical Assistant Act and the Board Rules to physicians, physician assistants, acupuncturists, surgical assistants, and the public to ensure informed professionals, allied health professionals, and consumers.
   (5) Receive complaints and investigate possible violations of the Medical Practice Act and the Board Rules.
   (6) Discipline violators through appropriate legal action to enforce the Medical Practice Act and the Board Rules.
   (7) Provide a mechanism for public comment with regard to the Board Rules and the Medical Practice Act and the Surgical Assistant Act.
   (8) Review and modify the Board Rules when necessary and appropriate.
   (9) Examine and license qualified applicants to practice medicine, acupuncture, and surgical assisting in Texas in a manner that ensures that applicable standards are maintained.
   (10) Provide recommendations to the legislature concerning appropriate changes to the Medical Practice Act and Surgical Assistant Act to ensure that the acts are current and applicable to changing needs and practices.
   (11) Provide informal public information on licensees.
   (12) Maintain data concerning the practice of medicine.

Source Note: The provisions of this §161.2 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective January 25, 2006, 31 TexReg 382.

§161.3. Organization and Structure.
(a) The board shall consist of 19 members appointed by the Governor with the advice and consent of the Senate.
(b) The board shall consist of the following composition: nine physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least three years; three physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for three years; and seven members who represent the public.
(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member shall continue to serve until a successor has been appointed. A member may be reappointed to successive terms as permitted by law at the discretion of the Governor.
(d) Each board member shall meet and maintain the qualifications for board membership as set by law.

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member’s official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member’s private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(10) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(11) Board member appearances.

(A) A board member should 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. A board member may provide expert testimony if the board member has been called primarily as a fact witness. A board member should disclose any potential employment as an expert witness to and seek prior approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.

(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 in which proceeding a licensee of the board is a party. A board member may furnish a written statement for a licensee to use in such administrative proceedings only if:

(i) the board member sought and received in writing the prior approval of the board's executive committee;

(ii) the written statement of the board member used by a licensee presents only facts that the board member has personally witnessed and does not offer or provide any statement as to character of the licensee or characterization of the events witnessed; and

(iii) the written statement plainly states that the recitation of the witnessed facts is not an indication of in any manner that the board concurs with, agrees to, or supports those facts or the board member in his or her action.

(12) 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.

(f) Report of Potential Grounds for Removal. If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of that ground. The president of the board shall then notify the governor's office and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president of the board, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists. Grounds for potential removal that must be reported are as follows:

(1) A board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity
to present information concerning the alleged absences and after allowing discussion by other members of the board.

(2) A board member who is subject of a non-disciplinary or disciplinary action, including but not limited to any remedial plan, board order, or administrative penalty, regardless of the nature of the violation(s) that led to the remedial plan, board order, or administrative penalty.

(g) The validity of an action of the board is not affected by the fact that the action is taken when a ground for potential removal of a board member exists.

(h) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

Source Note: The provisions of this §161.3 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective January 25, 2006, 31 TexReg 382; amended to be effective September 20, 2007, 32 TexReg 6314; amended to be effective March 18, 2013, 38 TexReg 1872; amended to be effective May 17, 2015, 40 TexReg 2533

§161.4. Officers of the Board.

(a) The Governor shall designate a member of the board to serve as the president of the board.

(b) The board shall elect officers from among its members to serve as the vice president and secretary-treasurer for a term not to extend longer than two years. The election of officers shall be held at least every other year at a regular meeting of the board.

(c) All elections and any other issues requiring a vote of the board shall be decided by a simple majority of the members present and voting.

(d) If more than two candidates are nominated for an office, and no candidate receives a majority on the first ballot, a second ballot will be conducted between the two candidates receiving the highest number of votes.

(e) Duties of the officers.

(1) The duties of the president shall include the following:

(A) approve the agenda for each board meeting;

(B) preside at all meetings of the board;

(C) represent the board in legislative matters and in meetings with related groups;

(D) appoint the members to serve on the standing, ad hoc, and advisory committees of the board;

(E) appoint the chair of each board committee;

(F) perform or designate a member or members of the board to coordinate the annual performance review of the executive director.

(G) perform such other duties as pertain to the office of the president and

(2) The duties of the vice president shall include the following:

(A) function as president in the absence or incapacity of the president;

(B) serve as president if the office of president becomes vacant until another member is named by the Governor; and

(C) perform such other duties that are from time to time assigned by the board.

(3) The duties of the secretary-treasurer shall include the following:

(A) function as president in the absence or incapacity of both the president and vice president;

(B) serve as president if both the offices of president and vice president becomes vacant until another member is elected by the board or named by the Governor; and

(C) perform such other duties as set out by law or such other duties that are from time to time assigned by the board.

(f) In the event of the absence or incapacity of the president, vice president, and secretary-treasurer, the board may elect another person to act as presiding officer of a board meeting or may elect an interim acting president for the duration of the absence or incapacity of the officers.

(g) After the death, resignation, or permanent incapacity of any elected officer, the board shall hold an election to fill the vacant officer position. If any elected officer is elected to another position at these elections, that officer's vacant position shall be filled by election to be held following the creation of the new vacancy.

Source Note: The provisions of this §161.4 adopted to be effective March 7, 2002, 27 TexReg 1486.

§161.5. Meetings.

(a) The board shall meet at least four times a year. It shall consider such matters as may be necessary.

(b) Special meetings shall be called by the president or by resolution of the board or upon written request signed by five members of the board.

(c) An agenda for each board meeting and committee meeting shall be posted in accordance with law and copies shall be sent to the board members.

(d) Board and committee meetings shall be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless the board by rule adopts a different procedure.
(e) A quorum for transaction of business by the board shall be one more than half the board's membership at the time of the meeting.

(f) The board may act only by majority vote of its members present and voting, with each member entitled to one vote. No proxy vote shall be allowed.

(g) Meetings of the board and of the committees are open to the public unless such meetings are conducted in executive session pursuant to state law.

(h) In order that board and committee meetings may be conducted safely, efficiently, and with decorum, attendees may not engage in disruptive activity that interferes with board proceedings.

(i) Members of the public shall remain within those areas of the board offices and board meeting room designated as open to the public.

(j) Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(k) Journalists have the same right of access to board meetings conducted in open session as other members of the public and are subject to the same requirements.

(l) The board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in disruptive activity that interferes with board proceedings.

(m) Any person may record all or any part of the proceedings of a public board meeting in attendance by means of a tape recorder, video camera, or any other means of sonic or visual reproduction.

(1) The executive director shall direct any individual wishing to record or videotape as to equipment location, placement, and the manner in which the recording is conducted.

(2) The decision will be made so as not to disrupt the normal order and business of the board.

(n) Executive Session.

(1) The board may meet in executive session pursuant to law.

(2) An executive session of the board shall not be held unless a quorum of the board has first been convened in open meeting. If during such open meeting, a motion is passed by the board to hold an executive session, the presiding officer shall publicly announce that an executive session will be held.

(3) The presiding officer of the board shall announce the date and time at the beginning and end of the executive session.

(4) A certified agenda of the executive session shall be prepared.

(o) Committee minutes shall be approved by the full board with a quorum of the committee members present to vote on approval of the minutes.

Source Note: The provisions of this §161.5 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective September 19, 2010, 35 TexReg 8348

§161.6. Committees of the Board.

(a) Each board committee shall be composed of board members appointed by the president of the board and shall include at least one physician member who holds the degree of doctor of osteopathic medicine and one public member.

(b) The following are standing and permanent committees of the board. The responsibilities and authority of these committees shall include the following duties and powers, and other responsibilities and charges that the board may from time to time delegate to these committees.

(1) Disciplinary Process Review Committee:

(A) oversee the disciplinary process and give guidance to the board and board staff regarding means to improve the disciplinary process and more effectively enforce the Medical Practice Act and board rules;

(B) monitor the effectiveness, appropriateness and timeliness of the disciplinary process and enforcement of the Medical Practice Act and board rules;

(C) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from board staff or board representatives regarding actions to be taken on pending cases;

(D) approve dismissals of complaints and closure of investigations; and

(E) make recommendations to the board staff and the board regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Medical Practice Act and board rules.

(2) Executive Committee:

(A) ensure records are maintained of all committee actions;

(B) delegate tasks to other committees;

(C) take action on matters of urgency that may arise between board meetings;

(D) assist in the presentation of information concerning the board and the regulation of the practice of medicine to the Legislature and other state officials;

(E) review staff reports regarding finances and the budget;

(F) formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment;
(G) study and make recommendations to the board regarding the roles and responsibilities of the board offices and committees;

(H) study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board;

(I) study and make recommendations to the board regarding board rules or any area of a board function that, in the judgment of the committee, needs consideration; and

(J) make recommendations to the board regarding matters brought to the attention of the executive committee.

(3) Finance Committee:

(A) review staff reports regarding finances and the budget;

(B) assist in the presentation of budget needs to the Legislature and other state officials;

(C) recommend proper fees for the agency to charge; and

(D) consider and make recommendations to the board regarding any aspect of board finances.

(4) Legislative Committee:

(A) review and make recommendations to the board regarding proposed legislative changes concerning the Medical Practice Act and the regulation of medicine;

(B) establish communication with members of the Legislature, trade associations, consumer groups, and related groups;

(C) assist in the organization, preparation, and delivery of information and testimony to members and committees of the Legislature; and

(D) make recommendations to the board regarding matters brought to the attention of the legislative committee.

(5) Licensure Committee:

(A) review applications for licensure and permits, make determinations of eligibility and report to the board its recommendations as provided by the Medical Practice Act and board rules;

(B) review board rules regarding licensure and make recommendations to the board regarding changes or implementation of such rules;

(C) evaluate each examination accepted by the board and develop each examination administered by the board;

(D) investigate and report to the board any problems in the administration of examinations and recommend and implement ways of correcting identified problems;

(E) make recommendations to the board regarding postgraduate training permits and issues concerning physicians in training;

(F) maintain communication with Texas medical schools;

(G) develop rules with regard to international medical schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;

(H) study and make recommendations regarding documentation and verification of records from all applicants for licensure or permits;

(I) review applications for acudetox specialist certification, make determinations of eligibility, and report to the board its recommendations as provided by Texas Occupations Code Annotated, 205.303;

(J) review applications for acupuncture licensure recommended by the Texas State Board of Acupuncture Examiners and for applicants that hold licenses in other states that have licensure requirements that are substantially equivalent to those of this state, make determinations of eligibility, and report to the board its recommendations;

(K) review applications and make initial determinations and recommendations to the board regarding approval, denial, revocation, decertification, or continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(L) develop and review board rules regarding all persons and entities subject to the Board's jurisdiction, and make recommendations to the board regarding changes or implementation of such rules;

(M) review applications for surgical assistant licensure, make determinations, of eligibility, and report to the board its recommendations; and

(N) make recommendations to the board regarding matters brought to the attention of the licensure committee.

(6) Public Information/Physician Profile Committee:

(A) develop information for distribution to the public;

(B) review and make recommendations to the board in regard to press releases, newsletters, websites and other publications;

(C) study and make recommendations to the board regarding all aspects of public information and public relations;

(D) receive information from the public concerning the regulation of medicine pursuant to a published agenda item and board rules;

(E) study and make recommendation to the board regarding all aspects of physician profiles; and

(F) make recommendations to the board regarding matters brought to the attention of the public information/physician profile committee.

(7) Standing Orders Committee:
(A) review and make recommendations to the board regarding board rules pertaining to standing orders;

(B) study and make recommendations to the board regarding issues concerning or referred by the Texas State Board of Acupuncture Examiners or other acupuncture issues;

(C) study and make recommendations to the board regarding issues concerning or referred by the Texas Physician Assistant Board;

(D) study and make recommendations to the board concerning ethical issues related to the practice of medicine; and

(E) make recommendations to the board regarding matters brought to the attention of the standing orders committee.

(8) Telemedicine Committee:

(A) review, study, and make recommendations to the board concerning the practice of telemedicine, including but not limited to licensure, regulation, and/or discipline of telemedicine license holders or applicants;

(B) review, study, and make recommendations to the board concerning interstate and intrastate telemedicine issues;

(C) review, study, and make recommendations to the board concerning board rules regarding or affecting the practice of telemedicine; and

(D) review, study, and make recommendations to the board concerning any other issue brought to the attention of the committee.

(c) With statutory or board authorization, the president may appoint, disband, or reconvene standing, ad hoc, or advisory committees as deemed necessary. Such committees shall have and exercise such authority as may be granted by the board.

Source Note: The provisions of this §161.7 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective March 16, 2008, 33 TexReg 2023.

§161.8. Chief of Staff.

(a) The executive director may determine qualifications for and employ a chief of staff who shall be responsible for the administrative operations of the agency and the performance of other duties as assigned by the executive director.

(b) Unless the board assigns duties or prerogatives exclusively to the executive director, the chief of staff may exercise any responsibilities or authority of the executive director except for medical director duties.

(c) The chief of staff acts under the supervision and at the direction of the executive director.

Source Note: The provisions of this §161.8 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective August 10, 2008, 33 TexReg 6132.

§161.9. Medical Director.

(a) If the executive director is not a physician licensed to practice in Texas, the executive director shall appoint a medical director who is a physician licensed to practice in Texas.

(b) The medical director shall be responsible for the implementation and maintenance of policies, systems, and measures regarding clinical and professional issues and determinations.

(c) The medical director acts under the supervision and at the direction of the executive director.

(d) In the event of the incapacity, resignation or death of the medical director, members of the board may assume duties of the medical director on an interim basis.

Source Note: The provisions of this §161.9 adopted to be effective March 7, 2002, 27 TexReg 1486; amended to be effective September 19, 2002, 27 TexReg 8768; amended to be effective January 25, 2006, 31 TexReg 382; amended to be effective August 10, 2008, 33 TexReg 6132.
§161.10. General Counsel.
(a) The executive director may employ a general counsel to provide legal advice to the staff of the agency and to the members of the board.
(b) The general counsel shall be licensed by the State Bar of Texas and may not be a lobbyist registered with the Office of the Secretary of State of Texas.
(c) The general counsel acts under the supervision and at the direction of the executive director.

§161.11. Rule Changes.
(a) All rules shall be adopted, repealed, or amended in accordance with the Administrative Procedure Act.
(b) Each adopted rule shall become effective 20 days after it is filed with the Office of the Secretary of State except as otherwise set out in the Administrative Procedure Act.

The board shall ensure non-discrimination in all policies, procedures, and practices as required under state and federal laws relating to race, color, disability, religion, sex, national origin, or age.

§161.13. General Considerations.
(a) A member of the news media may conduct an interview in the reception area of the board's offices or, at the discretion of the board's presiding officer, in the meeting room after recess or adjournment. No interview may be conducted in the hallways of the board's offices.
(b) Access by public visitors to the board's offices is limited to restricted area.

Source Note: The provisions of this §161.9 adopted to be effective March 7, 2002, 27 TexReg 1486.

Source Note: The provisions of this §161.10 adopted to be effective March 7, 2002, 27 TexReg 1486.

Source Note: The provisions of this §161.11 adopted to be effective March 7, 2002, 27 TexReg 1486.

Source Note: The provisions of this §161.12 adopted to be effective March 7, 2002, 27 TexReg 1486.

Source Note: The provisions of this §161.13 adopted to be effective March 7, 2002, 27 TexReg 1486.
§162.1. Supervision of Medical Students.

(a) In order to supervise a medical student who is enrolled at a Texas medical school as a full-time student or visiting student the physician must have an active and unrestricted Texas license.

(b) In order to supervise a medical student who does not meet the criteria in subsection (a) of this section the physician must:

(1) have an active and unrestricted Texas license;

(2) hold a faculty position in the graduate medical education program in the same specialty in which the student will receive undergraduate medical education;

(3) supervise the student during the educational period; and

(4) supervise the student's medical education in either a Texas hospital or teaching institution, which sponsors or participates in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board in the same subject as the medical or osteopathic medical education in which the hospital or teaching institution has an agreement with the applicant's school.

(c) If the physician is not licensed in Texas as required in subsection (a) or (b) of this section, the physician must be employed by the federal government and maintain an active and unrestricted license.

(d) Physician applicants who receive medical education in the United States in settings that do not comply with statutory requirements set forth in Texas Occupations Code §155.003(b) - (c) may be ineligible for licensure.

Source Note: The provisions of this §162.1 adopted to be effective November 30, 2003, 28 TexReg 10480; amended to be effective January 9, 2005, 29 TexReg 12187; amended to be effective May 12, 2008, 33 TexReg 3740; amended to be effective March 9, 2009, 34 TexReg 1589; amended to be effective June 24, 2009, 34 TexReg 4123

§162.2. Physician Supervision of a Student Physician Assistant.

To be eligible to act as a preceptor to a student physician assistant, a physician must:

(1) hold a current, active, and unrestricted Texas Medical License;

(2) retain professional and legal responsibility for the care rendered by the student physician assistant; and

(3) hold a valid written agreement with an accredited physician assistant program to supervise its students, if the supervision is to occur at a site other than that of the program itself. A copy of the agreement must be available for inspection by the board upon request.

Source Note: The provisions of this §162.2 adopted to be effective January 9, 2005, 29 TexReg 12187.
§163.1. Definitions.
The following words and terms (concerning General Definitions), when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Acceptable unapproved medical school--A school or college located outside the United States or Canada that:
   (A) is substantially equivalent to a Texas medical school; and
   (B) has not been disapproved by a state physician licensing or education agency.
      (i) If another state’s physician licensing agency or education agency has determined that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree or has otherwise disapproved the medical school, the board will not recognize the medical school as an acceptable unapproved medical school, unless:
         (I) the Texas Higher Education Coordinating Board has determined that a degree conferred by the medical school is the equivalent of an accredited or authorized degree through the review process described by §61.3021, Texas Education Code; or
         (II) the applicant can provide evidence that the determination or disapproval by the other state was unfounded.
      (ii) A fraudulent or substandard medical school operating outside the United States or Canada shall not be an acceptable unapproved medical school. "Fraudulent or substandard," as used in this subsection, has the meaning assigned by §61.302, Texas Education Code. If the Texas Higher Education Coordinating Board certifies that it has determined, through the review process described by §61.3021, Texas Education Code, that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree, the board will not recognize the medical school as an acceptable unapproved medical school.
      (iii) This section shall not affect any person who received a license from the board prior to a determination by the Texas Higher Education Coordinating Board through the review process described by §31.3021, Texas Education Code.

(3) Affiliated hospital--Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(4) Applicant--One who files an application as defined in this section.

(5) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:
   (A) forms furnished by the board, completed by the applicant:
      (i) all forms and addenda requiring a written response must be typed, printed in ink, or completed online;
      (ii) photographs must meet United States Government passport standards;
   (B) all documents required under §163.5 of this title (relating to Licensure documentation); and
   (C) the required fee.

(6) Board--Texas Medical Board.

(7) Continuous--12 month periods of uninterrupted postgraduate training with no absences greater than 21 days, unless such absences have been approved by the training program.

(8) Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Practice Act, Texas Occupations Code Annotated. §§164.051-164.053.

(9) One-year training program--A program that is one continuous year of postgraduate training approved by the board that 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; or
(v) the College of Family Physicians of Canada; or
(C) a postresidency program, usually called a fellowship, performed in the U.S. or Canada and approved by the board for additional training in a medical specialty or subspecialty.
(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.

(10) Sixty (60) semester hours of college courses--60 semester hours of college courses other than in medical school that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or substantially equivalent courses as determined by the board.

(11) Substantially equivalent to a Texas medical school--A medical school or college shall be considered to be substantially equivalent to a Texas medical school under the following conditions:

(A) An acceptable approved medical school shall be considered to be substantially equivalent to a Texas medical school. A medical school operating within the United States or Canada that is not an acceptable approved medical school shall not be considered to be substantially equivalent to a Texas medical school.

(B) A medical school operating outside the United States or Canada may be determined to be substantially equivalent to a Texas medical school if the medical school is designed to select and educate medical students and provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences. The school should provide information about the school’s program of advancement of knowledge through research; the school’s development of programs of graduate medical education to produce practitioners, teachers, and researchers; and, the school’s program to provide opportunity for postgraduate and continuing medical education, for the board’s consideration. In addition, to be determined substantially equivalent to a Texas medical school, the medical school’s characteristics shall include, but not be limited to, the following:

(i) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(ii) The admissions standards shall ensure that the medical school has a pool of applicants sufficiently large and possessing United States national level qualifications to fill its entering class. Medical schools must select students who possess the intelligence, integrity, and personal and emotional characteristics necessary for them to become effective physicians.

(iii) The curriculum shall meet the requirements for an unapproved medical school as set forth in the "Curriculum Definitions for Course Areas Prescribed by the Texas Higher Education Coordinating Board for Determining Eligibility of International Medical Graduates for Texas Medical Licensure," as adopted by the Texas Higher Education Coordinating Board, as follows:

(I) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled gross anatomy, biochemistry, biology, physiology, microbiology, immunology, pathology, pharmacology, and neuroscience.

(II) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, family practice, and surgery.

(iv) The curriculum shall be of at least 130 weeks in duration.

(v) There must be integrated institutional responsibility for the overall design, management and evaluation of a coherent and coordinated curriculum.

(vi) For schools that have geographically separated programs, the principal academic officer of each geographically remote site must coordinate the curriculum with an academic officer of the medical school responsible for organizing the educational program.

(12) Texas Medical Jurisprudence Examination (JP exam)--The ethics examination developed by the board.

(13) Two-year training program--Two continuous years of postgraduate training in the United States or Canada, progressive in nature that is:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Prerogistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;
§163.2. Full Texas Medical License.

(a) Graduates of medical schools in the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school in the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title (relating to Definitions);

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) be a graduate of:

(A) an acceptable approved medical school as defined under §163.1(1) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(5) have successfully completed a one-year training program of graduate medical training in the United States or Canada as defined under §163.1(13) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6(a) of this title (relating to Examinations Accepted for Licensure); and

(7) pass the Texas Medical Jurisprudence Examination.

(b) Graduates of medical schools outside the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) be a graduate of:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(5) have successfully completed a two-year training program of graduate medical training in the United States or Canada as defined under §163.1(13) of this title;
(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6 of this title;  
(7) pass the Texas Medical Jurisprudence Examination;  
(8) possess a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);  
(9) have the ability to communicate in the English language; and  
(10) have supplied all additional information that the board may require concerning the applicant's medical school.  

(c) Fifth Pathway Program. To be eligible for licensure, an applicant who has completed a Fifth Pathway Program must:  
(1) be at least 21 years of age;  
(2) be of good professional character as defined under §163.1(8) of this title;  
(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;  
(4) hold a certificate from:  
(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or  
(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.  

(5) have successfully completed a two-year training program of graduate medical education in the United States or Canada as defined under §163.1(12) of this title;  
(6) submit evidence of passing an examination, that is acceptable to the board for licensure;  
(7) pass the Texas Medical Jurisprudence Examination;  
(8) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;  
(9) have attained a passing score on the ECFMG examination;  
(10) have the ability to communicate in the English language;  
(11) have attained a satisfactory score on a qualifying examination and have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program) in a United States medical school; and  
(12) have supplied all additional information that the board may require, concerning the applicant's medical school, before approving the applicant.  

(d) Alternative License Procedure for Military Spouse.  
(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.  

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:  

(A) holds an active unrestricted medical license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas medical license; or  

(B) within the five years preceding the application date held a medical license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.  

(3) Applications for licensure from applicants qualifying under this subsection, shall be expedited by the board's licensure division as if they meet the provisions of §163.13 of this title (relating to expedited Licensure Process). Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.  

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this subsection:  

(A) are not required to comply with §163.7 of this title (relating to Ten Year Rule); and  

(B) in demonstrating compliance with §163.11(a) of this title (relating to Active Practice of Medicine), must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within one of the last three years preceding receipt of an Application for licensure.  

(e) Applicants with Military Experience.  
(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §163.1 of this title, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.  

(2) This section does not apply to an applicant who:
(A) has had a medical license suspended or revoked by another state or a Canadian province;
(B) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or
(C) has an unacceptable criminal history.

Source Note: The provisions of this §163.2 adopted to be effective November 10, 1999, 24 TexReg 9835; amended to be effective March 7, 2002, 27 TexReg 1487; amended to be effective May 2, 2004, 29 TexReg 3961; amended to be effective November 7, 2004, 29 TexReg 10104; amended to be effective January 25, 2006, 31 TexReg 382; amended to be effective June 28, 2006, 31 TexReg 5098; amended to be effective January 4, 2007, 31 TexReg 10797; amended to be effective July 3, 2007, 32 TexReg 3991; amended to be effective November 29, 2009, 34 TexReg 8530; amended to be effective December 4, 2011, 36 TexReg 8026; amended to be effective July 4, 2012, 37 TexReg 4925; amended to be effective September 30, 2012, 37 TexReg 7485; amended to be effective December 23, 2012, 37 TexReg 9772; amended to be effective March 18, 2013, 38 TexReg 1873; amended to be effective January 20, 2014, 39 TexReg 273

§163.4. Procedural Rules for Licensure Applicants.
(a) All applicants for licensure:
(1) if appropriate, are encouraged to use the Federation Credentials Verification Service (FCVS) offered by the Federation of State Medical Boards of the United States (FSMB) to verify medical education, postgraduate training, licensure examination history, board action history and identity;
(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:
(A) Delay by board staff in processing an application;
(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;
(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;
(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;
(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events.
(3) who in any way submit a false or misleading statement, document, or certificate in an application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;
(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;
(5) shall be required to comply with the board's rules and regulations which are in effect at the time the application form and fee are filed with the board;
(6) may be required to sit for additional oral, written, mental or physical examinations that, in the opinion of the board, are necessary to determine competency and ability of the applicant;
(7) must have the application for licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular); and
(8) that receive any medical or osteopathic medical education in the United States must have obtained such education while enrolled as a full-time or visiting student at a medical school that is accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training. An applicant who is unable to comply with this requirement must demonstrate that the applicant either:
(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or
(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.
(b) Applicants for a license must subscribe to an oath in writing. The written oath is part of the application.

(c) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States;

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude; or

(4) the applicant has violated §170.002 or Chapter 171, Texas Health and Safety Code.

(d) Review and Recommendations by the Executive Director.

(1) The executive director shall review applications for licensure and may determine whether an applicant is eligible for licensure or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a license by the executive director pursuant to §§155.001 - 155.152 of the Act, Chapter 163 of this title (relating to Licensure), Chapter 171 of this title (relating to Postgraduate Training Permits), or Chapter 172 of this title (relating to Temporary and Limited Licenses), the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than 20th day after the date the applicant receives notice of the determination.

(2) If the Executive Director determines that the applicant clearly meets all licensing requirements, the Executive Director or a person designated by the Executive Director, may issue a license to the applicant, to be effective on the date issued without formal board approval, as authorized by §155.002(b) of the Act.

(3) If the Executive Director determines that the applicant does not clearly meet all licensing requirements, a license may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(4) To promote the expeditious resolution of any licensure matter, the executive director with the approval of the board, may recommend that an applicant be eligible for a license, but only under certain terms and conditions and present a proposed agreed order or remedial plan to the applicant.

(A) If the proposed agreed order or remedial plan is acceptable to the applicant, the applicant shall sign the order/remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without initiating a Disciplinary Licensure Investigation (as defined in §187.13 of this title) or appearing before the licensure committee concerning issues relating to licensure eligibility.

(B) If the proposed agreed order or remedial plan is not acceptable to the applicant, the applicant may:

(i) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title. The applicant must request review not later than the 20th day after the date the applicant receives notice of the executive director's recommendation; or

(ii) withdraw their application.

(5) If the Executive Director determines that the applicant is ineligible for licensure based on one or more of the statutory or regulatory provisions listed in subparagraphs (A) - (E) of this paragraph, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued. Grounds for eligibility under this subsection include noncompliance with the following:

(A) Section 155.003(a)(1) of the Act that requires the applicant to be 21 years of age;

(B) Section 155.003(b) and (c) of the Act that require that medical or osteopathic medical education received by an applicant must be accredited by an accrediting body officially recognized by the United States Department of Education, or meet certain other requirements, as more fully set forth in subsection (a)(8) of this section, §§163.5(b)(11), 163.5(c)(2)(C), 163.5(c)(2)(D), and 163.1(11)(B)(iii) and (iv) of this chapter;

(C) Sections 155.051 - 155.0511, and 155.056 of the Act that relates to required licensure examinations and examination attempts;

(D) Section 163.7 of this chapter (relating to the Ten Year Rule); and

(E) Section 163.6(e) of this chapter (relating to Examinations Accepted for Licensure) that requires passage of the Jurisprudence Examination.
§163.4. Adoption of Rule.

(a) The provisions of this §163.4 adopted to be effective November 10, 1999, 24 TexReg 9835; amended to be effective May 21, 2000, 25 TexReg 4348; amended to be effective March 7, 2002, 27 TexReg 1487; amended to be effective January 9, 2003, 28 TexReg 67; amended to be effective May 2, 2004, 29 TexReg 3961; amended to be effective January 25, 2006, 31 TexReg 382; amended to be effective June 28, 2006, 31 TexReg 5098; amended to be effective July 3, 2007, 32 TexReg 3991; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective September 21, 2009, 34 TexReg 6449; amended to be effective November 29, 2009, 34 TexReg 8530; amended to be effective July 4, 2012, 37 TexReg 4925; amended to be effective August 3, 2014, 39 TexReg 5748

§163.5. Licensure Documentation.

(a) On request of board staff, an applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in subsections (b) - (e) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a valid passport or birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where such documentation is not available, the applicant must provide copies of other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant’s name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Dean's Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided to the applicant by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Evaluations. All applicants must provide evaluations completed by an appropriate supervisor, on a form provided by the board, of their professional affiliations for the past five years or since graduation from medical school, whichever is the shorter period.

(6) Medical School Transcript. On request of board staff, an applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(7) National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB). Each applicant must contact the NPDB-HIPDB and have a report of action submitted directly to the board on the applicant’s behalf.

(8) Graduate Training Verification. On request of board staff, an applicant must have any of the training programs in which they have participated in submit verification on a form provided by the board. The evaluation must show the beginning and ending dates of the program and state that the program was successfully completed.

(9) Specialty Board Certification. Each applicant who has obtained certification by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must submit a copy of the certificate issued by the member showing board certification.

(10) Medical License Verifications. On request of board staff, an applicant must have any state in which he or she has ever been licensed, regardless of the current status of the license, submit directly to this board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters.

(11) U.S. medical education. Applicants must demonstrate that any medical school education that was completed in the United States in satisfaction of their core basic and clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association, and in satisfaction of the 130 weeks of required medical education was accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. An applicant who is unable to comply with these requirements may in the alternative demonstrate that the applicant:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic
Association, or approved by the board under §171.4 of this title (relating to Board-Approved Postgraduate Fellowship Training Programs) in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant’s school; (B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties; or (C) for the purpose of remedying a single deficient U.S. clerkship that was obtained while enrolled in medical school, the applicant may subsequent to graduation from medical school, and after submission of an application for licensure: (i) complete a clerkship in the United States in satisfaction of clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Committee on Medical Education, and/or the American Osteopathic Association and in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association in the same specialty or sub-specialty as the deficient clerkship; or (ii) re-enroll in a medical school accredited by the Liaison Council on Medical Education, and/or the American Osteopathic Association as a visiting student and satisfactorily complete necessary coursework in the appropriate subject. (c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section. (1) Educational Commission for Foreign Medical Graduates (ECFMG) Status Report. Each applicant must submit an ECFMG status report. (2) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education that is substantially equivalent to a Texas medical school education. This may include but is not limited to: (A) a copy of the applicant's ECFMG file; (B) a copy of other states' licensing files; (C) copies of the applicant's clinical clerkship evaluations; and (D) a copy of the applicant's medical school file. (3) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education in the United States. The form will require the name of the clerkship, where the clerkship was located (name and location of hospital) and dates of the clerkship. (4) "Substantially equivalent" documentation. An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was substantially equivalent to a Texas medical school at the time of attendance as defined under §163.1(11) of this title. This may include but is not limited to: (A) a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an International Credential Evaluation from the Foreign Credential Service of America (FCSA), or another similar entity as approved by the board; (B) a board questionnaire, to be completed by the medical school and returned directly to board; (C) a copy of the medical school's catalog; (D) verification from the country's educational agency confirming the validity of school and licensure of applicant; (E) proof of written agreements between the medical school and all hospitals that are not located in the same country as the medical school, where medical education was obtained; (F) proof that the faculty members of the medical school had written contracts with the school if they taught a course outside the country where the medical school was located; (G) proof that the medical education courses taught in the United States complied with the higher education laws of the state in which the courses were taught; (H) proof that the faculty members of the medical school who taught courses in the United States were on the faculty of the program of graduate medical education when the courses were taught; and (I) proof that all education completed in the United States or Canada was while the applicant was enrolled as a visiting student as evidenced by a letter of verification from the U.S. or Canadian medical school. (5) Medical Diploma. On request of board staff, an applicant must submit a copy of his or her medical diploma, and translation if necessary. (d) Applicants may be required to submit other documentation, which may include the following: (1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.
(A) An official translation from the medical school (or appropriate agency) attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency that is a member of the American Translations Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use this phrase: "Subscribed and Sworn to this _______ day of __________, 20____." The notary must then sign and date the translation, and affix his/her Notary Seal to the document.

(2) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) Malpractice. If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) Outpatient Treatment for Alcohol/Substance Disorder or Mental Illness. Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include items listed in subparagraphs (A) - (D) of this paragraph. An inpatient facility shall include a hospital, ambulatory surgical center, nursing home, and rehabilitation facility.

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) DD214. A copy of the DD214, indicating separation from any branch of the United States military.

(7) Premedical School Transcript. Applicants, upon request, may be required to submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school or education required for country of graduation, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.
(8) Fingerprint Card. Upon request, applicants must complete a fingerprint card and return to the board as part of the application.

(9) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure.

(e) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

Source Note: The provisions of this §163.5 adopted to be effective November 10, 1999, 24 TexReg 9835; amended to be effective March 5, 2000, 25 TexReg 1623; amended to be effective July 2, 2000, 25 TexReg 6133; amended to be effective March 7, 2002, 27 TexReg 1487; amended to be effective September 19, 2002, 27 TexReg 8769; amended to be effective January 9, 2003, 28 TexReg 67; amended to be effective November 30, 2003, 28 TexReg 10480; amended to be effective May 2, 2004, 29 TexReg 3961; amended to be effective November 2004, 29 TexReg 10104; amended to be effective January 25, 2006, 31 TexReg 382; amended to be effective January 4, 2007, 31 TexReg 10797; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective January 20, 2009, 34 TexReg 336; amended to be effective November 29, 2009, 34 TexReg 8530; amended to be effective July 4, 2012, 37 TexReg 4925; amended to be effective September 30, 2012, 37 TexReg 7485; amended to be effective January 20, 2014, 39 TexReg 273; amended to be effective August 3, 2014, 39 TexReg 5748

§163.6. Examinations Accepted for Licensure.

(a) Licensing Examinations Accepted by the Board for Licensure. The following examinations are acceptable for licensure:

(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;

(8) State board licensing examination, passed before January 1, 1977, (with the exception of Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico then the exams must be passed before July 1, 1963); or

(9) One of the following examination combinations with a score of 75 or better on each part, level, component, or step:

(A) FLEX I plus USMLE 3;

(B) USMLE 1 and USMLE 2 (including passage of the clinical skills component if applicable), plus FLEX II;

(C) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable), plus NBME III or USMLE 3;

(D) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable), plus FLEX II;

(E) The NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III.

(b) Examination Attempt Limit.

(1) An applicant must pass each part of an examination listed in subsection (a) of this section within three attempts. An applicant who attempts more than one type of examination must pass each part of at least one examination and shall not be allowed to combine parts of different types of examination.

(2) Notwithstanding paragraph (1) of this subsection, an applicant who, on September 1, 2005, held a Texas physician-in-training permit issued under §155.105 of the Act or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:

(A) passed all but one part of the examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;

(B) is specialty board certified by a specialty board that:

(i) is a member of the American Board of Medical Specialties; or

(ii) is approved by the American Osteopathic Association; and
(iii) has completed in this state an additional two years of postgraduate medical training approved by the board.

(3) The limitation on examination attempts by an applicant under paragraph (1) of this subsection does not apply to an applicant who:

(A) holds a license to practice medicine in another state(s);

(B) is in good standing in the other state(s);

(C) has been licensed in another state(s) for at least five years;

(D) such license has not been restricted, cancelled, suspended, revoked, or subject to other discipline in the other state(s);

(E) has never held a medical license that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States; and

(F) has passed all but one part of the examination approved by the board within three attempts and:

(i) passed the remaining part of the examination within one additional attempt; or

(ii) passed the remaining part of the examination within six attempts if the applicant:

(I) is specialty board certified by a specialty board that:

(-a-) is a member of the American Board of Medical Specialties; or

(-b-) is approved by the American Osteopathic Association; and

(II) has completed in this state an additional two years of postgraduate medical training approved by the board.

(4) Attempts at a comparable part of a different type of examination shall be counted against the three attempt limit.

(c) Limit on Time to Complete Examination.

(1) An applicant must pass all parts of an examination listed in subsection (a)(1), (2), (4), (5), (6), or (7) of this section within seven years; or

(2) If the applicant is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree, the applicant may qualify by passing each part of an examination listed in subsection (a)(1), (2), (4), (5), or (6) of this section not later than the second anniversary of the date the applicant completed the required graduate medical training.

(d) The time frame to pass each part of the examination described by subsection (c)(1) of this section is extended to 10 years and the anniversary date to pass each part of the examination described by subsection (c)(2) of this section is extended to the 10th anniversary if the applicant:

(1) is specialty board certified by a specialty board that:

(A) is a member of the American Board of Medical Specialties; or

(B) is a member of the Bureau of Osteopathic Specialists; or

(2) has been issued a faculty temporary license, as prescribed by board rule, and has practiced under such a license for a minimum of 12 months and, at the conclusion of the 12-month period, has been recommended to the board by the chief administrative officer and the president of the institution in which the applicant practiced under the faculty temporary license.

(e) Texas Medical Jurisprudence Examination (JP Exam).

(1) In this chapter, when applicants are required to pass the JP exam, applicants must pass the JP exam with a score of 75 or better within three attempts, unless the Board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the Licensure Committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(2) An examinee shall not be permitted to bring medical books, compendia, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(3) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(4) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(5) The Board shall provide reasonable examination accommodations to applicants diagnosed with dyslexia. Satisfactory proof of an applicant's dyslexia is:

(A) proof of accommodations made by any entity which administers a national licensing examination accepted for licensure in this section;
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(B) proof of accommodations made by a specialty board recognized by the ABMS or BOS; or
(C) documentation from a medical professional acceptable to the board regarding the applicant's condition and need for accommodations.

(f) The time frame to pass each part of the examination described by subsections (c) and (d) of this section does not apply to an applicant who meets the following criteria:

(1) holds a license to practice medicine in another state;
(2) is in good standing in such state;
(3) has been licensed in such state for at least five years;
(4) such license has not been restricted, cancelled, suspended, revoked, or subject to another discipline in that state;
(5) will practice exclusively in a medically underserved area or a health manpower shortage area, as those terms are defined in Chapter 157 of the Texas Occupations Code; and
(6) has never held a medical license that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States.

Source Note: The provisions of this §163.6 adopted to be effective November 10, 1999, 24 TexReg 9835; amended to be effective November 30, 2003, 28 TexReg 10480; amended to be effective May 2, 2004, 29 TexReg 3961; amended to be effective November 7, 2004, 29 TexReg 10104; amended to be effective January 25, 2006, 31 TexReg 382; amended to be effective June 28, 2006, 31 TexReg 5098; amended to be effective January 4, 2007, 31 TexReg 10797; amended to be effective July 3, 2007, 32 TexReg 3991; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective November 29, 2009, 34 TexReg 8530; amended to be effective September 19, 2010, 35 TexReg 8349; amended to be effective December 4, 2011, 36 TexReg 8026; amended to be effective May 6, 2013, 38 TexReg 2759; amended to be effective January 20, 2014, 39 TexReg 273; amended to be effective September 28, 2014, 39 TexReg 7580; amended to be effective July 9, 2015, 40 TexReg 4353

§163.7. Ten Year Rule.
An applicant who has not passed an examination listed in §163.6(a) of this title (relating to Examinations Accepted for Licensure) for licensure within the ten-year period prior to the filing date of the application must:

(1) present evidence from a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, American Board of Oral and Maxillofacial Surgery, or by the Royal College of Physicians and Surgeons of Canada of passage, within the ten years prior to date of applying for licensure, a monitored:

(A) initial certification examination (passage of all parts required); or
(B) subsequent specialty written certification examination.

(2) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to the practice of medicine for at least six months under a faculty temporary license or six months in a training program approved by the board within twelve months prior to the application for licensure; or

(3) pass the Special Purpose Examination (SPEX) within the preceding ten years. The applicant must score 75 or better within three attempts.

Source Note: The provisions of this §163.7 adopted to be July 3, 2007, 32 TexReg 3991; amended to be effective November 29, 2009, 34 TexReg 8530; amended to be effective December 4, 2011, 36 TexReg 8026; amended to be effective May 6, 2013, 38 TexReg 2759; amended to be effective December 7, 2014, 39 TexReg 9344; amended to be effective May 20, 2015, 40 TexReg 2664

§163.8. Authorization to Take Professional Licensing Examination.

(a) The purpose of this section is to set forth the requirements of a medical school institution or degree program that will authorize its graduates to take the United State Medical Licensing Examination ("USMLE"), Jurisprudence Examination, or other professional licensing examination required for licensure by the board. By agreement entered into by the board (Agreement Regarding USMLE Step 3), the board has authorized the Federation of State Medical Boards ("FSMB") to verify eligibility of applicants, register approved applicants, and assure that the USMLE is administered according to stated guidelines. The Agreement provides that the board may set requirements for eligibility for applicants to take the USMLE that may be in addition to USMLE requirements.

(b) A medical school institution or degree program shall be approved by the board for purposes of authorizing graduates of the medical school institution or degree program to take a professional licensing


examination required by this title if the medical school institution or degree program:

(1) is accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education; or

(2) meets the requirements of the Educational Commission for Foreign Medical Graduates (ECFMG) for purposes of certification of foreign medical graduates.

c) Nothing in this subsection shall be construed to limit the provisions of §155.0031(d), Occupations Code, requiring an applicant to provide information showing that each medical school attended is substantially equivalent to a Texas medical school.

Source Note: The provisions of this §163.8 adopted to be July 3, 2007, 32 TexReg 3991

§163.9. Only One License.

Upon the issuance of any license or permit, all previously issued licenses and permits, including postgraduate training permits, shall be considered to be terminated. A person may not have more than one license or permit at the same time, except that a license holder who is required to register periodically may hold the license and the registration permit at the same time.

Source Note: The provisions of this §163.9 adopted to be July 3, 2007, 32 TexReg 3991

§163.10. Relicensure.

(a) Application for Relicensure. If a physician's license has been automatically cancelled due to failure to submit a complete registration application and registration fee, the physician must apply for relicensure and may obtain a new license by submitting reexamination and complying with the requirements and procedures for obtaining an original license.

(b) Existing Board Orders at Time of Cancellation.

(1) A physician who allows his or her license to be canceled following nonpayment while under an order of the board may apply for relicensure. Unless otherwise provided, the terms of the order shall be tolled for the period following cancellation.

(2) The licensee shall be required to comply with the terms of the order for either the period of time remaining on the order when the licensee had his or her license canceled for nonpayment of licensure fees or for an extended period of time as established by the board at the time of relicensure.

(3) A physician who allows his or her license to be canceled following nonpayment while under a suspension order of the board must also demonstrate that his or her return to the practice of medicine is in the physician's and the public's best interest as defined under Chapter 167 of this title (relating to Reinstatement and Reissuance).

(4) The board retains the discretion to add or delete terms and conditions of the tolled order upon the granting of relicensure.

Source Note: The provisions of this §163.10 adopted to be effective November 10, 1999, 24 TexReg 9835; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective March 7, 2002, 27 TexReg 1487; amended to be effective April 27, 2003, 28 TexReg 3324; amended to be effective November 30, 2003, 28 TexReg 10480; amended to be effective August 10, 2008, 33 TexReg 6133.

§163.11. Active Practice of Medicine.

(a) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within either of the last two years preceding receipt of an Application for licensure.

(b) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(c) Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the executive director or board, be eligible for:

(1) an unrestricted license if the applicant demonstrates:

(A) presents evidence from a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, American Board of Oral and Maxillofacial Surgery, or by the Royal College of Physicians and Surgeons of Canada of passage, within the two years prior to date of applying for licensure, of a monitored:

(i) initial specialty certification examination (passage of all parts required); or

(ii) subsequent specialty written certification examination.

(B) completion of remedial education, including but not limited to a mini-residency, fellowship or other structured program; or

(C) such other remedial measures that, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

(2) a license subject to one of more of the following conditions:

(A) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine; or
(B) such other restrictive or remedial conditions that, in the discretion of the executive director or board, are necessary to ensure protection of the public and establish minimal competency of the applicant to safely practice medicine.

Source Note: The provisions of this §163.11 adopted to be effective November 10, 1999, 24 TexReg 9835; amended to be effective May 2, 2004, 29 TexReg 3961; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective November 29, 2009, 34 TexReg 8530; amended to be effective December 4, 2011, 36 TexReg 8026; amended to be effective December 23, 2012, 37 TexReg 9772; amended to be effective May 20, 2015, 40 TexReg 2664

Applications for licensure shall be expedited by the board's licensure division provided the applicant meets the criteria for applying for licensure under §163.2(d) of this title (relating to Full Texas Medical License) or submits an affidavit stating that:

  (1) the applicant intends to practice in a rural community as determined by the Office of Rural Health Initiatives; or

  (2) the applicant intends to practice medicine in a medically underserved area or health professional shortage area designated by the United States Department of Health and Human Services that has a shortage of physicians.

Source Note: The provisions of this §163.13 adopted to be effective January 6, 2002, 26 TexReg 10865; amended to be effective November 30, 2003, 28 TexReg 10480; amended to be effective February 28, 2011, 36 TexReg 1275; amended to be effective January 20, 2014, 39 TexReg 273
§164.1. Purpose.
These rules are promulgated under the authority of the Medical Practice Act, Texas Occupations Code Ann. §153.001 and the Health Professions Council, Texas Occupations Code Ann. §101.201, to set forth the grounds under which a physician's license may be disciplined for false and deceptive advertising. Reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public. The Board permits the dissemination to the public of legitimate information, in accordance with the Board's rules, regarding the practice of medicine and where and from whom medical services may be obtained, so long as such information is in no way false, deceptive, or misleading. It is the responsibility of each physician to carefully scrutinize his advertisements and adhere to the highest ethical standards of truth in advertising.

Source Note: The provisions of this §164.1 adopted to be effective May 21, 2000, 25 TexReg 4348.

§164.2. 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--Informational communication to the public in any manner designed to attract public attention to the practice of a physician. Advertising may include oral, written, broadcast, and other types of communications disseminated by or at the behest of a physician. The communications covered include, but are not limited to, those made to patients, prospective patients, professionals or other persons who might refer patients, and to the public at large. The communications covered include signs, nameplates, professional cards, announcements, letterheads, listings in telephone directories and other directories, brochures, radio and television appearances, and information disseminated on the Internet or Web.

2. A testimonial--An attestation or implied attestation to the competence of a physician's service or treatment. Testimonials also include expressions of appreciation or esteem, a character reference, or a statement of benefits received. Testimonials are not limited to patient comments but may also include comments from colleagues, friends, family, actors, models, fictional characters, or other persons or entities.

3. Applicant--An individual physician requesting recognition of his or her certifying board for the physician's advertising purposes or a certifying board requesting recognition as an entity for its diplomates.

4. Application--An application is all documents and information necessary to complete an applicant's request including the following:
   A. forms or addenda furnished by the board, completed by the applicant, typed in ink, or completed online if requiring a written response;
   B. documentation furnished by the certifying board as required; and
   C. the required fee.

5. Board--The Texas Medical Board.

6. Certifying board--Entity requesting recognition by the Texas Medical Board.

Source Note: The provisions of this §164.2 adopted to be effective May 21, 2000, 25 TexReg 4348; amended to be effective May 5, 2011, 36 TexReg 2727

§164.3. Misleading or Deceptive Advertising.
No physician shall disseminate or cause the dissemination of any advertisement that is in any way false, deceptive, or misleading. Any advertisement shall be deemed by the board to be false, deceptive, or misleading if it:

1. contains material false claims or misrepresentations of material facts which cannot be substantiated;
2. contains material implied false claims or implied misrepresentations of material fact;
3. omits material facts;
4. makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;
5. advertises or assures a permanent cure for an incurable disease;
6. compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;
7. advertises professional superiority or the performance of professional service in a superior manner if the advertising is not subject to verification;
8. contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;
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(9) includes photographs or other representations of models or actors without explicitly identifying them as models and not actual patients;

(10) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(11) represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(12) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(13) states that a service is free when it is not, or contains untruthful or deceptive claims regarding costs and fees. If other costs are frequently incurred when the advertised service is obtained then this should be disclosed. Offers of free service must indeed be free. To state that a service is free but a third party is billed is deceptive and subject to disciplinary action;

(14) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient;

(15) advertises or represents in the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;

(16) claims that a physician has a unique or exclusive skill without substantiation of such claim;

(17) involves uninvited solicitation such as "drumming" patients or conduct considered an offense under Texas Occupations Code §102.001(a) relating to the solicitation of patients; or

(18) fails to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement, article, or infomercial, unless the nature, format or medium of such advertisement makes the fact of compensation apparent.

Source Note: The provisions of this §164.3 adopted to be effective May 21, 2000, 25 TexReg 4348; amended to be effective September 19, 2002, 27 TexReg 8769; amended to be effective May 12, 2008, 33 TexReg 3741.

§164.4. Board Certification.

(a) A physician is authorized to use the term "board certified" in any advertising for his or her practice only if the specialty board that conferred the certification and the certifying organization is a member board of the American Board of Medical Specialties (ABMS), or the American Osteopathic Association Bureau of Osteopathic Specialists (BOS), or is the American Board of Oral and Maxillofacial Surgery.

(b) Physicians who are certified by a board that does not meet the criteria of subsection (a) of this section, shall be authorized to use the term "board certified" only if the medical board determines that the physician-based certifying organization that conferred the certification has certification requirements that are substantially equivalent to the requirements of the ABMS or the BOS existing at the time of application to the medical board. Physicians, or physician-based certifying organizations on behalf of their members, must submit an application to a committee of the medical board, and demonstrate that:

(1) the organization requires all physicians who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;

(2) the organization has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to Section 501(c);

(3) the organization has a permanent headquarters and staff;

(4) the organization has at least 100 duly licensed members, fellows, diplomates, or certificate holders from at least one-third of the states;

(5) the organization requires all physicians who are seeking certification to have successfully completed postgraduate training that is accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association and that provides substantial and identifiable supervised training of comprehensive scope in the specialty or subspecialty certified, and the organization utilizes appropriate peer review;

(6) the organization provides an online resource for the consumer to verify the board certification of its members; and

(7) the organization has the ability to provide a full explanation of its certification process and membership upon request by the Texas Medical Board.

(c) A physician may not authorize the use of or use the term "board certified" if the claimed board certification has expired and has not been renewed at the time the advertising in question was ordered.

(d) The terms "board eligible," "board qualified," or any similar words or phrase calculated to convey the same meaning may not be used in physician advertising.

(e) A physician's authorization of or use of the term "board certified", or any similar words or phrase calculated to convey the same meaning in any advertising for his or her practice shall constitute
misleading or deceptive advertising unless the specialty board which conferred the certification and the certifying organization meet the requirements in subsection (a) or (b) of this section.

(f) A physician may advertise a field of interest if the physician is certified by, or a member, fellow, or diplomate of an organization that meets the requirements of subsection (a) or (b) of this section.

(g) A board certified physician who advertises board certification may advertise a field of interest that is different from the certified specialty only if the physician identifies the specialty for which the physician is board certified in an equal size of type or emphasis.

(h) A physician who is not board certified by, or a member, fellow, or diplomate of an organization that meets either the requirements of subsection (a) or (b) of this section may not advertise a field of interest, except that the physician may advertise that his or her practice is "limited to" a certain practice area.

(i) A physician who holds a certification that was granted prior to September 1, 2010, and whose certifying board was approved by the medical board for advertising purposes prior to September 1, 2010, is considered to meet the requirements of subsection (b) of this section.

(j) Application for board certification approval for the purpose of advertising.

(1) Applicants for approval of board certification under subsection (b) of this section shall complete a written application and payment of an application fee as set out in §175.1 of this title (relating to Application Fees).

(2) Applicants whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited. Any further request for board certification recognition will require submission of a new application and inclusion of the current application fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) A committee of the board requires an applicant to meet specific additional requirements for approval and the application will expire prior to deadline established by the Committee; or

(C) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation.

(3) If the executive director determines that an application meets all qualifications, the applicant shall be presented to a committee of the board for review and approval.

(4) If the Executive Director determines that the applicant does not clearly meet all requirements, the executive director shall notify the applicant and the applicant may appeal that decision to a committee of the board.

(5) Disapproval Determination.

(A) If a committee of the board or the full board determines that an applicant's certifying board does not meet the board's requirements for approval, the applicant shall be notified of the disapproval determination.

(B) If an applicant's certifying board is disapproved, the applicant may request a rehearing of the application before a committee of the board. The request must be made within 20 days receipt of notice of the disapproval determination. It is at the discretion of the committee whether to grant a rehearing. The request for rehearing must be based on information not previously presented to or considered.

(6) A certifying board approved by the board under this subsection must be reviewed every five years from the date of initial approval and the board must obtain information of any substantive changes in the certifying board's requirements for diplomates since the certifying board was last reviewed by the board. In addition, a renewal fee as set out §175.2 of this title (relating to Registration and Renewal Fees) must be paid by an applicant to have the certifying board reviewed.

Source Note: The provisions of this §164.4 adopted to be effective March 8, 2001, 26 TexReg 1863; amended to be effective May 2, 2004, 29 TexReg 3962; amended to be effective July 3, 2007, 32 TexReg 3992; amended to be effective January 17, 2011, 36 TexReg 137; amended to be effective May 5, 2011, 36 TexReg 2727

§164.5. Advertising Records and Responsibility.

(a) Any and all advertisements are presumed to have been approved by the licensee named therein.

(b) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any employees acting as an agent of such firm or entity.

(c) If photographs or other representations of actual patients are used in advertising, there must not be communication of facts, data, or information which may identify the patient without first obtaining patient consent.

(d) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media and a copy of any other form of advertisement shall be retained by the licensee for a period of two years from the last date
(e) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public communication.

(f) It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be excised if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reasons be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Source Note: The provisions of this §164.5 adopted to be effective May 21, 2000, 25 TexReg 4348.

§164.6.Required Disclosures on Website.

(a) Disclosure. A licensee that maintains a website in relation to the license's professional practice must clearly disclose:

1. ownership of the website;
2. specific services provided;
3. office address and contact information;
4. licensure and qualifications of physician(s) and associated health care providers;
5. fees for online consultation and services and how payment is to be made;
6. financial interest in any information, products, or services;
7. appropriate uses and limitations of the site, including providing health advice and emergency health situations;
8. uses and response times for e-mails, electronic messages, and other communications transmitted via the site;
9. to whom patient health information may be disclosed and for what purpose;
10. rights of patients with respect to patient health information; and
11. information collected and any passive tracking mechanisms utilized.

(b) Accountability. Licensees must provide patients with a clear mechanism to:

1. access, supplement, and amend patient-provided personal health information;
2. provide feedback regarding the site and the quality of information and services; and
3. register complaints, including information regarding filing a complaint with the Texas Medical Board as provided for in Chapter 178 of this title (relating to Complaints).

(c) Advertising/Promotion of Goods or Products. Advertising or promotion of goods or products that a licensee sells outside the normal course of business from which the physician receives direct remuneration or incentives is prohibited.

(d) This section applies only to licensees who bill for services provided via the Internet.

Source Note: The provisions of this §164.6 adopted to be effective July 1, 2010, 35 TexReg 5561; amended to be effective May 5, 2011, 36 TexReg 2727
§165.1. Medical Records.

(a) Contents of Medical Record. Regardless of the medium utilized, each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

(1) The documentation of each patient encounter should include:
   (A) reason for the encounter and relevant history, physical examination findings and prior diagnostic test results;
   (B) an assessment, clinical impression, or diagnosis;
   (C) plan for care (including discharge plan if appropriate); and
   (D) the date and legible identity of the observer.

(2) Past and present diagnoses should be accessible to the treating and/or consulting physician.

(3) The rationale for and results of diagnostic and other ancillary services should be included in the medical record.

(4) The patient's progress, including response to treatment, change in diagnosis, and patient's non-compliance should be documented.

(5) Relevant risk factors should be identified.

(6) The written plan for care should include when appropriate:
   (A) treatments and medications (prescriptions and samples) specifying amount, frequency, number of refills, and dosage;
   (B) any referrals and consultations;
   (C) patient/family education; and,
   (D) specific instructions for follow up.

(7) Include any written consents for treatment or surgery requested from the patient/family by the physician.

(8) Include a summary or documentation memorializing communications transmitted or received by the physician about which a medical decision is made regarding the patient.

(9) Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(10) All non-biographical populated fields, contained in a patient's electronic medical record, must contain accurate data and information pertaining to the patient based on actual findings, assessments, evaluations, diagnostics or assessments as documented by the physician.

(11) Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(12) Salient records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(13) The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (11) of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) Maintenance of Medical Records.

(1) A licensed physician shall maintain adequate medical records of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the physician.

(2) If a patient was younger than 18 years of age when last treated by the physician, the medical records of the patient shall be maintained by the physician until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(3) A physician may destroy medical records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved.

(4) Physicians shall retain medical records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(5) Physicians may transfer ownership of records to another licensed physician or group of physicians only if the physician provides notice consistent with §165.5 of this chapter (relating to Transfer and Disposal of Medical Records) and the physician who assumes ownership of the records maintains the records consistent with this chapter.

(6) Medical records may be owned by a physician's employer, to include group practices, professional associations, and non-profit health organizations, provided records are maintained by these entities consistent with this chapter.
(7) Destruction of medical records shall be done in a manner that ensures continued confidentiality.

Source Note: The provisions of this §165.1 adopted to be effective December 29, 1997, 22 TexReg 12490; amended to be effective September 14, 2003, 28 TexReg 7703; amended to be effective March 4, 2004, 29 TexReg 1946; amended to be effective September 28, 2006, 31 TexReg 8090; amended to be effective January 20, 2009, 34 TexReg 337; amended to be effective September 19, 2010, 35 TexReg 8350; amended to be effective May 20, 2015, 40 TexReg 2665.

§165.2. Medical Record Release and Charges.

(a) Release of Records Pursuant to Written Request. As required by the Medical Practice Act, §159.006, a physician shall furnish copies of medical and/or billing records requested or a summary or narrative of the records pursuant to a written release of the information as provided by the Medical Practice Act, §159.005, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The physician may delete confidential information about another patient or family member of the patient who has not consented to the release. If requested, the physician shall provide the requested records in electronic format, if such records are readily producible. If the requested records are not readily producible in a readable electronic format, the records shall be produced in a format as agreed to by the physician and the requestor. If by the nature of the physician's practice, the physician transmits health information in electronic form, the physician may be subject to the Health Insurance Portability and Accountability Act (HIPAA) 45 C.F.R. Parts 160-164. Unless otherwise provided under HIPAA, physicians subject to HIPAA must permit the patient or an authorized representative access to inspect medical and/or billing records and may not provide summaries in lieu of actual copies unless the patient authorizes the summary and related charges.

(b) Deadline for Release of Records. The requested copies of medical and/or billing records or a summary or narrative of the records shall be furnished by the physician within 15 business days after the date of receipt of the request and reasonable fees for furnishing the information.

(c) Denial of Requests for Records. If the physician denies the request for copies of medical and/or billing records or a summary or narrative of the records, either in whole or in part, the physician shall furnish the patient a written statement, signed and dated, within 15 business days of receipt of the request stating the reason for the denial and how the patient can file a complaint with the federal Department of Health and Human Services (if the physician is subject to HIPAA) and the Texas Medical Board. A copy of the statement denying the request shall be placed in the patient's medical and/or billing records as appropriate.

(d) Contents of Records. For purposes of this section, "medical records" shall include those records as defined in §165.1(a) of this title (relating to Medical Records) and shall include copies of medical records of other health care practitioners contained in the records of the physician to whom a request for release of records has been made.

(e) Allowable Charges.

(1) Paper Format.

(A) The physician responding to a request for such information shall be entitled to receive a reasonable, cost-based fee for providing the requested information.

(B) A reasonable fee for providing the requested records in paper format shall be a charge of no more than $25 for the first twenty pages and $.50 per page for every copy thereafter.

(2) Electronic Format

(A) The physician responding to a request for such information to be provided in electronic format shall be entitled to receive a reasonable, cost-based fee for providing the requested information in electronic format.

(B) A reasonable fee for providing the requested records in electronic format shall be a charge of no more than: $25 for 500 pages or less; $50 for more than 500 pages.

(3) Hybrid Records Format.

(A) The physician responding to a request for such information that is contained partially in electronic format and partially in paper format ("hybrid"), may provide the requested information in a hybrid format and shall be entitled to receive a reasonable, cost based fee for providing the requested information.

(B) A reasonable fee for providing the requested records in a hybrid format may be a combination of the fees as set forth in paragraphs (1) and (2) of this subsection.

(4) Other Charges.

(A) If an affidavit is requested, certifying that the information is a true and correct copy of the records, whether in paper, electronic or hybrid format, a reasonable fee of up to $15 may be charged for executing the affidavit.

(B) A physician may charge separate fees for medical and billing records requested.

(C) Allowable charges for copies of diagnostic imaging studies are set forth in §165.3 of this title (relating to Patient Access to Diagnostic Imaging Studies in Physician's Office) and are separate from the charges set forth in this section.
(5) A reasonable fee for records provided in a paper, electronic or hybrid format may not include costs associated with searching for and retrieving the requested information, and shall include only the cost of:

(A) copying and labor, including, compiling, extracting, scanning, burning onto media, and distributing media;
(B) cost of supplies for creating the paper copy or electronic media (if the individual requests portable media) that are not prohibited by federal law;
(C) postage, when the individual has requested the copy or summary be mailed; and
(D) preparing a summary of the records when appropriate.

(f) Emergency Requests. The physician providing copies of requested medical and/or billing records or a summary or a narrative of such records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any State or province of Canada if requested for purposes of emergency or acute medical care.

(g) Non-emergent Requests. In the event the physician receives a proper request for copies of medical and/or billing records or a summary or narrative of the records for purposes other than for emergency or acute medical care, the physician may retain the requested information until payment is received. If payment is not routed with such a request, within ten calendar days from receiving a request for the release of such records, the physician shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical and/or billing record as appropriate.

(h) Improper Withholding for Past Due Accounts. Medical and/or billing records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.

(i) Subpoena Not Required. A subpoena shall not be required for the release of medical and/or billing records requested pursuant to a proper release for records under this section and the Medical Practice Act, §159.006, made by a patient or by the patient's guardian or other representative duly authorized to obtain such records.

(j) Billing Record Requests. In response to a proper request for release of medical records, a physician shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.

(k) Prohibited Fees for Records Released Related to Disability Claims. The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law. In particular, under §161.202 of the Texas Health and Safety Code, a physician may not charge a fee for a medical or mental health record requested by a patient, former patient or authorized representative of the patient if the request is related to a benefits or assistance claim based on the patient's disability.

(l) Applicable Federal Law. Whenever federal law or applicable federal regulations affecting the release of patient information are inconsistent with provisions of this section, the provisions of federal law or federal regulations shall be controlling, unless the state law is more restrictive/stringent. Physicians are responsible for ensuring that they are in compliance with federal law and regulations including the Health Insurance Portability and Accountability Act (HIPAA) 45 C.F.R. Parts 160-164.

Source Note: The provisions of this §165.2 adopted to be effective December 29, 1997, 22 TexReg 12490; amended to be effective May 21, 2000, 25 TexReg 4349; amended to be effective November 19, 2000, 25 TexReg 11282; amended to be effective September 19, 2002, 27 TexReg 8769; amended to be effective March 4, 2004, 29 TexReg 1946; amended to be effective January 20, 2014, 39 TexReg 273

§165.3. Patient Access to Diagnostic Imaging Studies in Physician’s Office.
(a) Purpose. This section is promulgated to ensure that patients have reasonable access to diagnostic imaging studies maintained in the physician's office and that the practice of medicine by individual licensees and the delivery of health care to the public shall not be unduly hindered or interrupted by allowing for such access. As used in this section, "diagnostic imaging studies" or "imaging studies" includes static and non-static films and imaging studies in electronic format.

(b) Request and release.
(1) Upon receiving a written request and release of information that complies with §159.005 of the Act, a physician in possession or control of diagnostic imaging studies of a patient shall allow access to the imaging studies through one or more of the following means:
(A) providing copies of the imaging studies to the patient or recipient as designated in the request; or

(B) releasing the original imaging studies to the patient or recipient as designated in the request.

(2) Release and transfer of original imaging studies may be evidenced by a signed and dated receipt from a patient or recipient of the original imaging studies, or from their authorized representative, acknowledging receipt of and responsibility for the original imaging studies.

(c) Exceptions. As provided for under §159.005 of the Act, a physician is not required to release imaging studies directly to a patient if the physician determines that access to the imaging studies would be harmful to the physical, mental, or emotional health of the patient. If a physician makes a determination that access would be harmful to the physical, mental, or emotional health of the patient, the physician shall, within the time allowed after receipt of a proper request, provide access to the requested imaging studies to an authorized representative of the patient as provided for in subsection (b) of this section.

(d) Time for release and denial. The requested copies or access to imaging studies shall be provided by the physician within 15 business days after the date of receipt of the request. If the physician denies the request, in whole or in part, the physician shall furnish the patient or recipient a written statement, signed and dated, within 15 business days of receipt of the request stating the reason for the denial and how the patient or recipient can file a complaint with federal Department of Health and Human Services and the Texas Medical Board. A copy of the statement denying the request shall be placed in the patient's medical records.

(e) Fees. The physician responding to a request by providing copies of imaging studies shall be entitled to a reasonable fee for providing the copies. A reasonable fee shall be no more than $8 per copy of an imaging study. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery.

(f) Emergency Request. The physician providing copies of requested imaging studies shall be entitled to a reasonable fee prior to release of the copies unless the copies are requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any state or province of Canada if requested for purposes of emergency or acute medical care.

(g) Non-emergent Requests. In the event that the physician receives a proper request for access to imaging studies for purposes other than for emergency or acute medical care, the physician may retain copies of the requested information until payment is received. If payment is not routed with such a request, within ten calendar days from receiving the request, the physician shall notify the requesting party in writing of the need for payment and may withhold the copies until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record.

(h) Improper Withholding for Past Due Accounts. Access to or copies of imaging studies requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such copies based on a past due account for medical care or treatment previously rendered to the patient.

(i) Subpoena. A subpoena shall not be required for access to or the release of originals or copies of imaging studies requested pursuant to the provisions of this section.

(j) Maximum charges. The allowable charges set forth in this section shall be maximum amounts, and this section shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by prevailing state or federal law.

Source Note: The provisions of this §165.3 adopted to be effective December 29, 1997, 22 TexReg 12490; amended to be effective September 19, 2002, 27 TexReg 8769; amended to be effective September 14, 2003, 28 TexReg 7703; amended to be effective June 24, 2009, 34 TexReg 4124.

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

(a) The board may appoint a temporary or permanent custodian for medical records abandoned by a physician when a person or entity applies with the board to be appointed record custodian.

(b) The records will be considered abandoned if they are without custodial care for a minimum of two weeks without alternative arrangements being made by the physician, the physician's legal guardian, or by the executor of the physician's estate.

(c) The record custodian appointed by the board shall take custody of and maintain the confidentiality of the physician's records, to include available medical records and billing records, according to the provisions of board rules and state statutes.

(d) The appointed record custodian shall provide the records, or copies of the records, to the patient or to the patient's designee according to board rules and state statutes. In addition to the reasonable copying fee defined in board rules, the appointed record custodian may charge an additional fee of $25.00 per patient record.

(e) The appointed record custodian shall retain care of the records for no less than 90 days and shall publish appropriate notice of pending destruction of the records.
for no less than 30 days prior to destruction of the records.

(f) Destruction of medical records shall be done in a manner that ensures continued confidentiality.

(g) The board may publish a Request for Bids for one entity to function as the appointed record custodian for all areas of the state. If a sole statewide contractor is not selected, the board may publish a Request for Bids for entities to function as regional appointed record custodian or a custodian may be appointed on a case by case basis.

Source Note: The provisions of this §165.4 adopted to be effective May 21, 2000, 25 TexReg 4349; amended to be effective September 19, 2002, 27 TexReg 8769; amended to be effective September 14, 2003, 28 TexReg 7703.

§165.5. Transfer and Disposal of Medical Records.
(a) Required Notification of Discontinuance of Practice. When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for:

1. ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and
2. notifying the board when they are terminating practice, retiring, or relocating, and therefore no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.

3. Employers of the departing physician as described in §165.1(b)(6) of this chapter are not required to provide notice, however, the departing physician remains responsible, for providing notification consistent with this section.

(b) Method of Notification.
1. When a physician retires, terminates employment, or otherwise leaves a medical practice, he or she shall provide notice to patients of when the physician intends to terminate the practice, retire or relocate, and will no longer be available to patients, and offer patients the opportunity to obtain a copy of their medical records or have their records transferred.
2. Notification shall be accomplished by:
   A. publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area;
   B. placing written notice in the physician's office; and
   C. sending letters to patients seen in the last two years notifying them of discontinuance of practice.

3. A copy of the notice shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.

4. Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.

(c) Prohibition Against Interference.
1. Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

2. A physician, physician group, or organization described in §165.1(b)(6) of this title (relating to Medical Records) may not withhold information from a departing physician that is necessary for notification of patients, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(d) Voluntary Surrender or Revocation of Physician's License.
1. Except as provided for in subsection (f) of this section, physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must notify their patients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

2. Physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must obtain a custodian for their records to be approved by the board within 30 days of the effective date of the voluntary surrender or revocation.

(e) Criminal Violation. A person who violates any provision of this chapter is subject to criminal penalties pursuant to §165.151 of the Act.

(f) Exceptions to Required Notification of Discontinuance of Practice.
1. A physician is not required to provide notice of his or her discontinuation of practice to patients treated pursuant to a locum tenens position at a practice location, if the physician was treating such patients during a period of no longer than six months at that location.

2. For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services.
§165.6. Medical Records Regarding an Abortion on an Unemancipated Minor.

(a) As used in this section:

(1) "Abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus (as defined at §33.001, Texas Family Code).

(2) "Unemancipated minor" means a minor who is not 18 years, unmarried and has not had the disabilities of minority removed under Chapter 31, Texas Family Code (as defined at §33.001, Texas Family Code).

(b) In the case of an unemancipated minor patient on whom a physician plans to perform an abortion, the physician shall obtain and maintain in the medical records one of the following:

(1) the written consent of one of the patient's parents, managing conservator, or legal guardian, in accordance with §164.052(a)(19), Medical Practice Act;

(2) a court order authorizing the minor to consent to the abortion, in accordance with §33.003 or §33.004, Texas Family Code;

(3) an affidavit of the physician authorizing the physician to perform the abortion as if the court had issued an order granting the application or appeal, in accordance with §33.005, Texas Family Code; or

(4) indications supporting the physician's judgment, if the physician concludes, on the basis of good faith clinical judgment, that a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the patient's parent, managing conservator, or legal guardian, in accordance with §164.052(a)(19), Medical Practice Act. The physician shall also maintain in the medical records a copy of the certification to the Department of State Health Services, as required by §33.002, Texas Family Code.

(c) Except in the case of a medical emergency, the physician shall obtain and maintain in the medical records a written consent signed by the patient that includes the requirements set forth in §171.011 and §171.012, Texas Health and Safety Code.

(d) The physician must use due diligence in determining that any person signing a written consent for an abortion on an unemancipated minor is, in fact, who the person purports to be. The physician may not perform the abortion unless the written consent is notarized. The physician must use due diligence to determine that any woman on which he or she performs an abortion who claims to have reached the age of majority or to have had the disabilities of minority removed has, in fact, reached the age of majority or has had the disabilities of minority removed.

(e) The physician shall maintain the medical records required by this section until the later of the fifth anniversary of the date of the patient's majority or the seventh anniversary of the date the physician received or created the documentation for the record.

(f) Pursuant to §164.052(c), Medical Practice Act, the board adopts the following form for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor:
DISCLOSURE AND CONSENT FORM
MEDICAL, SURGICAL, AND DIAGNOSTIC PROCEDURES

PATIENT NAME: __________________________ DATE OF BIRTH: _______________ AGE: __________

This Form has been adopted by the Texas Medical Board in accordance with the requirements of §164.052(c), Texas Occupations Code and is published in 22 Texas Administrative Code §165.6(f). The purpose of this Form is to allow the physician to obtain the required consents for an abortion to be performed on an unemancipated minor. This Form is available for downloading on the Texas Medical Board web site at “www.tmb.state.tx.us”.

Part I. Information about Patient Consent Requirements and Parental Consent Requirements.

TO THE PATIENT: As the patient, you have the right to be given information about your health condition, our plans for your care, and the risks and hazards of the planned care. You have the right to provide written consent for the medical procedures agreed to be performed. As your physician, I am required by law to provide this information to you, and to have your consent, or permission, before we can start any medical procedure on you. This is called the “Patient Consent Requirement.” Your signature at the bottom of Part IV of this Form is your consent for me to perform the medical procedures that are checked below in Part II.

TO THE PATIENT’S PARENT, LEGAL GUARDIAN, OR MANAGING CONSERVATOR: As the parent, legal guardian, or managing conservator of a child, you have the right to be given information about your child or ward’s health condition, our plans for her care, and the risks and hazards of the planned care. You are also required to provide written consent, or permission, for the medical procedures agreed to be performed on your child or ward, unless otherwise stated in law. This called the “Parental Consent Requirement”.

A child includes each patient who is under 18 years old, unmarried, and has not had the disabilities of minority removed by court order. In Texas, this is called an “unemancipated minor.” I am required by law to have the written consent of either one of the patient’s parents, legal guardian, or managing conservator before we can perform an abortion on an unemancipated minor. The Parental Consent Requirement does not apply if the unemancipated minor has a court order waiving the parental consent requirement (a “judicial bypass order”)

The Parental Consent Requirement has two parts. The first part requires one of the patient’s parents, legal guardian, or managing conservator to initial each page of this Form. Their initials mean that they have had the chance to read this information (or to have it read to them) and to ask questions. The initialing of each page can be done at any time and at any location. The second part requires either one of the patient’s parents, legal guardian, or managing conservator to sign the Parental Consent in Part V of this Form. This Form must be signed in front of a person who is a notary public either in the physician’s office or clinic, or in front of a notary public at any location. The purposes of these signing requirements are to help make sure that only those persons listed on the Parental Consent in Part V of this Form are the ones who actually sign it.

Part II. Surgical and Medical Procedures.

The surgical and/or medical procedures that are planned to be performed on the patient are the ones that are checked below. As used in this Form, “abortion” means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

Initials of parent, guardian, or conservator

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Surgical Abortion Procedures:

- Dilatation and Curettage (D&C)
- Dilatation and Evacuation (D&E)
- Manual Vacuum Aspiration
- Machine Vacuum Aspiration

Medical Abortion Procedures:

- Mifepristone
- Misoprostol

Other as listed:

Part III. Risks and Hazards.

There are risks and hazards related to the surgical and medical procedures planned for the patient. 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 checked above.

The patient should read and initial the following blanks. Her initials mean she has read the information (or had it read to her) and agrees with the statement.

- I have been told by the physician or physician’s assistant about the following risks and hazards that may occur in connection with any surgical, medical, and/or diagnostic procedure:
  
  (A) Potential for infection.
  (B) Blood clots in veins and lungs.
  (C) Hemorrhage.
  (D) Allergic reactions.
  (E) Even death.

- I have been told by the physician or physician’s assistant about the following risks and hazards that may occur with a surgical abortion:
  
  (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.

- I have been told by the physician or physician’s assistant about the following risks and hazards that may occur with a medical/non-surgical abortion:
  
  (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.

- I have been told by the physician or physician’s assistant about the following risks and hazards that may occur with this particular procedure:

Initials of parent, guardian, or conservator
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:

I have been told by the physician or physician's assistant about the following other information that is required by law to be discussed before I can give my voluntary and informed consent to an abortion: (See §171.11 and §171.12, Texas Health and Safety Code):

(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.
Part IV. Patient’s Consent for Surgical or Medical Procedures.

To meet the Patient Consent Requirement, the patient must complete Part IV of this Form. An initial on each blank means that the patient has read (or had the information read to her) and agrees with the statement. The patient’s signature means that she is agreeing to have the abortion procedures set out above.

Patient Consent Statement:

_____ I understand that my doctor __________________________ (print the name of your doctor) is going to perform an abortion on me, which will end my pregnancy and will result in the death of the fetus.

_____ I understand that I am not being forced 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 non-treatment, 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.”

_____ I believe that I have sufficient information to give this informed consent.

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 believe that I understand what it says. By my signature below, I give my voluntary consent to have the surgical and medical procedures performed on me that am listed above.

__________________________
Printed Name of Patient

__________________________ Date

__________________________ Signature of Patient

__________________________
Initials of parent, guardian, or conservator

Page No 4
Part V. 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 ________________________________

Part VI. Parental Consent for Surgical or Medical Procedures.

To meet the Parental Consent Requirement, one of the parents, the legal guardian, or the managing conservator of the patient must initial each page of this Form and complete Part VI of this Form. An initial on each page blank means that the parent, legal guardian, or managing conservator has had the opportunity to read the information (or to have the information read to them) and has had the opportunity to ask questions to the physician or the physician’s assistant about this information. The signature of the parent, legal guardian, or managing conservator means that the person signing is agreeing to have the abortion procedures performed on the patient as set out above.

Parental Consent Statement:

______ I understand that the doctor listed above is going to perform an abortion on the patient, which will end her pregnancy and will result in the death of the fetus.

______ I have had the opportunity to read this Form (or have it read to me) and have initialed each page.

______ I have had the opportunity to ask questions to the physician or the physician’s assistant about the information in this Form and the surgical and medical procedures to be performed on the patient.

______ I believe that I have sufficient information to give this informed consent.

By my signature below, I state and affirm that I am the patient’s:

☐ Father ☐ Mother ☐ Legal Guardian ☐ Managing Conservator

Initials of parent, guardian, or conservator ________________________________
By my signature below, I give permission for _____________________________ (print the name of the patient), who is an emancipated 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

Part VII. 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 Part V of this Form in front of a person who is a notary public.

The signing in front of a person who is 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.

These signing requirements do not require the parent, legal guardian, or managing conservator to be present with the patient at the time of the procedure.

To be completed by the notary public who notarizes the signing by the parent, legal guardian, or managing conservator, as provided in Part V, above:

State of Texas §
County of ____________________________ §

This instrument was acknowledged before me on the ______ day of __________________, A.D., 20____

by ___________________________________________ (print name).

(SEAL)

Notary Public, State of Texas
My commission expires: ________________________________

Initials of parent, guardian, or conservator

Source Note: The provisions of this §165.6 adopted to be effective September 28, 2006, 31 TexReg 8090.
§166.1. Physician Registration.

(a) Each physician licensed to practice medicine in Texas shall register with the board, submit a current physician profile, and pay a fee. A physician may obtain a registration permit ("permit") by submitting the required form and by paying the required registration fee to the board on or before the expiration date of the permit. The fee shall accompany an application prescribed by the board which sets forth the licensee's name, mailing address, primary practice site, and address for receipt of electronic mail if available.

(b) The board shall stagger initial registrations of newly-licensed physicians proportionally.

(c) The board shall provide notice to each physician at the physician's last known mailing address according to the records of the board at least 30 days prior to the expiration date of the registration permit and shall provide for a 30-day grace period for payment of the registration fee from the date of the expiration of the permit.

(d) Within 30 days of a physician's change of mailing or practice address or professional name from the addresses or professional name on file with the board, a physician shall notify the board in writing of such change and submit additional documentation if requested.

(e) All permits issued to license holders are valid for two-year periods.

(f) Emergency Contact Information.

(1) As part of the physician's registration application, each physician shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

(2) A licensed physician who receives an initial registration permit shall provide the information required under paragraph (1) of this subsection not later than the 30th day after the date the permit is issued to the extent the information has not been provided through a recent registration. Each physician who applies to renew a registration permit shall submit the information required under paragraph (1) of this subsection with the renewal application.

(3) A physician shall report to the board any change in the information required under paragraph (1) of this subsection not later than the 45th day after the date of the change.

(4) The information provided by a physician under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code. The board may not publish, release, or make available information provided by a license holder under this section except as provided by paragraph (5) of this subsection.

(5) In the event of a public health emergency declared or invoked by the governor, the Department of State Health Services, or a federal agency, the board may publish, release, or make available information provided by a physician under this subsection for the sole purpose of disseminating information to:

(A) a physician licensed by the board;

(B) a designated city, county, state, or federal public health or emergency management official; or

(C) the Federation of State Medical Boards.

(g) A physician may not obtain a registration permit if the physician has violated §170.002 or Chapter 171, Texas Health and Safety Code.

Source Note: The provisions of this §166.1 adopted to be effective December 24, 1993, 18 TexReg 9189; amended to be effective January 12, 1996, 21 TexReg 106; amended to be effective September 23, 1999, 24 TexReg 7411; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective November 30, 2003, 28 TexReg 10483; amended to be effective January 9, 2005, 29 TexReg 12187; amended to be effective June 29, 2006, 31 TexReg 5099; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective November 29, 2009, 34 TexReg 8531; amended to be effective July 4, 2012, 37 TexReg 4927

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories:

(1) At least 24 credits every 24 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an...
accredited CME sponsor approved by the American Osteopathic Association;
(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician’s Recognition Award; or
(E) approved by the board for medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(4) A physician who performs forensic examinations on sexual assault survivors must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:
(A) meet the requirements described in paragraph (1)(A) - (C) of this subsection; or
(B) is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.

(5) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(6) A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A licensee may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements.

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association Bureau of Osteopathic Specialists. This provision exempts the physician from all CME requirements, including the requirement for two credit involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

(d) A licensee shall be presumed to have complied with subsection (a)(1) and (3) of this section if the licensee is meeting the Maintenance of Certification (MOC) program requirements set forth by a specialty or subspecialty member board of the ABMS, and the member board's MOC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) of this section. This provision does not exempt the licensee from the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section.

(e) A physician may request in writing an exemption for the following reasons:

(1) the physician’s catastrophic illness;
(2) the physician’s military service of longer than one year’s duration outside the state;
(3) the physician’s medical practice and residence of longer than one year’s duration outside the United States; or
(4) good cause shown submitted in writing by the physician, which provides satisfactory evidence to the board that the physician is unable to comply with the requirement for CME.

(f) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(g) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(h) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(i) This section does not prevent the board from taking board action with respect to a licensee or an
applicant for a license by requiring additional credits of CME or of specific course subjects.

(j) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(k) Physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date, will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(l) CME credits which are obtained during the 30 day grace period after the expiration of the licensee's permit to comply with the CME requirements for the preceding two years, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.

(m) A false report or false statement to the board by a licensee regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500.

(n) Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).

(o) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.3 of this title (relating to Penalties). Any administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.3 of this title.

Source Note: The provisions of this §166.2 adopted to be effective December 24, 1993, 18 TexReg 9189; amended to be effective August 2, 1995, 20 TexReg 5240; amended to be effective January 12, 1996, 21 TexReg 106; amended to be effective December 12, 1996, 21 TexReg 11785; amended to be effective December 23, 1997, 22 TexReg 12490; amended to be effective March 4, 1998, 23 TexReg 1949; amended to be effective May 9, 1999, 24 TexReg 3346; amended to be effective May 21, 2000, 25 TexReg 4349; amended to be effective September 21, 2000, 25 TexReg 9217; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective September 19, 2002, 27 TexReg 8769; amended to be effective November 30, 2003, 28 TexReg 10483; amended to be effective June 29, 2006, 31 TexReg 5099; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective January 20, 2009, 34 TexReg 337; amended to be effective May 6, 2009, 34 TexReg 2675; amended to be effective November 29, 2009, 34 TexReg 8531; amended to be effective May 13, 2012, 37 TexReg 3408; amended to be effective January 20, 2014, 39 TexReg 278; amended to be effective March 16, 2015, 40 TexReg 1379; amended to be effective July 9, 2015, 40 TexReg 4353

§166.3. Retired Physician Exception.

The registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

(1) To become exempt from the registration fee due to retirement:

(A) the physician's current license must not be under an investigation or order with the board or otherwise have a restricted license; and

(B) the physician must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(2) The following restrictions shall apply to physicians whose licenses are on official retired status.

(A) the physician must not engage in clinical activities or practice medicine in any state;

(B) the physician may not prescribe or administer drugs to anyone, nor may the physician possess a Drug Enforcement Agency or Texas controlled substances registration; and

(C) the physician's license may not be endorsed to any other state.

(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status by submitting a written request to the attention of the Permits Department of the board which indicates the following:

(A) the physician's Texas medical license number;

(B) current mailing address;

(C) proposed practice location;

(D) intended type of medical practice;

(E) length of retired status;

(F) any other medical licenses held;
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(G) any condition which adversely affects the physician's ability to practice medicine with reasonable skill and safety;

(H) any current specialty board certifications; and,

(I) any formal or informal continuing medical education obtained during the period of retired status.

(4) The request of a physician seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(A) current certification by a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery obtained by passing within the two years prior to date request to return to active status, a monitored:
   (i) specialty certification examination;
   (ii) maintenance of certification examination; or
   (iii) continuous certification examination;

(B) limitation of the practice of the requestor to specified activities of medicine and/or exclusion of specified activities of medicine;

(C) passage of the Special Purpose Examination (SPEX);

(D) remedial education, including but not limited to a mini-residency, fellowship or other structured program;

(E) passage of the Medical Jurisprudence Examination; and/or

(F) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

(5) The request of a physician seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in paragraph (4)(A) - (F) of this subsection.

(6) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting physician at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

(7) A physician applying for retired status under paragraphs (1) and (2) of this section may be approved for emeritus retired status, a subgroup of "official retired status," provided that the physician has:

(A) never received a remedial plan or been the subject of disciplinary action by the Texas Medical Board;

(B) no criminal history, including pending charges, indictment, conviction and/or deferred adjudication in Texas;

(C) never held a license, registration or certification that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state, or territory of the United States, a province of Canada, a uniformed service of the United States or other regulatory agency.

Source Note: The provisions of this §166.3 adopted to be effective December 24, 1993, 18 TexReg 9189; amended to be effective January 12, 1996, 21 TexReg 107; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective November 30, 2003, 28 TexReg 10483; amended to be effective November 29, 2009, 34 TexReg 8531; amended to be effective July 4, 2012, 37 TexReg 4927; amended to be effective January 20, 2014, 39 TexReg 278

§166.4. Expired Registration Permits.

(a) If a physician's registration permit has expired, the physician may register for a new permit without monetary penalty during the first 30 days following expiration. If a physician's permit has been expired for longer than 30 days, but less than 91, the physician may obtain a new permit by submitting to the board a completed permit application, the registration fee, and a $75 penalty fee.
(b) If a physician's registration permit has been expired for longer than 90 days but less than one year, the physician may obtain a new permit by submitting a completed permit application, the registration fee, and a $150 penalty fee.

(c) If a physician's registration permit has been expired for one year or longer, the physician's license is automatically canceled, unless an investigation is pending, and the physician may not obtain a new permit.

(d) In accordance with §156.008(a) of the Act, practicing medicine after the expiration of the 30-day grace period under subsection (a) of this section without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing medicine without a license and may be subject to criminal penalties under §165.152 of the Act. However, the Board interprets §156.005 of the Act to provide the exclusive sanction that may be imposed by the board for practicing medicine after the 30-day grace period and within one year after expiration.

(e) All penalty fees must be paid before a physician may be determined eligible for a registration exception or CME exemption.

Source Note: The provisions of this §166.4 adopted to be effective December 24, 1993, 18 TexReg 9189; amended to be effective January 12, 1996, 21 TexReg 106; amended to be effective May 9, 1999, 24 TexReg 3346; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective November 30, 2003, 28 TexReg 10483; amended to be effective March 16, 2008, 33 TexReg 2024; amended to be effective November 29, 2009, 34 TexReg 8531.

§166.5. Relicensure.

(a) To be relicensed following cancellation for failure to submit a complete registration application and registration fee, a physician must submit to reexamination and qualify under §164.151 of the Act and §163.10 of this title (relating to Relicensure).

(b) To be relicensed following voluntary relinquishment or surrender of a medical license, a physician must reapply and qualify under §164.151 of the Act and §196.4 of this title (relating to Relicensure After Relinquishment or Surrender of a Medical License).

Source Note: The provisions of this §166.5 adopted to be effective December 24, 1993, 18 TexReg 9189; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective November 30, 2003, 28 TexReg 10483; amended to be effective July 3, 2007, 32 TexReg 3992; amended to be effective August 10, 2008, 33 TexReg 6133.

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

(a) A retired physician licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the registration fee.

(b) As used in this section:

(1) "voluntary charity care" means medical care provided for no compensation to:

(A) indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a physician must truthfully certify under oath, on a form approved by the board that the following information is correct:

(1) the physician's practice of medicine does not include the provision of medical services for either direct or indirect compensation which has monetary value of any kind;

(2) the physician's practice of medicine is limited to voluntary charity care for which the physician receives no direct or indirect compensation of any kind for medical services rendered;

(3) the physician's practice of medicine does not include the provision of medical services to members of the physician's family; and

(4) the physician's practice of medicine does not include the self-prescribing of controlled substances or dangerous drugs.

(d) A physician who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing medical education as required under the Act, §§156.051 - 156.055 and §166.2 of this title (relating to Continuing Medical Education), except that the number of credits of informal CME, as required by §166.2(a)(3) of this title shall be reduced from 24 credits to 20 credits.

(e) A retired physician who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act, §§164.051 - 164.053, based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the physician engages in the compensated practice of medicine, the provision of medical services to members of the physician's family, or the self-prescribing of controlled substances or dangerous drugs.
(f) A physician who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §164.052(a)(1), in addition to any civil or criminal actions provided for by state or federal law.

(g) A retired physician providing voluntary charity care must obtain the approval of the board before returning to active status by submitting a written request to the attention of the Permits Department of the board which indicates the following:

1. the physician's Texas medical license number;
2. current mailing address;
3. proposed practice location;
4. intended type of medical practice;
5. length of retired status providing voluntary charity care;
6. any other medical licenses held;
7. any condition which adversely affects the physician's ability to practice medicine with reasonable skill and safety;
8. any current specialty board certifications;
9. any formal or informal continuing medical education obtained during the period of retired status; and
10. a description of all voluntary charity care provided during the period of retired status.

(h) The request of a physician seeking a return to active status whose license has been placed on retired status providing voluntary charity care for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

(i) The request of a physician seeking a return to active status whose license has been placed on retired status providing voluntary charity care for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to, those options provided in subsection (h)(1) - (6) of this section.

(j) In evaluating a request of a physician seeking a return to active status whose license has been placed on retired status providing voluntary charity care, the Licensure Committee or the full board may require a personal appearance by the requesting physician at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

Source Note: The provisions of this §166.6 adopted to be effective September 27, 1995, 20 TexReg 7192; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective November 30, 2003, 28 TexReg 10483; amended to be effective June 29, 2006, 31 TexReg 5099; amended to be effective August 10, 2008, 33 TexReg 6133; amended to be effective January 20, 2009, 34 TexReg 337; amended to be effective November 29, 2009, 34 TexReg 8531; amended to be effective August 3, 2014, 39 TexReg 5748
§166.7 Report of Impairment on Registration Form
(a) A licensee who reports an impairment that affects the licensee's ability to actively practice medicine as defined by §163.11(a) of this title (relating to Active Practice of Medicine) shall be given written notice of the following:
   (1) based on the licensee's impairment, the licensee may request:
       (A) to be placed on retired status pursuant to §166.3 of this title (relating to Retired Physician Exception);
       (B) to have the licensee's license converted to an administrative medicine license as defined under §172.17 of this title (relating to Limited License for Practice of Administrative Medicine) if the licensee's impairment is solely physical, however, the licensee will not be required to comply with §172.17(d) of this title regarding initial application for a administrative medicine license;
       (C) to cancel the licensee's license pursuant to §196.1 of this title (relating to Relinquishment of License); or
       (D) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and
   (2) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the Board's Investigation Division for possible disciplinary action.
(b) The Board shall provide written notice as described in subsection (a) of this section within 30 days of receipt of the licensee's registration form indicating the licensee's impairment.

Source Note: The provisions of this §166.7 adopted to be effective May 5, 2011, 36 TexReg 2727.
§167.1. Reinstatement or Reissuance of Medical License Following Suspension or Revocation.

(a) Reinstatement of Medical License Following Suspension.

(1) A physician whose license has been suspended by order of the board must submit a written request to the board's compliance division and appear at a probationer show compliance proceeding as described in §187.44 of this title (relating to Probationer Show Compliance Proceedings) and in paragraph (2) of this subsection to request reinstatement of licensure.

(2) A person may not apply for reinstatement of a license that was suspended before the first anniversary of the date on which the suspension became effective.

(3) A request for reinstatement following suspension cannot be considered more often than annually unless otherwise specified by order of the board.

(4) A physician's request for reinstatement must include evidence that all stipulations for the probation of the suspension have been completed.

(5) A physician who allows his or her license to be cancelled for nonpayment while under a suspension order may apply for relicensure in accordance with §163.10 of this title (relating to Relicensure).

(b) Reissuance of License Following Revocation.

(1) A physician whose license has been revoked must complete in every detail the application for reissuance of license, including payment of the required application fee.

(2) The physician whose license has been revoked must appear before a committee of the board for a determination regarding reissuance of license.

(3) A person may not apply for reissuance of a license that was revoked before the first anniversary of the date on which the revocation became effective.

(4) An application for reissuance of a license following revocation cannot be considered more often than annually.

(5) In addition to any other requirement set out in this chapter for reissuance of a license following revocation, a physician must also demonstrate compliance with current licensure eligibility requirements.

Source Note: The provisions of this §167.1 adopted to be effective December 24, 1993, 18 TexReg 9190; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective April 27, 2003, 28 TexReg 3324; amended to be effective March 16, 2008, 33 TexReg 2024

§167.2. Procedure for Requests for Reinstatement.

Pursuant to the Medical Practice Act, §§154.006, 164.003 and 164.151-154, and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to dispositions of any requests for reinstatement of a medical license following suspension.

(1) The board may make a disposition of any request for reinstatement of a medical license following suspension by stipulation, agreed order, agreed settlement, consent order, or default.

(2) In the event the board makes such a disposition of a request for reinstatement of a medical license following suspension, the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

(3) To facilitate the expeditious disposition of requests for reinstatement following suspension, the board may provide an applicant with an opportunity to attend a probationer show compliance proceeding in accordance with §187.44 of this title (relating to Probationer Show Compliance Proceedings).

(4) In accordance with §187.44 of this title (relating to Probationer Show Compliance Proceedings) an applicant for reinstatement shall be provided with written notice of the time, date, and location of the probationer show compliance proceeding in accordance with §187.44 of this title (relating to Probationer Show Compliance Proceedings).

(5) The probationer show compliance proceeding shall allow:

(A) the board staff to address whether it is in the best interest of the public and the physician to return to the practice of medicine by presenting a synopsis of the allegations and the basis of the suspension of the applicant's medical license, the facts which the board staff reasonably believes could be proven by competent evidence at a hearing, and whether the applicant has complied with the terms and conditions of the order suspending his license if applicable;

(B) the applicant to reply to the board staff's presentation and present facts the applicant reasonably believes could be proven by competent evidence at a hearing;
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(C) presentation of evidence by the staff and the applicant which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representative(s) are relevant to the proceeding;

(D) representation of the applicant by counsel;

(E) presentation of oral or written statements by the applicant or the applicant's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and,

(G) questioning of witnesses.

(6) The board's representative(s) shall exclude from the probationer show compliance proceeding all persons except witnesses during their testimony or presentation of statements, the applicant, the applicant's attorney or representative, board members, district review committee members, and board staff.

(7) During the probationer show compliance proceeding, the board's legal counsel shall be present to advise the board's representative(s) or the board's employees.

(8) During the deliberations of an appropriate settlement, the board's representative(s) at a probationer show compliance proceeding shall exclude the applicant, the applicant's attorney or representative, any witnesses, and the general public. A board legal counsel and board staff shall be available to assist the representative(s) in their deliberations.

(9) At the probationer show compliance proceeding the board's representative(s) will attempt to mediate disputed matters, and the board's representative(s) may call upon the board staff at any time for assistance in conducting the proceeding.

(10) The board's representative(s) shall prohibit or limit access to the board's investigative file by the applicant, the applicant's attorney or representative, any witnesses, and the public consistent with the Medical Practice Act, §164.007.

(11) At the conclusion of the probationer show compliance proceeding, the board's representative(s) shall make recommendations for disposition of the request for reinstatement which may include deferral pending receipt of additional information, denial of the request, or in accordance with board rule §187.43 of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders), a modification or termination of the agreed or disciplinary order under which the suspension was originally granted. The board's representative(s) may make recommendations to the applicant for resolution of the issues. Such recommendations may include any reasonable restrictions authorized by the Act and any other remedial actions in the public interest. These recommendations may be subsequently modified by the board's representative(s) or staff based on new information, a change of circumstance, or to expedite a resolution in the interest of protecting the public. These recommendations may be adopted, modified, or rejected by the duly convened board or through the duly authorized actions of the board's Disciplinary Process Review Committee.

(12) The applicant may either accept or reject the settlement recommendations proposed by the board's representative(s). If the applicant accepts the recommendations, the applicant shall execute the settlement agreement in the form of an agreed order or affidavit as soon thereafter as is practicable. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting a formal hearing. If the applicant requests a formal hearing, the matter shall be referred to the board's staff for hearing, as described in Chapter 187, Subchapter C of this title (relating to Formal Proceedings at SOAH).

(13) Following acceptance and execution by the applicant of the settlement agreement, the agreement shall be submitted to the board for approval.

(14) The following as stated in subparagraphs (A)-(C) of this paragraph relate to consideration of an agreed disposition by the board.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed settlement agreement. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve a proposed settlement agreement, the applicant shall be so informed and the matter shall be referred to the board staff for appropriate action to include further negotiation, further investigation, an additional probationer show compliance proceeding or a formal hearing.

(C) To promote the expeditious resolution of any request for reinstatement, with the approval of the executive director, a member of the Executive Committee, or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement to the board for consideration and acceptance without conducting a probationer show compliance proceeding. If the board does not approve such a proposed settlement agreement, the applicant shall be so informed and the matter shall be referred to the board staff for appropriate action to include further negotiation, further investigation, a probationer show compliance proceeding or a hearing.
§167.3. Disposition of Application for Reissuance of a Revoked License

Pursuant to the Medical Practice Act, §164.151 and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to the dispositions of any applications for reissuance of a license to practice medicine.

(1) The board may make an informal disposition of any application for reissuance of a medical license following revocation by stipulation, agreed order, agreed settlement or default.

(2) In the event the board makes such a disposition of an application for reissuance of a medical license following revocation, the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

(3) If an opportunity to appear before a committee of the board is provided to an applicant, the applicant shall be provided with written notice of the hearing including the date and time and allegations to the last mailing address of the applicant or the applicant's attorney on file with the board. The applicant shall also be provided with written notice of the time, date and location of the committee hearing and the rules governing the proceeding.

(4) The committee hearing shall allow:

   (A) board staff to present a synopsis of the allegations and the facts that supported the revocation of the applicant's medical license, and to address whether it is in the best interest of the public and the physician to return to the practice of medicine;

   (B) the applicant the opportunity to reply to the board staff's presentation and offer relevant evidence;

   (C) representation of the applicant by counsel; and

   (D) presentation of oral or written statements by the applicant or the applicant's counsel.

(5) At the conclusion of the applicant's presentation, the committee shall make a recommendation for disposition of the application for reissuance which may include:

   (A) deferral pending receipt of additional information;

   (B) denial of the request for reissuance;

   (C) reissuance of an unrestricted license; or

   (D) reissuance of a restricted license subject to any reasonable restrictions or conditions authorized by the Act and any other remedial actions found to be in the public's best interest.

(6) An applicant who is offered a restricted license may either accept or reject the recommendations proposed by the committee. If the applicant accepts the recommendations, the applicant shall execute the agreement in the form of an agreed order. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting judicial review in the manner provided by §164.009 of the Act.

(7) Following acceptance and execution by the applicant of the agreement to restrictions on the applicant's license, the application for reissuance and the agreed order shall be submitted to the board for approval.

   (A) Upon an affirmative majority vote, the board shall enter an order approving the proposed reissuance of licensure subject to restrictions or conditions. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

   (B) If the board does not approve the proposed order or otherwise denies the applicant's application for reissuance, the applicant shall be so informed and the board's decision shall be subject to judicial review in the manner provided by §164.009 of the Act.

Source Note: The provisions of this §167.3 adopted to be effective October 17, 2001, 26 TexReg 8069; amended to be effective March 16, 2008, 33 TexReg 2024.

§167.4. Best Interests of Public

Pursuant to §164.151 of the Act, a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the best interests of the public.

(1) Best interests of the public determination shall include: consideration and examination of the underlying action that led to the revocation in case of a physician who whose license was revoked.

(2) Best interests of the public may include, but not be limited to, an assessment by the Board as to whether the physician demonstrates:

   (A) remediation of any competency, technical, educational, training or ethical limitations as found in the order leading to revocation or suspension of a license or any competency, technical, educational, training or ethical limitations found since the entry of the order;
that risk of further disciplinary proceedings for the revocation or suspension of the license will be minimal or minimized if the physician is returned to the practice of medicine and the public will adequately be protected, whether by probationary order or other terms and conditions as agreed to by the physician or authorized by §164.101 and §164.102 of the Act;

(C) that an adequate practice plan will be in place to reduce or eliminate the risk of further disciplinary proceedings by the board;

(D) continued medical competency such that the physician is able to provide the same standard of medical care as any applicant for a license under Chapter 163 of this title (relating to Licensure). Further, the board shall require an applicant for reissuance to meet the qualifications and requirements set forth in Chapter 163 of this title, including, but not limited to documentation of completion of the process of a current application for licensure; and

(E) that the physician's services are needed and would benefit the citizens of Texas.

Source Note: The provisions of this §167.4 adopted to be effective March 16, 2008, 33 TexReg 2024; amended to be effective January 20, 2014, 39 TexReg 279

§167.5. Best Interests of the Physician.
Pursuant to §164.151 of the Act, a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the physician's best interests. Best interests of the physician may include, but not be limited to, an assessment by the Board as to whether the physician:

(1) understands all issues of competency, technical, educational, training or ethical limitations as found in the order which led to the revocation or suspension of a license; and

(2) demonstrates that risk of further disciplinary proceedings for the revocation or suspension of the license of the physician will be minimal or minimized if the physician is returned to the practice of medicine.

Source Note: The provisions of this §167.5 adopted to be effective March 16, 2008, 33 TexReg 2024.

§167.6. Final Action.
In any contested case proceeding regarding a reinstatement or reissuance request, the order revoking or suspending a license is a final action and shall not be subject to further litigation as to its findings of fact or conclusions of law, provided, however, that the order shall be admissible in the contested case proceeding for purposes of establishing the basis for the original action. The basis of the revocation shall be considered and addressed as a factor in the best interest of the public determination in every contested case that must be addressed by the ALJ in the Proposal for Decision. The Order is relevant for purposes of subsequent efforts following revocation by the physician to demonstrate reinstatement of the license is in the best interests of the public and the applicant physician.

Source Note: The provisions of this §167.6 adopted to be effective May 21, 2000, 25 TexReg 4349; amended to be effective October 17, 2001, 26 TexReg 8069; amended to be effective April 27, 2003, 28 TexReg 3324; amended to be effective January 20, 2014, 39 TexReg 279

§167.7. Judicial Review.
A decision by the board to deny a request for reinstatement or application for reissuance of a medical license is subject to review in the manner provided by §164.009 of the Act.

Source Note: The provisions of this §167.7 adopted to be effective October 17, 2001, 26 TexReg 8069.

§167.8. Certain Persons Ineligible for Reinstatement or Reissuance of License.
Except on express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interest of the public and of the person whose license has been suspended or revoked, the board may not reinstate or reissue a license to a person who license has been suspended or revoked because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code relating to dangerous drugs and controlled substances;

(2) Section 485.033, Health and Safety Code relating to inhalant paraphernalia; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §§801 et seq.) which is a federal law relating to controlled substances; and

(4) any of the following sections of the Penal Code:

(A) Section 22.011(a)(2) (sexual assault of a child);

(B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);

(C) Section 21.02 (continuous sexual abuse of a young child or children); or

(D) Section 21.11 (indecency with a child).
Source Note: The provisions of this §167.8 adopted to be effective October 17, 2001, 26 TexReg 8069; amended to be effective March 16, 2008, 33 TexReg 2024; amended to be effective December 4, 2011, 36 TexReg 8029.
§168.1. Purpose.
The purpose of this chapter is to provide a process by which an individual may request a criminal history evaluation letter regarding the person's eligibility for a license issued by the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners, as allowed by §53.102 of the Texas Occupations Code.

Source Note: The provisions of this §168.1 adopted to be effective November 29, 2009, 34 TexReg 8531.

§168.2. Criminal History Evaluation Letters.
(a) Prior to applying for licensure, an individual seeking licensure may request that agency staff review the person's criminal history to determine if the person is ineligible for licensure based solely on the person's criminal background.
(b) Requestors must submit their requests in writing along with appropriate fees as provided in §175.1 of this title (relating to Application Fees).
(c) The agency may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.
(d) The agency shall provide criminal history evaluation letters that include the basis for ineligibility if grounds for ineligibility exist to all requestors no later than the 90th day after the agency receives all required documentation to allow the agency to respond to a request.
(e) If a requestor does not provide all requested documentation within one year of submitting the original request, the requestor must submit a new request along with appropriate fees.
(f) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the agency, the agency may invalidate the criminal history evaluation letter.
(g) An individual shall be permitted to apply for licensure, regardless of the agency's determination in a criminal history evaluation letter.

Source Note: The provisions of this §168.2 adopted to be effective November 29, 2009, 34 TexReg 8531.
The purpose of this chapter is to provide physicians with guidelines for supplying drugs to their patients as authorized by the Medical Practice Act §§157.002, 158.001-.003 ("the Act") Title 3 Subtitle B Tex. Occ. Code Ann. and by the Texas Pharmacy Act Title 3 Subtitle J Tex. Occ. Code Ann.

Source Note: The provisions of this §169.1 adopted to be effective April 27, 1990, 15 TexReg 2167; amended to be effective April 27, 2003, 28 TexReg 3325.

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

(2) Administer--The direct application of a drug by injection, inhalation, ingestion, or any other means to the body of a physician's patient.
(3) Board--The Texas Medical Board.
(4) Dispense--Preparing, packing, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his or her agent by or pursuant to the lawful order of a physician.
(5) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.
(6) Immediate needs--The amount of a prescription drug needed for the proper treatment of a patient until access to a pharmacy is possible. "Immediate needs" shall be considered the amount of medication deemed necessary for a 72-hour period.
(7) Physician--A licensee of the Texas Medical Board.
(8) Provision--To supply one or more unit doses of a dangerous drug or controlled substance.
(9) Reimbursed for cost--An additional charge separate from that made for the physician's professional services which includes the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service, but not including a separate fee for the act of dispensing the drug product itself.
(10) Rural area--An area in which there is no pharmacy within a 15-mile radius of the physician's office and which is within either a county with a total population of 5,000 or less according to the most recent federal census; or a city or town, incorporated or unincorporated, with a population of less than 2,500 according to the most recent federal census, but not including a city or town, incorporated or unincorporated, whose boundaries are adjacent to an incorporated city or town with an equal or greater population.
(11) Sample--A prescription drug which is prepackaged by the original manufacturer, provided to the physician at no cost by the manufacturer, and is either marked as a sample on the original container or is included in the physician's records as a sample.
(12) Standing delegation order--Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations, or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations, or procedures are to provide authority of and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient.
(13) Standing medical orders--Orders, rules, regulations, or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients who have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical and/or surgical procedures. These orders, rules, regulations, or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient.

Source Note: The provisions of this §169.2 adopted to be effective April 27, 1990, 15 TexReg 2167; amended to be effective April 27, 2003, 28 TexReg 3325; amended to be effective August 10, 2008, 33 TexReg 6134.

§169.3. Administration of Drugs.
A physician may personally administer those drugs to his or her patients, which are, in the physician's medical judgment, therapeutically beneficial or necessary for the patient's treatment. A physician may delegate to any qualified and properly trained person the authority to administer drugs. A physician shall comply with all appropriate record keeping requirements applicable to
the drugs administered, or shall assure compliance with said record keeping requirements by persons acting under the physician's direction and supervision. A physician may charge a fee for the administration of drugs to a patient that is separate from fees charged for other medical services. The separate fee shall allow the physician to recover the cost of administration, including the cost of the drug itself.

Source Note: The provisions of this §169.3 adopted to be effective April 27, 1990, 15 TexReg 2167; amended to be effective April 27, 2003, 28 TexReg 3325.

§169.4. Providing, Dispensing, or Distributing Drugs.
Except as otherwise provided in §169.5 of this chapter, a physician may provide, dispense, or distribute drugs for use or consumption by the patient away from the physician's office or after the conclusion of the physician-patient encounter only in quantities as are necessary to meet the patient's immediate needs. A physician shall comply personally with all appropriate labeling and record keeping requirements under state or federal law or shall oversee compliance by persons acting under his or her direction and supervision. A physician who provides, dispenses, or distributes drugs to a patient to meet his or her immediate needs may not charge a fee separate from that charged for medical services provided to the patient.

Source Note: The provisions of this §169.4 adopted to be effective April 27, 1990, 15 TexReg 2167; amended to be effective April 27, 2003, 28 TexReg 3325.

§169.5. Exceptions.
Under the following circumstances, a physician may dispense or distribute drugs in quantities greater than those necessary to meet a patient's immediate needs.

(1) A licensed physician who practices medicine in a rural area, as defined in Section 169.2(10) of this chapter, may maintain a supply of dangerous drugs in his or her office to be dispensed in treating his or her patients and may be reimbursed for the cost of supplying those drugs without violating the Texas Pharmacy Act, Title 3 Subtitle J Tex. Occ. Code Ann. A physician desiring to dispense dangerous drugs in compliance with this subsection and §§158.001-.003 of the Act, shall notify the board and the Texas State Board of Pharmacy that he or she practices in a rural area.

(2) If a physician believes that a patient's prescribed treatment regimen should include certain drugs, the physician may supply them to the patient by means of pharmaceutical samples. No charge may be made by a physician for such samples. A patient's immediate needs as defined in this chapter shall not affect or limit the quantity of pharmaceutical samples a physician may provide to the patient.

Source Note: The provisions of this §169.5 adopted to be effective April 27, 1990, 15 TexReg 2167; amended to be effective April 27, 2003, 28 TexReg 3325.

§169.6. Administration or Provision of Drugs in Licensed Facilities.
A physician may authorize the administration or provision of dangerous drugs to a patient in a facility licensed as a Class D (clinic) pharmacy by the Texas State Board of Pharmacy. However, in such facilities, the physician may delegate to other persons only authority for entering on the label the patient's name, date of provision of the dangerous drug, and the practitioner's name.

Source Note: The provisions of this §169.6 adopted to be effective April 27, 1990, 15 TexReg 2167.

§169.7. Record Keeping.
(a) The following provisions relate to dangerous drugs.

(1) A licensee shall be presumed to have complied with record keeping requirements for dangerous drugs (the Texas Health and Safety Code, Chapter 483) received as pharmaceutical samples if:

(A) the licensee maintains a copy of each signed request form for samples required by the Prescription Drug Marketing Act of 1987, Public Law Number 100-293, 102 Statute 95 (21 United States Code 503(D) for a period of two years from the date of acquisition; and

(B) the licensee makes appropriate entries in patients' medical records when a pharmaceutical sample is supplied to a patient.

(b) The following provisions relate to controlled substances.

(1) A licensee shall be presumed to have complied with record keeping requirements for controlled substances (the Texas Health and Safety...
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(1) A licensee shall be presumed to have received as pharmaceutical samples if:

(A) the licensee maintains a copy of each signed request form for samples required by the Prescription Drug Marketing Act of 1987, Public Law Number 100-293, 102 Statute 95 (21 United States Code 503(D) for a period of two years from the date of acquisition; and

(B) the licensee maintains records of pharmaceutical samples as required by the Texas Department of Public Safety under 37 TAC §§13.201 - 13.209 (Controlled Substances - Record Keeping).

(2) A licensee shall be presumed to have complied with the record keeping requirements for controlled substances (the Texas Health and Safety Code, Chapter 481) received or acquired other than as a pharmaceutical sample if the licensee maintains records of such controlled substances as required by 37 TAC §§13.201 - 13.209, controlled substance regulations.

Source Note: The provisions of this §169.7 adopted to be effective April 27, 1990, 15 TexReg 2167; amended to be effective April 27, 2003, 28 TexReg 3325; amended to be effective January 20, 2009, 34 TexReg 338.

§169.8. Policy.
It is the policy of the board to encourage physicians to issue prescriptions for drugs and remedies, unless supplying the drug is necessary to meet the patient's immediate medical needs and the drug is reasonably unavailable from licensed pharmacies in the existing circumstances, or unless the physician determines that the patient's prescribed treatment regimen requires that pharmaceutical samples should be supplied to the patient.

Source Note: The provisions of this §169.8 adopted to be effective April 27, 1990, 15 TexReg 2167.
§170.1. Purpose.
The treatment of pain is a vital part of the practice of medicine. Patients look to physicians not only to cure disease, but also to try to relieve their pain. Physicians should be able to treat their patients' pain using sound clinical judgment without fear that the board will pursue disciplinary action. Sound clinical judgment results from the use of generally accepted standards of care, which include evidence-based medicine, when available. This rule sets forth minimum requirements related to the proper treatment of pain. The board’s intent is to protect the public and give guidance to physicians. The principles underlying this rule include:

(1) Pain is a medical condition that every physician sees regularly. It is an integral part of the practice of medicine. Patients deserve to have medical treatment for their pain, whether the pain is acute or chronic, mild or severe. The goal of pain management is to treat the patient's pain in relation to overall health, including physical function, psychological, social, and work-related factors.

(2) The regulatory atmosphere must support a physician's ability to treat pain, no matter how difficult the case, using whatever tools are most appropriate. Drugs, including opiates, are essential tools for the treatment of pain.

(3) The board is charged by the Legislature with the responsibility to assure that drugs are used in a therapeutic manner. A license to practice medicine gives a physician legal authority to prescribe drugs for pain. The physician has a duty to use that authority to help, and not to harm patients and the public.

(4) Harm can result when a physician does not use sound clinical judgment in using drug therapy. If the physician fails to apply sufficient drug therapy, the patient will likely suffer continued pain and may demonstrate relief-seeking behavior, known as pseudoaddiction. On the other hand, non-therapeutic drug therapy may lead to or contribute to abuse, addiction, and/or diversion of drugs. As with everything in the practice of medicine, physicians must be well informed of and carefully assess the risks and the benefits as they apply to each case.

(5) The extent of medical records must be legible, complete, accurate and current for each patient.

(6) Treatment of chronic pain requires a reasonably detailed and documented plan to assure that the treatment is monitored and evaluated on an ongoing basis.

(7) The intent of the board is not to impose regulatory burdens on the practice of medicine. Rather, these rules set forth those items expected to be done by any reasonable physician involved in the treatment of pain.

Source Note: The provisions of this §170.1 adopted to be effective January 20, 2007, 31 TexReg 10798; amended to be effective January 20, 2014, 39 TexReg 279; amended to be effective August 4, 2015, 40 TexReg 4898

§170.2. Definitions.
In this Chapter:

(1) "Abuse" or "substance abuse"--the essential feature of substance abuse is a maladaptive pattern of substance use manifested by recurrent and significant adverse consequences related to the repeated use of substances.

(2) "Acute pain"--the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited.

(3) "Addiction"--a primary, chronic, neurobiological disease characterized by craving and compulsive use of drugs. Addiction is often characterized by impaired control over drug use, including taking more drugs more often than prescribed by a physician. It may also be characterized by continued use despite harm to oneself or others. Genetic, psychosocial, and environmental factors may influence the development and manifestation of addiction. Physical dependence and tolerance are normal physiological consequences of extended drug therapy for pain and, alone, do not indicate addiction.

(4) "Chronic pain"--a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(5) "Dangerous drugs"--medications defined by the Texas Dangerous Drug Act, 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."

(6) "Diversion"--the use of drugs by anyone other than the person for whom the drug was prescribed.

(7) "Escalation"--increasing the dosage and/or frequency of the use of drugs.

(8) "Pain"--An unpleasant sensory and
emotional experience associated with actual or potential
tissue damage or described in terms of such damage.

(9) "Physical dependence"—A state of
adaptation that is manifested by drug class-specific
signs and symptoms that can be produced by abrupt
cessation, rapid dose reduction, decreasing blood level
of the drug, and/or administration of an antagonist.
Physical dependence, alone, does not indicate
addiction.

(10) "Pseudoaddiction"—the iatrogenic
syndrome resulting from the misinterpretation of relief
seeking behaviors as though they are drug-seeking
behaviors that are commonly seen with addiction. The
relief seeking behaviors resolve upon institution of
effective analgesic therapy.

(11) "Scheduled drugs" (sometimes referred to
as "Controlled Substances")—medications defined by
the Texas Controlled Substances Act, Chapter 481,
Texas Health and Safety Code. This Act establishes
certain categories, or schedules of drugs, based on risk of
abuse and addiction. (Schedule I includes drugs that
carry an extremely high risk of abuse and addiction and
have no legitimate medical use. Schedule V includes
drugs that have the lowest abuse/addiction risk).

(12) "Tolerance" (tachyphylaxis)—a
physiological state resulting from regular use of a drug
in which an increased dosage is needed to produce a
specific effect, or a reduced effect is observed with a
constant dose over time. Tolerance does not necessarily
occur during opioid treatment and does not, alone,
indicate addiction.

(13) "Withdrawal"—the physiological and
mental readjustment that accompanies discontinuation
of a drug for which a person has established a physical
dependence.

Source Note: The provisions of this §170.2 adopted to
be effective January 4, 2007, 31 TexReg 10798; amended to be effective August 4, 2015, 40 TexReg 4898

§170.3. Guidelines. A physician’s treatment of a patient’s pain will be
evaluated by considering whether it meets the generally
accepted standard of care and whether the following
minimum requirements have been met:

(1) Evaluation of the patient.

(A) A physician is responsible for
obtaining a medical history and a physical examination
that includes a problem-focused exam specific to the
chief presenting complaint of the patient.

(B) The medical record shall document
the medical history and physical examination. In the
case of chronic pain, the medical record must
document:

(i) the nature and intensity of the
pain;

(ii) current and past treatments for
pain;

(iii) underlying or coexisting diseases
and conditions;

(iv) the effect of the pain on physical
and psychological function;

(v) any history and potential for
substance abuse or diversion; and

(vi) the presence of one or more
recognized medical indications for the use of a
dangerous or scheduled drug.

(C) Prior to prescribing dangerous drugs
or controlled substances for the treatment of chronic
pain, a physician must consider reviewing prescription
data and history related to the patient, if any, contained
in the Prescription Drug Monitoring Program described
by §§481.075, 481.076, and 481.0761 of the Texas
Health and Safety Code and consider obtaining at a
minimum a baseline toxicology drug screen to
determine the presence of drugs in a patient, if any. If a
physician determines that such steps are not necessary
prior to prescribing dangerous drugs or controlled
substances to the patient, the physician must document
in the medical record his or her rationale for not
completing such steps.

(2) Treatment plan for chronic pain. The
physician is responsible for a written treatment plan that
is documented in the medical records. The medical
record must include:

(A) How the medication relates to the
chief presenting complaint of chronic pain;

(B) dosage and frequency of any drugs
prescribed;

(C) further testing and diagnostic
evaluations to be ordered, if medically indicated;

(D) other treatments that are planned or
considered;

(E) periodic reviews planned; and

(F) objectives that will be used to
determine treatment success, such as pain relief and
improved physical and psychosocial function.

(3) Informed consent. It is the physician's
responsibility to discuss the risks and benefits of the use
of controlled substances for the treatment of chronic
pain with the patient, persons designated by the patient,
or with the patient's surrogate or guardian if the patient
is without medical decision-making capacity. This
discussion must be documented by either a written
signed document maintained in the records or a
contemporaneous notation included in the medical
records. Discussion of risks and benefits must include
an explanation of the:

(A) diagnosis;
(B) treatment plan;
(C) anticipated therapeutic results, including the realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;
(D) therapies in addition to or instead of drug therapy, including physical therapy or psychological techniques;
(E) potential side effects and how to manage them;
(F) adverse effects, including the potential for dependence, addiction, tolerance, and withdrawal; and
(G) potential for impairment of judgment and motor skills.

(4) Agreement for treatment of chronic pain. A proper patient-physician relationship for treatment of chronic pain requires the physician to establish and inform the patient of the physician's expectations that are necessary for patient compliance. If the treatment plan includes extended drug therapy, the physician must use a written pain management agreement between the physician and the patient outlining patient responsibilities, including the following provisions:
   (A) the physician may require laboratory tests for drug levels upon request;
   (B) the physician may limit the number and frequency of prescription refills;
   (C) only one physician will prescribe dangerous and scheduled drugs;
   (D) only one pharmacy designated by the patient will be used for prescriptions for the treatment of chronic pain, unless the designated pharmacy under the agreement is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or patient presents to have the drug dispensed; and
   (E) reasons for which drug therapy may be discontinued (e.g., violation of agreement).

   (A) The physician must see the patient for periodic review at reasonable intervals in view of the individual circumstances of the patient.
   (B) Periodic review must assess progress toward reaching treatment objectives, taking into consideration the history of medication usage, as well as any new information about the etiology of the pain.
   (C) Each periodic visit shall be documented in the medical records.
   (D) Contemporaneous to the periodic reviews, the physician must note in the medical records any adjustment in the treatment plan based on the individual medical needs of the patient.
   (E) A physician must base any continuation or modification of the use of dangerous and scheduled drugs for pain management on an evaluation of progress toward treatment objectives.
      (i) Progress or the lack of progress in relieving pain must be documented in the patient's record.
      (ii) Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, and/or improved quality of life.
      (iii) Objective evidence of improved or diminished function must be monitored. Information from family members or other caregivers, if offered or provided, must be considered in determining the patient's response to treatment.
      (iv) If the patient's progress is unsatisfactory, the physician must reassess the current treatment plan and consider the use of other therapeutic modalities.

   (v) The physician must periodically review the patient's compliance with the prescribed treatment plan and reevaluate for any potential for substance abuse or diversion. In such a review, the physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and consider obtaining at a minimum a toxicology drug screen to determine the presence of drugs in a patient, if any. If a physician determines that such steps are not necessary, the physician must document in the medical record his or her rationale for not completing such steps.

(6) Consultation and Referral. The physician must refer a patient with chronic pain for further evaluation and treatment as necessary. Patients who are at-risk for abuse or addiction require special attention. Patients with chronic pain and histories of substance abuse or with co-morbid psychiatric disorders require even more care. A consult with or referral to an expert in the management of such patients must be considered in their treatment.

(7) Medical records. The medical records shall document the physician's rationale for the treatment plan and the prescription of drugs for the chief complaint of chronic pain and show that the physician has followed these rules. Specifically the records must include:
   (A) the medical history and the physical examination;
   (B) diagnostic, therapeutic and laboratory results;
   (C) evaluations and consultations;
   (D) treatment objectives;
   (E) discussion of risks and benefits;
(F) informed consent;
(G) treatments;
(H) medications (including date, type, dosage and quantity prescribed);
(I) instructions and agreements; and
(J) periodic reviews.

Source Note: The provisions of this §170.3 adopted to be effective January 4, 2007, 31 TexReg 10798; amended to be effective August 4, 2015, 40 TexReg 4898
§171.1. Purpose.
Pursuant to the Board's authority under Tex. Occ. Code §155.105 of the Medical Practice Act, this chapter is promulgated to:

(1) Provide criteria for the eligibility and discipline of physicians who apply for and are granted physician-in-training permits; and

(2) Set forth conduct that must be reported on all individuals who are in postgraduate training in order to protect public health and welfare.

Source Note: The provisions of this §171.1 adopted to be effective November 7, 2004, 29 TexReg 10107.

§171.2. Construction.

(a) Unless otherwise indicated, permit holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Permit holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Permit holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the permit holder's practice of medicine. Such cooperation shall include, but not be limited to, permit holder's written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) A physician-in-training permit holder's failure to comply with required reporting is grounds for disciplinary action by the Board.

(d) In accordance with §155.105 of the Medical Practice Act, the board shall retain jurisdiction to discipline a permit holder whose permit has been terminated, canceled, and/or expired if the permit holder violated the Medical Practice Act or board rules during the time the permit was valid.

(e) The issuance of a permit to a physician shall not be construed to oblige the board to issue the physician subsequent permits or licenses. The board reserves the right to investigate, deny a permit or full licensure, and/or discipline a physician regardless of when the information was received by the board.

Source Note: The provisions of this §171.2 adopted to be effective November 7, 2004, 29 TexReg 10107; amended to be effective June 29, 2006, 31 TexReg 5100; amended to be effective February 28, 2011, 36 TexReg 1275.


(a) Definitions.

(1) Approved Postgraduate Training Program--A clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), the Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior to 1994), the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada.

(2) Board-approved Fellowship--A clearly defined and delineated postgraduate subspecialty-training program approved by the Texas Medical Board under §171.4 of this title.

(3) Designated Institutional Official(DIO)--The individual in a sponsoring graduate medical education institution who has the authority and responsibility for the graduate medical education programs.

(4) Fellowship--A subspecialty training program of graduate medical education for postgraduate residents who have completed the requirements for eligibility for first board certification in the specialty and that is approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), a member board of the American Board of Medical Specialties (ABMS), or a member board of the Bureau of Osteopathic Specialists (BOS).

(5) Postgraduate Resident--A physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program or a board-approved fellowship.

(6) Physician-in-Training Permit--

(A) A physician-in-training permit is a permit issued by the board in its discretion to a physician who does not hold a license to practice medicine in Texas and is enrolled in a training program as defined in paragraphs (1), (2), and (4) of this subsection in Texas, regardless of his/her postgraduate year (PGY) status within the program.

(B) The permit shall be effective for the length of the postgraduate training program as reported by the training program.

(C) A physician-in-training permit is valid only for the practice of medicine within the training program for which it was approved. If a permit holder
enters into a new program that is not covered by the issued permit, the permit shall be terminated and the permit holder must apply for a new permit for the new program.

(D) A physician-in-training permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine that is outside of the approved program. Internal moonlighting shall be considered additional optional training within the scope of a training program, provided the internal moonlighting:

(i) occurs under the direction of a faculty member that is associated with the training program;

(ii) is in compliance with the training requirements established by an approved accrediting body recognized under paragraph (1) of this subsection, including but not limited to requirements for faculty supervision and work hour limitations; and

(iii) is in the same specialty as the training program or approved by the program director as a training area related to the specialty.

(7) Subspecialty-Training Program--A postgraduate training program, also known as a fellowship, entered into after the completion of a residency program that provides advanced graduate medical education in a narrow field of study within a medical specialty.

(b) Qualifications of Physician-in-Training Permit Holders.

(1) To be eligible for a physician-in-training permit, an applicant must present satisfactory proof to the board that the applicant:

(A) is at least 18 years of age;

(B) is of good professional character and has not violated §§164.051 - 164.053 of the Medical Practice Act;

(C) is a graduate of a medical school or has completed a Fifth Pathway Program;

(D) has been accepted into an approved postgraduate training program, a board-approved postgraduate fellowship training program, or a fellowship meeting the criteria set forth in subsection (a)(4) of this section; and

(E) has been credentialed by the postgraduate training program to include verification by the program of:

(i) the applicant's identity; and

(ii) the applicant's character and academic qualifications including verification of medical school graduation.

(2) To be eligible for a physician-in-training permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B) an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(C) a prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude.

(c) Application for Physician-in-Training Permit.

(1) Application Procedures.

(A) Applications for a physician-in-training permit shall be submitted to the board no earlier than the 120th day prior to the date the applicant intends to begin postgraduate training in Texas to ensure the application information is not outdated. To assist in the expedited processing of the application, the application should be submitted as early as possible within the sixty-day window prior to the date the applicant intends to begin postgraduate training in Texas.

(B) The board may, in unusual circumstances, allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions shall be reviewed by the board's executive director on a case-by-case basis.

(C) For each document presented to the board, which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for training permit and shall approve the issuance of physician-in-training permits for all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to
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receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee or panel of the board for review of the application for a determination of eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee or panel of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee or panel finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's or panel's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Government Code Chapter 552 and the Medical Practice Act, Texas Occupations Code §§155.007(g), 155.058, and 164.007(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(H) All applicants for physician-in-training permits whose applications have been filed with the board in excess of one year will be considered expired.

(I) If the Executive Director determines that the applicant clearly meets all PIT requirements, the Executive Director or a person designated by the Executive Director, may issue a permit to the applicant, to be effective on the date of the reported first date of the training program without formal board approval, as authorized by §155.002(b) of the Act.

(J) If the Executive Director determines that the applicant does not clearly meet all PIT requirements, a PIT may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(K) If the Executive Director determines that the applicant is ineligible for a PIT for one or more reasons listed under subsection (b)(1)(A) and (C) - (E) of this section, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of eligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(2) Physician-in-Training Permit Application. An application for a physician-in-training permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules;

(B) certification by the postgraduate training program:

(i) for a Texas postgraduate training program, a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a Texas licensed physician, the Texas Licensed supervising physician of the postgraduate training program on a form provided by the board that certifies that:

(I) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(II) the applicant has met all educational and character requirements established by the program and has been accepted into the program; and

(III) the program has received a letter from the dean of the applicant's medical school that states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school.

(ii) if the applicant is completing rotations in Texas as part of the applicant's residency out-of-state training program or with the military:

(I) a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a physician licensed in any state, the supervising physician, licensed in any state, of the postgraduate training program on a form provided by the board that certifies that:
(a) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;
(b) the applicant has met all educational and character requirements established by the program and has been accepted into the program;
(c) the program has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school; and

(ii) a certification by the Texas Licensed physician supervising the Texas rotations of the postgraduate training program on a form provided by the board that certifies:
(a) the facility at which the rotations are being 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 rotation in Texas;
(C) arrest records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested from the arresting authority by the applicant and said authority must submit copies directly to the board;
(D) medical records for inpatient treatment for alcohol/substance disorder, mental illness, and physical illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:
(i) an applicant's statement explaining the circumstances of the outpatient treatment;
(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and
(iii) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;
(F) an oath on a form provided by the board attesting to the truthfulness of statements provided by the applicant;
(G) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.
(3) Physician-in-Training Application for Rotator PITs. If the applicant is enrolled in postgraduate training program that is outside of Texas, and requests a permit to complete a rotation in Texas that is less than 60 consecutive days as part of an approved postgraduate training, the applicant must submit all documents listed in paragraph (2) of this subsection except that the applicant shall not be required to submit medical records as listed in paragraph (2)(D) and (E) of this subsection.
(d) Expiration of Physician-in-Training Permit.
(1) Physician-in-Training permits shall be issued with effective dates corresponding with the beginning and ending dates of the postgraduate resident's training program as reported to the board by the program director.
(2) Physician-in-training permits shall expire on any of the following, whichever occurs first:
(A) on the reported ending date of the postgraduate training program;
(B) on the date a postgraduate training program terminates or otherwise releases a permit holder from its training program; or
(C) on the date the permit holder obtains full licensure or temporary licensure pending full licensure pursuant to §155.002 of the Act.
(3) Physician-in-training permit holders who are issued permits on or after April 1, 2005, and who require extensions to remain in a training program after a program's reported ending date must submit a written request to the board and fee, if required, along with a
statement by the program director authorizing the request for the extension. Such extensions shall be granted at the discretion of the board's executive director and may not be for longer than 90 days unless good cause is shown.

(e) The executive director of the board may, in his/her discretion, issue a temporary physician-in-training permit to an applicant if the applicant and the postgraduate training program have submitted written requests. The executive director, in his/her discretion, will determine the length of the permit and may issue additional temporary physician-in-training permits to an applicant.

Source Note: The provisions of this §171.3 adopted to be effective November 7, 2004, 29 TexReg 10107; amended to be effective June 29, 2006, 31 TexReg 5100; amended to be effective August 10, 2008, 33 TexReg 6134; amended to be effective November 29, 2009, 34 TexReg 8532; amended to be effective May 15, 2012, 37 TexReg 3582; amended to be effective December 23, 2012, 37 TexReg 9773

§171.4. Board-Approved Fellowships.

(a) The executive director may in his/her discretion, upon written request, approve fellowships as referenced in §171.3(a)(2) of this chapter. Fellowships meeting the criteria set forth in §171.3(a)(4) of this chapter do not require board approval for physician in training permits to be issue to subspecialty postgraduate residents in the fellowship. If the executive director does not recommend approval, the institution's designated institutional official (DIO) and chair of the Graduate Medical Education Committee (GMEC) may appeal to the board for its discretionary consideration of the request.

(b) The initial request for approval should be submitted to the executive director, on a form prescribed by the board, 90 days prior to the beginning date of the program to assist in the expedited processing of an application. The request must include the length of the fellowship; the length of time for which the institution is requesting approval of the fellowship itself, not to exceed five years; and other information as required by the board.

(c) Approval of fellowships requires certification by the DIO and the chair of the GMEC of the institution in which the fellowship will be conducted that the fellowship program has been evaluated and approved by the institution's graduate medical education committee. The evaluation shall include but not be limited to satisfactory demonstration to the committee of the fellowship's:

1. goals and objectives; documented curriculum; and, qualifications of the program director and program faculty, including, but not limited to, certification by the appropriate specialty board and/or appropriate educational qualifications;
2. process by which subspecialty postgraduate residents are selected;
3. prerequisite requirements of the subspecialty postgraduate residents, including whether prior residenc.y training in a related specialty is required;
4. delineated duties and responsibilities required of subspecialty postgraduate residents in the program;
5. number of subspecialty postgraduate residents to be enrolled each year;
6. scholarly activity to be required of subspecialty postgraduate residents;
7. type of supervision to be provided for subspecialty postgraduate residents;
8. requirements for the program director or supervising physician to hold a Texas license or faculty temporary license issued by the board;
9. methods for evaluation of subspecialty postgraduate residents by the program; and
10. progressive nature, including, but not limited to, the progressively greater responsibility of the subspecialty postgraduate residents throughout the course of the fellowship if the fellowship is over one year in length.

(d) Institutions with board-approved fellowships must determine whether to conduct internal reviews of the program at the mid-point of the program's most recent approval period.

(e) Institutions with board-approved fellowships that are eligible for accreditation as described in §171.3(a)(4) of this chapter must determine whether the fellowship should seek such accreditation rather than board approval of the fellowship.

(f) The DIO and the chair of the GMEC of the institution for which a fellowship program has been previously approved by the board must apply to have the program approved again, if the program is to continue after the expiration date. Applications for subsequent approval must comply with all requirements in this section for initial approval and must be submitted at least three months prior to the expiration of the approved program in order to prevent a lapse in time of the fellowship. Permit holders shall be allowed to complete their fellowship regardless of continuing program approval.

(g) All board-approved fellowships that subsequently become approved by the ACME, AOA, a member board of the ABMS, or a member board of the BOS, must notify the board within 30 days of their approval. Fellowships may not be dually approved by the board and ACME, AOA, a member board of the
ABMS, or a member board of the BOS. A board-approved fellowship that becomes approved by the ACGME, AOA, a member board of the ABMS, or a member board of the BOS immediately loses its board-approved status when its new approval becomes effective through the ACGME, AOA, a member board of the ABMS, or a member board of the BOS.

Source Note: The provisions of this §171.4 adopted to be effective November 7, 2004, 29 TexReg 10107; amended to be effective June 29, 2006, 31 TexReg 5100; amended to be effective August 10, 2008, 33 TexReg 6134; amended to be effective November 29, 2009, 34 TexReg 8532.

§171.5. Duties of PIT Holders to Report.
(a) Failure of any PIT holder to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the PIT holder.

(b) The PIT holder shall report in writing to the executive director of the board the following circumstances within thirty days of their occurrence:

(1) the opening of an investigation or disciplinary action taken against the PIT holder by any licensing entity other than the TMB;
(2) an arrest; a fine, citation or violation over $250 (excluding traffic tickets, unless drugs or alcohol were involved); charge or conviction of a crime; indictment; imprisonment; placement on probation; or receipt of deferred adjudication; and
(3) diagnosis or treatment of a physical, mental or emotional condition, which has impaired or could impair the PIT holder's ability to practice medicine.

Source Note: The provisions of this §171.5 adopted to be effective August 10, 2008, 33 TexReg 6134; amended to be effective November 29, 2009, 34 TexReg 8532; amended to be effective February 28, 2011, 36 TexReg 1275

§171.6. Duties of Program Directors to Report.
(a) Failure of any postgraduate training program director to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the program director.

(b) The director of each approved postgraduate training program shall report in writing to the executive director of the board the following circumstances within thirty (30) days of the director's knowledge for all participants completing postgraduate training:

(1) if a physician did not begin the training program due to failure to graduate from medical school as scheduled or for any other reason(s);
(2) if a physician has been or will be 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) if a physician has been arrested after the permit holder begins training in the program;
(4) if a physician poses a continuing threat to the public welfare as defined under Texas Occupations Code §151.002(a)(2), as amended;
(5) if the program has taken final action that adversely affects the physician's status or privileges in a program for a period longer than 30 days;
(6) if the program has suspended the physician from the program;
(7) if the program has requested termination or terminated the physician from the program, requested or accepted withdrawal of the physician from the program, or requested or accepted resignation of the physician from the program and the action is final.

(c) A violation of §§164.051 - 164.053 or any other provision of the Medical Practice Act is grounds for disciplinary action by the Board.

Source Note: The provisions of this §171.6 adopted to be effective November 7, 2004, 29 TexReg 10107; amended to be effective June 29, 2006, 31 TexReg 5100; amended to be effective August 10, 2008, 33 TexReg 6134; amended to be effective December 18, 2011, 36 TexReg 8377; amended to be effective December 23, 2012, 37 TexReg 9773
Chapter 172. Temporary and Limited Licenses

Subchapter A. General Provisions and Definitions

§172.1. Purpose.
Pursuant to §§155.101, 155.103 and §155.104 of the Medical Practice Act, the Board is authorized to adopt rules relating to granting temporary, provisional and limited licenses. This chapter is promulgated to provide criteria for the eligibility and discipline of physicians who apply for and are granted temporary, provisional and limited licenses.

Source Note: The provisions of this §172.1 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective January 25, 2006, 31 TexReg 387; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective January 20, 2014, 39 TexReg 279

§172.2. Construction and Definitions.
(a) Unless otherwise indicated, temporary license holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Temporary license holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Temporary and limited license holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the license holder’s practice of medicine. Such cooperation shall include, but not be limited to, written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) In accordance with the Medical Practice Act, the board shall retain jurisdiction to discipline a temporary or limited license holder whose license has been terminated, canceled, and/or expired if the license holder violated the Medical Practice Act or board rules during the time the license was valid.

(d) The issuance of a temporary or limited license shall not be construed to obligate the board to issue subsequent permits or licenses. The board reserves the right to investigate, deny a permit, temporary or limited license, or full licensure, and/or discipline a physician regardless of when the information was received by the board.

(e) Nothing in this chapter shall be construed to prevent the board from issuing temporary or limited licenses to those physicians awaiting full licensure pursuant to §172.11 of this title (relating to Temporary Licensure--Regular) or to those licensees who qualify for CME temporary licenses pursuant to §166.2(k) of this title (relating to CME temporary licenses).

(f) All applicants for temporary or limited licenses whose applications have been filed with the board in excess of one year will be considered expired.

(1) If the Executive Director determines that the applicant clearly meets all requirements for the temporary or limited license, the Executive Director or a person designated by the Executive Director, may issue a license to the applicant, to be effective on the date of issuance without formal board approval, as authorized by §155.002(b) of the Act.

(2) If the Executive Director determines that the applicant does not clearly meet all requirements for a temporary or limited license, a license may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(3) If the Executive Director determines that the applicant is ineligible for a temporary or limited license for one or more reasons that are not subject to exception by statute or rule, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(g) In addition to other definitions that may apply to licensure, the following words and terms, when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Act that is part of patient care service--Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.

(2) Controlled substance--A substance, including a drug, an adulterant, and a diluant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 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 Schedules I through V or Penalty Groups 1 through 4 of 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) Episodic consultation--Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year. Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.

(5) Informal consultation--Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.

(6) Patient care service initiated in this state--Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.

(7) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(8) Practice of medicine--A person shall be considered to be practicing medicine under any of the following circumstances listed in subparagraphs (A) - (D) of this paragraph. This definition does not negate the responsibility of applicants to demonstrate engagement in the active practice of medicine as set forth in §163.11 of this title (relating to Active Practice of Medicine).

(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof;

(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation;

(C) the person exercises medical judgment, renders an opinion, or gives advice concerning the diagnosis or treatment of a patient, or makes any determination regarding the appropriate or necessary medical response to a particular patient's medical condition that affects the medical care of the patient; or

(D) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.

(9) State--Any state, territory, or insular possession of the United States and the District of Columbia.

Source Note: The provisions of this §172.2 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective January 25, 2006, 31 TexReg 387; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective September 19, 2010, 35 TexReg 8351.
§172.3. Distinguished Professors Temporary License.
   (a) The executive director of the board may issue a distinguished professors temporary license to an applicant:
      (1) who has passed the Texas medical jurisprudence examination;
      (2) whose application has been filed, processed, and found to be in order;
      (3) whose application for a full Texas medical license is complete in every detail except that the applicant will not be required to have taken and passed the SPEX examination as set forth in §163.4 of this title (relating to Procedural Rules for Licensure Applicants); and
      (4) who holds an appointment as a salaried full professor on the faculty working full-time in one of the following institutions:
         (A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Commission on Osteopathic College Accreditation;
         (B) The University of Texas Health Center at Tyler;
         (C) The University of Texas M.D. Anderson Cancer Center; or
         (D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline.
   (b) The distinguished professors temporary license shall be requested by the president, dean or chief academic officer of the institution as defined in subsection (a)(3) of this section and shall be valid only in the institution or its affiliated hospitals.
   (c) The distinguished professors temporary license shall be valid for a continuous one-year period; however, the permit is revocable at any time the board deems necessary. The distinguished professors temporary license shall automatically expire one year after the date of issuance. The distinguished professors temporary license is renewable one time, at the discretion of the executive director.
   (d) At the conclusion of this one-year period, the distinguished professor shall present recommendations from the president, dean or chief academic officer of the institution, and shall petition the board for a permanent, unrestricted license to practice medicine in Texas. If this petition is denied, the institution may request a one-year extension of the distinguished professors temporary license. If an extension is granted, and following termination of such extension, the distinguished professor shall again present recommendations from the president, dean or chief academic officer of the institution and re-petition the board for a permanent, unrestricted license to practice medicine in Texas. If the petition is again denied, no further distinguished professors temporary license shall be issued.
   (e) If the board grants the petition for licensure, the distinguished professor may be issued a permanent, unrestricted license.

Source Note: The provisions of this §172.3 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective September 19, 2010, 35 TexReg 8351

§172.4. State Health Agency Temporary License.
An applicant may elect to apply for a state health agency temporary license in lieu of licensure.
   (1) The executive director of the board may issue such a temporary license to an applicant:
      (A) who holds a valid license in another state or Canadian province on the basis of an examination, that is accepted by the board for licensure;
      (B) who has passed the Texas medical jurisprudence examination;
      (C) whose application has been filed, processed, and found to be in order. The application shall be complete in every detail with the exception of compliance with §163.7 of this title (relating to Ten Year Rule); and
      (D) who holds a salaried, administrative, or clinical position with an agency of the State of Texas.
   (2) The state health agency temporary license shall be requested by the chief administrative officer of the employing state agency and shall be issued exclusively to that agency. The chief administrative officer shall state whether the temporary license is for a:
      (A) clinical position. This temporary license will be valid for a one-year period from the date of issuance and will not be renewable. The temporary license is revocable at any time the board deems necessary. To practice beyond one year, the holder of the temporary license must fully comply with §163.7 of this title (relating to Ten Year Rule). During the period that the state health agency clinical temporary license is in effect, the physician will be supervised by a licensed staff physician who will regularly review the temporary license holder's skill and performance. This temporary license will be marked "clinical"; or
(B) administrative non-clinical position. This temporary license will be valid for a one-year period from the date of issuance; however, it is revocable at any time the board deems necessary. The temporary license shall automatically expire one year after the date of issuance but may be re-issued annually at the request of the chief administrative officer of the employing state agency and at the discretion of the board. The holder of a state health agency temporary license, not designated as clinical, shall not practice medicine as that term is defined in the Medical Practice Act, TEX. OCCUPATIONS CODE ANN. §151.002(a)(13). This temporary license will be marked "administrative."

Source Note: The provisions of this §172.4 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective March 9, 2009, 34 TexReg 1589; amended to be effective January 20, 2014, 39 TexReg 279

§172.5. Visiting Physician Temporary Permit.
(a) Visiting Physician Temporary Permit - General.
(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of a licensed Texas physician, excluding training in postgraduate training programs:
(A) for educational purposes;
(B) to practice charity care to underserved populations in Texas;
(C) in cases of declared emergency disasters;
(D) for the provision of forensic psychiatric examinations related to criminal matters; or
(E) for the provision of specialized medical care for which the applying physician has demonstrated good cause for the issuance of the permit.
(2) In order to be determined eligible for a visiting physician temporary permit the applicant must:
(A) not have any medical license that is under restriction, disciplinary order, or probation in another state, territory, or Canadian province;
(B) be supervised by a physician who:
   (i) has an unrestricted license in Texas; and
   (ii) has not been the subject of a disciplinary order, unless the order was administrative in nature;
   (C) present written verification from the supervising physician as to the purpose for the requested permit.
(3) Visiting physician temporary permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.
(b) Visiting Physician Temporary Permit - KSTAR.
(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to participate in the Texas A&M KSTAR program. In order to be determined eligible for a visiting physician temporary permit, the applicant must:
   (A) present written verification from the KSTAR program of acceptance into the program;
   (B) be supervised by a physician who:
      (i) has an unrestricted license in Texas; and
      (ii) has not been the subject of a disciplinary order, unless the order was administrative in nature;
   (C) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and
   (D) not have been convicted of a felony or have any medical license that is or has been under restriction, disciplinary order, or probation in another state, territory, or Canadian province based on a professional boundary violation, unless otherwise determined eligible by the Board.
(2) Visiting physician temporary permits for participation in the KSTAR program shall be valid for the length of the program. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

Source Note: The provisions of this §172.5 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective January 25, 2006, 31 TexReg 387; amended to be effective July 3, 2007, 32 TexReg 3992; amended to be effective September 19, 2010, 35 TexReg 8351; amended to be effective November 24, 2010, 35 TexReg 10231; amended to be effective December 23, 2012, 37 TexReg 9773; amended to be effective March 23, 2014, 39 TexReg 1930; amended to be effective August 3, 2014, 39 TexReg 5748
§172.6. Visiting Professor Temporary License.
The board may issue a temporary license to practice medicine to a physician appointed as a visiting professor by a Texas medical school or institution in accordance with this section.

(1) The visiting professor temporary license may be valid for any number of 31-day increments not to exceed 24 increments. The incremental periods wherein the temporary license is valid need not be contiguous, but rather may be in any arrangement approved by the executive director of the board.

(2) The visiting professor temporary license shall state on its face the periods during which it will be valid. If all periods of validity are not known at the time of the temporary license issuance, the temporary license holder shall request that the executive director of the board endorse the temporary license with each incremental period of validity as such becomes known. No temporary license shall be valid at any time when the period of validity is not stated on the temporary license unless suitable temporary alternative arrangements have been presented to and accepted by the executive director of the board.

(3) The visiting professor temporary license shall be issued to the institution authorizing the named visiting professor to practice medicine within the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the visiting professor. The visiting professor may participate in the full activities of the department in whichever hospital the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(4) The visiting professor temporary license may be issued to one of the following institutions:
   (A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;
   (B) The University of Texas Health Center at Tyler;
   (C) The University of Texas M.D. Anderson Cancer Center; or
   (D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline.

(5) The visiting professor and the school shall file affidavits with the board affirming acceptance of the terms, limitations and conditions imposed by the board on the medical activities of the visiting professor.

(6) The application for visiting professor temporary license or the renewal thereof shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the visiting professor. The application shall be made by the chairman of the department in which the visiting professor will teach and provide such information and documentation to the board as may be requested. Such application shall be endorsed by the dean of the medical school or by the president of the institution.

(7) All applications shall state the date when the visiting professor shall begin performance of duties.

Source Note: The provisions of this §172.6 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective August 10, 2008, 33 TexReg 6135.

§172.7. National Health Service Corps Temporary License.
The board may issue a temporary license to practice medicine to a physician who has contracted with the National Health Service Corps to practice medicine in Texas under the following terms and conditions.

(1) The physician must be a graduate of a medical school approved by the board. An 8 1/2 x 11 notarized true copy of the original medical diploma shall be submitted to the board.

(2) The physician must hold a valid, unrestricted license in another state or territory to practice medicine. A notarized true copy of the license registration certificate shall be submitted to the board. If the physician is not licensed in another state, he or she must have passed either the United States Medical Licensing Examination (USMLE), within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years, or the National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor, within three attempts, all steps must be passed within seven years, or the National Board of Medical Examiners Examination (NBME) within three attempts, all steps must be passed within seven years. A certified transcript of the scores shall be submitted to the board by the appropriate authority.

(3) The physician must have a valid contract with the National Health Service Corps. The temporary license will expire at the termination of the contract with the National Health Service Corps. A notarized true copy of the contract shall be submitted to the board.

(4) The temporary license shall be issued for one year and may be renewed.

(5) The temporary license allows the physician to practice medicine only within the scope of his or her contract with the National Health Service Corps.

Source Note: The provisions of this §172.7 adopted to be effective November 7, 2004, 29 TexReg 10111.
§172.8. Faculty Temporary License.

(a) The board may issue a faculty temporary license to practice medicine to a physician in accordance with §155.104, Texas Occupations Code. "Physician," as used in that statute and in this section, is interpreted to mean a person who holds an M.D., D.O., or equivalent degree and who is licensed to practice medicine in another state or a Canadian province or has completed at least two years of postgraduate residency, but does not hold a license to practice medicine in this state.

(1) Each medical license held in any state, territory, or Canadian province must be free of any restrictions, disciplinary order or probation.

(2) The physician must have passed the Texas medical jurisprudence examination within three attempts, with a score of 75 or better, unless the board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the licensure committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(3) "Institution," as used in this section, shall mean any of the following:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Science Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center;

(D) an institutional sponsor of a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education or;

(E) a nonprofit health corporation certified under §162.001, Medical Practice Act, and affiliated with a program as described in subparagraph (D) of this paragraph.

(4) The physician must:

(A) hold a salaried faculty position equivalent to an assistant professor-level or higher as determined by the institution working full-time in one of the institutions; or

(B) hold a faculty position equivalent to an assistant professor-level or higher as determined by the institution, work at least part-time in one of the institutions; and

(i) be on active duty in the United States military; and

(ii) be engaged in a practice under the faculty temporary license that will fulfill a critical need of the citizens of Texas.

(5) The physician must sign an oath on a form provided by the board swearing that the physician has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this section; and will subject themselves to the disciplinary procedures of the board.

(b) The faculty temporary license shall be issued for a period of one year. The holder of a faculty temporary license may apply for one or more successive faculty temporary licenses.

(c) The faculty temporary license holder's practice of medicine shall be limited to the teaching confines of the applying institution as a part of duties and responsibilities assigned by the institution to the physician.

(d) The physician may participate in the full activities of the department of any hospital for which the physician's institution has full responsibility for clinical, patient care, and teaching activities. "Full responsibility" means that the institution has agreed to provide physicians to see patients in the hospital and that the institution provides any necessary supervision for such physicians.

(e) The physician and the institution shall file affidavits with the board affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the physician. The institution must also affirm in its affidavit that prior to filing the affidavit, the institution has reviewed the physician's criminal background, disciplinary history with other state licensing entities, and medical malpractice history.

(f) The application and fee for the faculty temporary license shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the physician.

(g) The application shall be made by the chairman of the department of the institution in which the physician teaches or the person holding the equivalent position at the institution where the physician teaches, and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the institution. An endorsement must include a statement that the medical school or institution has investigated and determined the physician to be of good professional character and fit to practice medicine. An endorsement shall also state that the medical school or institution has accepted the responsibility to properly supervise the medical activities of the physician.
(i) Two years in a teaching faculty position under a faculty temporary license at any institution listed in subsection (a)(3) of this section may be equivalent to two years of approved postgraduate training if, at the conclusion of this two-year period, the physician presents recommendations in his or her behalf from the chief administrative officer and the president of the institution. A recommendation must include verification that the physician has completed at least two years in a teaching faculty position under a faculty temporary license at the level of assistant professor or higher and that the duties of the physician in such position required activities that demonstrate that the physician's medical competence is substantially equivalent to the competence of a person who has completed two years of an approved postgraduate residency program as described in §171.3(a)(1) of this title (relating to Physician-in-Training Permits). Each year in a teaching faculty position under a faculty temporary license shall be considered the equivalent of one year of approved postgraduate training.

(j) An applicant is not eligible for a faculty temporary license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) the applicant holds a medical license that has been subject to disciplinary action in another state, territory, or Canadian province;

(3) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States; or

(4) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

(k) Six months under a faculty temporary license may be used to meet the requirements under Section 163.7(2) of this title (relating to Ten Year Rule).

Source Note: The provisions of this §172.8 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective January 25, 2006, 31 TexReg 387; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective November 29, 2009, 34 TexReg 8532; amended to be effective December 4, 2011, 36 TexReg 8029; amended to be effective July 4, 2012, 37 TexReg 4928; amended to be effective May 6, 2013, 38 TexReg 2759; amended to be effective August 3, 2014, 39 TexReg 5748; amended to be effective May 20, 2015, 40 TexReg 2666


(a) The board may issue a temporary license to practice medicine to a medical school graduate, who holds a research appointment at an institution in accordance with subsection (b) of this section, in a program approved by the board, under the following terms and conditions listed in paragraphs (1) - (7) of this subsection.

(1) The research must be in clinical medicine and/or the basic sciences of medicine.

(2) The research is limited to the duties and responsibilities assigned by the applying institution to research appointee in their research capacity.

(3) The research appointment must be approved by the Dean of the medical school or the president of the institution.

(4) The research appointment must be supervised by a faculty member of the institution who has an active unrestricted Texas medical license.

(5) The research appointee must be of good professional character as elaborated in the Medical Practice Act.

(6) The Postgraduate Research Temporary License may be issued for a maximum of one, is not renewable and cannot be used towards physician licensure requirements in Texas.

(7) The Postgraduate Research Temporary License holder's practice of medicine shall be limited to the confines of the institution and to the area of the research assigned by the institution to the physician.

(b) "Institution," as used in this section, shall mean any of the following:

(1) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association's Commission on Osteopathic College Accreditation;

(2) The University of Texas Health Science Center at Tyler;

(3) The University of Texas M.D. Anderson Cancer Center;

(4) an institutional sponsor of a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education, American Osteopathic Association’s Commission on Osteopathic College Accreditation (COCA); or

(5) a nonprofit health corporation certified under §162.001, Medical Practice Act, and affiliated with a program as described in paragraph (4) of this subsection.

Source Note: The provisions of this §172.9 adopted to be effective November 7, 2004, 29 TexReg 10111; amended to be effective January 20, 2014, 39 TexReg 279
§172.10. Department of State Health Services Medically Underserved Area (DSHS-MUA) Temporary License.

The board may issue a temporary license to practice medicine to a physician who is appointed by the Department of State Health Services (DSHS) to provide free services at medically underserved areas at its regional clinics. Medically underserved areas shall be those areas as defined under §157.052 of the Medical Practice Act.

(1) Length of Temporary License. The DSHS-MUA temporary licenses may be valid for up to 31 days and a physician may not be issued more than one temporary license in any 12-month period.

(2) Eligibility.

(A) The physician must hold a current medical license that is free of any restriction, disciplinary order or probation in another state, territory, a Canadian province, or uniformed service of the United States.

(B) Each medical license held in another state, territory, Canadian province, or uniformed service of the United States must be free of any restrictions, disciplinary order or probation.

(C) The physician must be employed by the Texas Army National Guard, the uniformed service of the United States, or the national branches of the military reserves.

(3) Scope. A DSHS-MUA temporary license holder may only provide services at a DSHS regional clinic in a medically underserved area as defined under §157.052 of the Medical Practice Act.

(4) Supervision. The DSHS-MUA temporary license holder must be supervised by a physician who has an unrestricted and active license in Texas. The physician shall provide continuous supervision, but the constant physical presence of the supervising physician is not required.

(5) Deadline. DSHS must submit applications on behalf of physicians requiring temporary licenses at least 30 days before the anticipated start date at the DSHS regional clinic.

Source Note: The provisions of this §172.10 adopted to be effective January 9, 2005, 29 TexReg 12188.

§172.11. Temporary Licensure—Regular.

(a) The executive director of the board may issue a temporary license to an applicant:

(1) who has passed the Texas medical jurisprudence examination;

(2) whose completed application has been filed, processed, and found to be in order; and

(3) who has met all other requirements for licensure.

(b) Each applicant shall receive only one temporary license prior to the issuance of a permanent license. The board, in unusual circumstances, may allow the issuance of one additional temporary license if it finds it is in the best interest of the public health and welfare. These exceptions are reviewed by the executive director on a case-by-case basis.

Source Note: The provisions of this §172.11 adopted to be effective January 25, 2006, 31 TexReg 387.
§172.12. Out-of-State Telemedicine License

(a) Qualifications. A person may not engage in the practice of medicine across state lines in this State, hold oneself as qualified to do the same, or use any title, word, or abbreviation to indicate or induce others to believe that one is licensed to practice across state lines in this state unless the person is actually so licensed. For a person to be eligible for an out-of-state telemedicine license to practice medicine across state lines under the Medical Practice Act, §151.056, and §163.1 of this title (relating to Definitions), the person must:

(1) be 21 years of age or older;
(2) be actively licensed to practice medicine in another state which is recognized by the board for purposes of licensure, and not the recipient of a previous disciplinary action by any other state or jurisdiction;
(3) not be the subject of a pending investigation by a state medical board or another state or federal agency;
(4) be currently certified by a member board of the American Board of Medical Specialties or Bureau of Osteopathic Specialists, or by the American Board of Oral and Maxillofacial Surgery, obtained by passing, within the ten years prior to date of applying for licensure, a monitored:
   (A) specialty certification examination;
   (B) maintenance of certification examination; or
   (C) continuous certification examination;
(5) have passed the Texas Medical Jurisprudence Examination;
(6) complete a board-approved application for an out-of-state telemedicine license for the practice of medicine across state lines and submit the requisite initial fee; and
(7) not be determined ineligible for licensure under subsection (b) of this section.

(b) Denial of Out-of-State Telemedicine License. An application for an out-of-state telemedicine license to practice medicine across state lines may be denied based on failure to demonstrate the requisite qualifications for issuance of an out-of-state license, grounds for denial of an application for a full license pursuant to §155.003(e) of the Act, failure to submit the required fee, and any grounds for disciplinary action of a licensee under the Medical Practice Act, §164.051 (relating to Grounds for Denial or Disciplinary Action).

(c) Limits on Out-of-State Telemedicine License. An out-of-state telemedicine license to practice medicine across state lines shall be limited exclusively to the interpretation of diagnostic testing and reporting results to a physician fully licensed and located in Texas or for the follow-up of patients where the majority of patient care was rendered in another state, and the license holder shall practice medicine in a manner so as to comply with all other statutes and laws governing the practice of medicine in the state of Texas. Unless a person holds a current full license to practice medicine in this state pursuant to this chapter and the provisions of the Medical Practice Act, Chapter 155 (relating to License to Practice Medicine), a person holding an out-of-state telemedicine license shall not be authorized to physically practice medicine in the state of Texas.

(d) Registration Requirements. All out-of-state telemedicine licenses to practice medicine across state lines licenses must be renewed and maintained according to registration requirements of §166.1 of this title (relating to Physician Registration).

(e) Disciplinary Action. The issuance by the board of an out-of-state telemedicine license subjects the licensee to the jurisdiction of the board in all matters set forth in the Medical Practice Act and all rules and regulations, including all matters related to discipline.

(f) Exemptions. The following activities shall be exempt from the requirements of an out-of-state telemedicine license and this chapter:

(1) episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a person licensed in this state;
(2) consultation services provided by a physician located in another jurisdiction to a medical school as defined in the Education Code, §61.501;
(3) consultation services provided by a physician located in another jurisdiction to an institution defined in either Subchapter C, Chapter 73, or Subchapter K, Chapter 74 of the Education Code;
(4) informal consultation performed by a physician outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation;
(5) furnishing of medical assistance by a physician in case of an emergency or disaster if no charge is made for the medical assistance; and
(6) ordering home health or hospice services for a resident of this state to be delivered by a home and community support services agency licensed by this state, by the resident's treating physician who is located in another jurisdiction of a state having borders contiguous with the borders of this state.
§172.13. Conceded Eminence.

(a) The board may issue a license to an applicant pursuant to the authority of §155.006, Tex. Occ. Code, by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) "Conceded eminence and authority in the applicant's specialty," as used in this section, shall mean that the physician has achieved a high level of academic or professional recognition for excellence in research, teaching, or the practice of medicine, as evidenced by objective factors, including academic appointments, length of time in a profession, scholarly publications and presentations, professional accomplishments, and awards.

(c) An applicant for a license based on conceded eminence must complete an application showing that the applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:
   (A) a school of medicine in this state accredited by the LCME or AOA;
   (B) The University of Texas Health Center at Tyler;
   (C) The University of Texas M.D. Anderson Cancer Center; or
   (D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under paragraph (1) of this subsection;

(3) has not failed a licensing examination within the three-attempt limit provided by §163.6(b) and §163.6(e)(1) of this title;

(4) has passed the Texas Medical Jurisprudence Examination;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, as defined by §163.1(a)(8) of this title;

(7) has conceded eminence and authority in a medical specialty identified in the application;

(8) has not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital;

(9) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude; and

(10) has read and will abide by board rules and the Medical Practice Act.

(d) Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular).

(e) The holder of a conceded eminence license shall be limited to the practice of only a specialty of medicine for which the license holder has conceded eminence and authority, as identified in the application. The license holder may only practice medicine within the setting of the institution or program that recommended the license holder under subsection (c)(1) of this section, including a setting that is part of the institution or program by contractual arrangement.

(f) If the holder of a conceded eminence license terminates the relationship with the institution or program that recommended the license holder under subsection (c)(1) of this section, the conceded eminence license shall be considered automatically canceled. To practice medicine in Texas, the license holder must:

(1) file a new application with the recommendation of a new institution or program, as required by subsection (c)(1) of this section, or

(2) file an application for another Texas medical license or permit.

(g) The holder of a conceded eminence license shall be required to pay the same fees and meet all other procedural requirements for issuance and renewal of the license as a person holding a full Texas medical license.

(h) The holder of a conceded eminence license shall be subject to disciplinary action under the Medical Practice Act and board rules.

Source Note: The provisions of this §172.13 adopted to be effective January 25, 2006, 31 TexReg 5104; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective January 20, 2014, 39 TexReg 279

§172.15. Public Health License.

(a) The board may issue a license that is limited to public health medicine to an applicant pursuant to the authority of §155.009, Texas Occupations Code, authorizing the board to issue a limited license for the practice of administrative medicine.

(b) "Public health medicine," as used in this section, means professional managerial, administrative,
or supervisory activities related to public health or the practice of medicine on behalf of and as defined by a governmental entity serving as a public health agency or institution, including prescriptive authority for public health purposes, preventive interventions, diagnosis and treatment of communicable and vaccine preventable diseases, pharmacological interventions for smoking cessation and contraception, and other clinical preventive medicine interventions such as those to prevent obesity and diabetes.

(c) An applicant for a public health license must complete the same application and meet the same requirements as an applicant for a full Texas medical license, except:

(1) the applicant for a public health license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in §163.11 of this title (relating to Active Practice of Medicine);

(2) the applicant must be employed by or under contract with a governmental entity serving as a public health agency or institution; and

(3) the application shall be endorsed by a physician affiliated with the governmental entity or the Texas Department of State Health Services. An endorsement must include a certificate by the endorsing physician that the applicant is of good professional character and qualified to perform public health services as defined by the governmental entity.

(d) The holder of a public health license shall be required to pay the same fees and meet all other requirements for issuance and renewal of the license as a person holding a full license to practice medicine.

(e) The public health license holder's practice of medicine shall be limited to activities on behalf of a governmental entity serving as a public health agency or institution and duties and responsibilities assigned by the governmental entity to the public health license holder. The holder of a public health license may, however, be an employee or under contract with governmental entities other than or in addition to the governmental entity named in license holder's original application for a public health license.

(f) The holder of a public health license shall be subject to the Medical Practice Act and the Rules of the board as a person holding a full license to practice medicine. A physician is engaged in the practice of medicine when the physician uses medical training and experience to make a medical decision.

(g) This section shall have no effect on any full Texas medical license.

(h) Any clinical medicine performed under a public health license may not be used to satisfy the active practice of medicine requirements for full licensure under §163.11 of this title (relating to Active Practice of Medicine).

Source Note: The provisions of this §172.15 adopted to be effective March 18, 2007, 32 TexReg 1506; amended to be effective July 4, 2012, 37 TexReg 4928

§172.16. Provisional Licenses for Medically Underserved Areas.

(a) The board shall issue a provisional license to an applicant for a license who:

(1) is licensed in good standing with another state medical licensing entity;

(2) passed an examination within the number of allowed attempts as provided under §163.6 of this title (relating to Examinations Accepted for Licensure);

(3) submits information to the board to be used for criminal background checks; and

(4) is sponsored by a person licensed under the Medical Practice Act with whom the applicant may practice under unless the board waives this requirement after determination that compliance with this provision constitutes a hardship to the applicant.

(b) An applicant who holds a provisional license may only practice in a location that is:

(1) designated by the federal government as a health professional shortage area; or

(2) designated by the federal or state government as a medically underserved area.

(c) An applicant shall be determined ineligible for a provisional license if the applicant:

(1) has had a medical license suspended or revoked by another state or a Canadian province;

(2) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(3) has an unacceptable criminal history.

(d) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical license or denies the provisional license holder's application for a license;

(2) designated by the federal or state government as a medically underserved area.

(3) has an unacceptable criminal history.

(d) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical license or denies the provisional license holder's application for a license;

(2) the 270th day after the date the provisional license was issued; or

(3) upon determination by the Executive Director that the provisional license holder is ineligible for licensure pursuant to §155.003(e) of the Act.

(e) An individual may not be granted more than one provisional license.

(f) A provisional license holder may only be granted a temporary license under §172.11 of this title (relating to Temporary Licensure--Regular) if:

(1) the provisional license holder meets all requirements for licensure under Chapter 163 of this title (relating to Licensure); or,

(2) the provisional license holder has been referred to the Licensure Committee (Committee) for review, but due to a force majeure, the Committee must defer action until the Committee's next scheduled...
meeting, however, the provisional license is set to expire before the next Committee meeting.

Source Note: The provisions of this §172.16 adopted to be effective November 29, 2009, 34 TexReg 8532; amended to be effective September 19, 2010, 35 TexReg 8351; amended to be effective June 28, 2011, 36 TexReg 3917; amended to be effective July 4, 2012, 37 TexReg 4928

§172.17 Limited License for Practice of Administrative Medicine.

(a) Pursuant to §155.009, Texas Occupations Code, the board may issue to an applicant a license that is limited to administrative medicine.

(b) "Administrative medicine," as used in this section means administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician, and capable of affecting the health and safety of the public or any person.

(c) An administrative medicine license does not include the authority to practice clinical medicine, prescribe dangerous drugs or controlled substances, or delegate medical acts or prescriptive authority.

(d) An applicant for an administrative medicine license must complete the same application and meet the same requirements as an applicant for a full Texas medical license, except that the applicant for an administrative medicine license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in §163.11 of this title (relating to Active Practice of Medicine). Applicants for administrative medicine licenses must demonstrate that they have practiced administrative medicine in either of the two years preceding date of application or otherwise demonstrate that they are competent to practice administrative medicine.

(e) The holder of an administrative medicine license shall be required to pay the same fees and meet all other requirements for issuance and renewal of the license as a person holding a full Texas medical license.

(f) The holder of an Administrative Medicine License shall be subject to the Medical Practice Act and the Rules of the board as a person holding a full Texas medical license.

(g) This section shall have no effect on any full Texas medical license issued prior to the effective date of this rule. The license of any physician who has agreed to a board order restricting the license to administrative medicine based solely on the failure to meet the licensure requirement to be engaged in the active practice of medicine, upon request of the physician, may be converted to an administrative medicine license and the board order regarding such physician shall be terminated, provided that the only requirement of the order is the restriction to administrative medicine.

Source Note: The provisions of this §172.17 adopted to be effective September 19, 2010, 35 TexReg 8351 and 35 TexReg 8497

§172.18 Military Limited Volunteer License.

(a) Pursuant to §155.103 of the Texas Occupations Code, the Board may issue a military limited volunteer license to practice medicine to an applicant who:

(1) is licensed and in good standing, or was licensed and retired in good standing, as a physician in another state;

(2) is or was authorized as a physician to treat personnel enlisted in a branch of the United States armed forces or veterans; and

(3) meets all other requirements prescribed by Board Rule.

(b) The board may not issue a license under this section to an applicant who:

(1) holds a medical license that:

(A) is currently under investigation by a state of the United States, a province of Canada, or a uniformed service of the United States;

(B) is or was restricted, cancelled, suspended, revoked, or subject to other discipline or denial of licensure by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) holds a license issued by the Drug Enforcement Agency or a state public safety agency to prescribe, dispense, administer, supply, or sell a controlled substance that:

(A) is currently under investigation by a state of the United States, a province of Canada, or a uniformed service of the United States;

(B) is or was restricted, cancelled, suspended, revoked, or subject to other discipline or denial by a state of the United States, a province of Canada, or a uniformed service of the United States; or

(3) is currently under investigation or has been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony or a misdemeanor involving moral turpitude.

(c) A physician who practices medicine under a license issued under this section may:

(1) only practice at a clinic that primarily treats indigent populations; and

(2) not receive direct or indirect compensation or payment of anything of monetary value in exchange for the medical services rendered by the physician to the indigent patients at the clinic.

(d) A military limited volunteer license holder is subject to board rules, including rules regarding
disciplinary action, license registration and renewal, and continuing medical education.

(e) A military limited volunteer license shall be issued for a period of two years and may be renewed and maintained according to registration requirements as prescribed by Board Rules.

Source Note: The provisions of this §172.18 adopted to be effective January 20, 2014, 39 TexReg 279
§173.1. Profile Contents.
(a) The Texas Medical Board (the "board") shall develop and make available to the public a comprehensive profile of each licensed physician electronically via the Internet or in paper format upon request.
(b) The profile of each licensed physician shall contain the following information listed in paragraphs (1) - (28) of this subsection:
   (1) full name as the physician is licensed;
   (2) place of birth if the physician requests that it be included in the physician's profile;
   (3) year of birth;
   (4) gender;
   (5) ethnic origin if the physician requests that it be included in the physician's profile;
   (6) name of each medical school attended and the dates of:
      (A) graduation; or
      (B) Fifth Pathway designation and completion of the Fifth Pathway Program;
   (7) a description of all graduate medical education in the United States or Canada, including:
      (A) beginning and ending dates;
      (B) program name;
      (C) city and state of program;
      (D) type of training (internship, residency or fellowship); and
      (E) specialty of program;
   (8) any specialty certification held by the physician and issued by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;
   (9) primary and secondary specialties practiced, as designated by the physician;
   (10) the number of years the physician has actively practiced medicine in:
      (A) the United States or Canada; and
      (B) Texas;
   (11) the original date of issuance of the physician's Texas medical license;
   (12) the expiration date of the physician's registration permit;
   (13) the physician's current registration, disciplinary and licensure statuses;
   (14) the name and city of each hospital in Texas in which the physician has privileges;
   (15) the physician's primary practice location (street address, city, state and zip code);
   (16) the physician's mailing address (street or P.O. Box address, city, state, and zip code), if the physician does not have a primary practice location;
   (17) the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;
   (18) whether the physician participates in the Medicaid program;
   (19) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;
   (20) a description of any conviction for an offense constituting a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;
   (21) a description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction;
   (22) a description of any public board action against the physician;
   (23) a description of any disciplinary action against the physician by a medical licensing board of another state;
   (24) a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §164.201 unless the investigation was resolved more than five years before the date of the update and no action was taken against the physician's license as a result of the investigation;
   (25) a description of any formal complaint issued by the board's staff against the physician and initiated and filed with the State Office of Administrative Hearings under §164.005 of the Act and the status of the complaint;
   (26) a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters;
   (27) a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal; and
(28) whether the physician provides utilization review services for an insurance company in connection with health care services rendered by a group health plan and the name of the insurance company or companies. This does not include providing utilization review in relation to worker's compensation claims.

Source Note: The provisions of this §173.1 adopted to be effective March 5, 2000, 25 TexReg 1623; amended to be effective January 7, 2001, 25 TexReg 12977; amended to be effective January 6, 2002, 26 TexReg 10865; amended to be effective March 11, 2002, 27 TexReg 1733; amended to be effective September 19, 2002, 27 TexReg 8770; amended to be effective January 9, 2003, 28 TexReg 71; amended to be effective November 30, 2003, 28 TexReg 10489; amended to be effective December 30, 2007, 32 TexReg 9629; amended to be effective January 20, 2009, 34 TexReg 4124; amended to be effective November 29, 2009, 34 TexReg 8533; amended to be effective June 28, 2011, 36 TexReg 3918; amended to be effective March 7, 2012, 37 TexReg 1514.

§173.2. Profile Update and Correction Form.

(a) The board shall develop a Profile Update and Correction Form (the "Form") which allows for corrections and/or updates to the profile information to be made by the physician. The physician must submit all changes to profile information upon this Form, or indicate on the Form that no change is necessary. The Form shall contain the date the information will be made available to the public and will allow the physician to request a copy of the physician's profile. Upon such request, and when the profile information has been updated, the board shall provide a copy to the physician. The Form will be made available in hard copy and on the Internet.

(b) Compliance with the request for information from the board is mandatory. Failure to return the completed Form to the board shall be considered noncompliance. Non-compliance shall result in nonrenewal of the physician's license until such time as the physician provides the requested information.

(c) Submission of false or misleading information or omission of required information by the physician shall be considered grounds for disciplinary action.

(d) All data contained in the profile shall indicate the source of the data and the last update date.

Source Note: The provisions of this §173.2 adopted to be effective March 5, 2000, 25 TexReg 1623; amended to be effective December 30, 2007, 32 TexReg 9629.

§173.3. Physician-Initiated Updates.

(a) Physicians are required to attest as to whether or not the physician's profile information is correct at the time of the physician's registration and to initiate correction of any incorrect information.

(b) Physicians should maintain current profile information by submitting updates and corrections as changes occur.

(c) The physician shall make necessary corrections and updates by submitting a profile update and correction form or by submitting it online if completing the registration via the internet.

(d) A physician shall report the following to the Board within 30 days after the event:

1. Any change of mailing or practice address;
2. Incarceration in a state or federal penitentiary;
3. An initial conviction, final conviction, or placement on deferred adjudication, community supervision, or deferred disposition for:
   (A) a felony;
   (B) a misdemeanor that directly relates to the duties and responsibilities of a physician licensed by the board;
   (C) a misdemeanor involving moral turpitude;
   (D) a misdemeanor under Chapter 22, Penal Code (relating to assaultive offenses), other than a misdemeanor punishable by fine only;
   (E) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
   (F) a misdemeanor under §25.07, Penal Code (relating to the violation of a protective order or a magistrate's order);
   (G) a misdemeanor under §25.071, Penal Code (relating to the violation of a protective order preventing offenses caused by bias or prejudice);
4. An initial finding by the trier of fact of guilt of a felony under:
   (A) Chapter 481 or 483, Health and Safety Code (relating to offenses involving controlled substances and dangerous drugs);
   (B) Section 485.033, Health and Safety Code (relating to offenses involving inhalant paraphernalia);

Source Note: The provisions of this §173.3 adopted to be effective March 5, 2000, 25 TexReg 1623; amended to be effective November 3, 2002, 27 TexReg 10026; amended to be effective November 30, 2003, 28 TexReg
§173.4. Updates to the Physician's Profile Due to Board Action.  
(a) When the board takes disciplinary action or files a formal complaint at the State Office of Administrative Proceedings pursuant to Section 164.005 of the Act against a physician, such action shall be noted on the physician's profile not later than the 10th working day after the board's action occurs and shall be made available to the public.  
(b) All records relating to formal complaints that have been posted on a physician's profile shall be removed if:
   (1) the complaint was dismissed more than five years before the date of the update; and
   (2) the complaint was dismissed as baseless, unfounded, or not supported by sufficient evidence that a violation occurred, or no action was taken against the physician's license as a result of the complaint.

Source Note: The provisions of this §173.4 adopted to be effective March 5, 2000, 25 TexReg 1623; amended to be effective November 30, 2003, 28 TexReg 10489; amended to be effective November 29, 2009, 34 TexReg 8533.

§173.5. Updates to the Physician's Profile Due to Information Received by a Third Party.  
(a) When the board is notified by a third party of a change in profile information for a physician, the board shall send a copy of the Form to the physician with the changes noted. The physician shall have one month in which to correct factual errors or dispute the information.  
(b) Amendments to a physician's profile shall be made by the board when:
   (1) the board receives information from non-governmental third-parties that has been verified by the board and contradicts information reported on a physician's profile;
   (2) the board receives information from state or federal governmental authorities regarding criminal convictions described in §173.1(b)(20) and (21) of this title (relating to Profile Contents);
   (3) the board determines that information provided on a physician's profile would violate state or federal confidentiality laws; or
   (4) the board otherwise determines that information provided on a physician's profile is false or misleading.

Source Note: The provisions of this §173.5 adopted to be effective March 5, 2000, 25 TexReg 1623; amended to be effective December 30, 2007, 32 TexReg 9629; amended to be effective January 20, 2014, 39 TexReg 281

§173.7. Corrections and the Dispute Process.  
(a) If the physician wishes to make corrections or dispute the proposed profile information updated under any section of this chapter, the procedures in this section shall apply.  
(b) If the board receives the Form from the physician without corrections to the profile information, the profile shall be made available to the public as is.  
(c) If the board receives the Form from the physician and the physician has indicated corrections to the information on the Form, the board shall review the proposed corrections.  
(d) If the board determines that the physician's corrections are satisfactory, the board shall update the profile information and make the profile available to the public.  
(e) If the board determines that the physician's corrections are unsatisfactory, the board shall so notify the physician, along with a presentation of the information in a format satisfactory to the board, and instructions of the process that the physician must follow to dispute the information.  
(f) If the physician wishes to dispute the profile information which is in the format satisfactory to the board, the physician must submit a formal letter of dispute to the board within two weeks of the date of the notification in subsection (e) of this section. The physician must then submit proof of factual error to the board within one month of the date of the notification in subsection (e) of this section.  
(g) Upon receipt of the formal letter of dispute from the physician, a notation that the information under dispute is "Not available" shall be attached to the appropriate category of the physician's profile and such notation shall be made available to the public on the profile.  
(h) After review of the proof provided by the physician during the dispute process as described in subsection (f) of this section, the board shall make a determination as to the profile information to be provided to the public.  
(i) Upon determination by the board of the dispute, the board shall notify the physician of the determination, shall update the physician's profile with the information, shall remove the "Not available" notation and shall make the profile available to the public.
Source Note: The provisions of this §173.7 adopted to be effective March 5, 2000, 25 TexReg 1623; amended to be effective May 12, 2008, 33 TexReg 3741.
§174.1. Purpose.
Pursuant to §153.001 and §157.001 of the Medical Practice Act, the Board is authorized to adopt rules relating to the practice of medicine. This chapter is promulgated to establish standards for the use of the Internet and the provision of telemedicine medical services by physicians who are licensed to practice medicine in this State. This chapter does not apply to out-of-state telemedicine licenses issued by the Board pursuant to §151.056 of the Act and §172.12 of this title (relating to Out-of-State Telemedicine License), federally qualified health centers (FQHCs), or to consultations provided by health insurance help lines.

Source Note: The provisions of this §174.1 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective October 17, 2010, 35 TexReg 9085.

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

(1) Distant site provider--A physician or a physician assistant or advanced practice nurse who is supervised by and has delegated authority from a licensed Texas physician, who uses telemedicine to provide health care services to a patient in Texas. Distant site providers must be licensed in Texas.

(2) Established medical site--A location where a patient will present to seek medical care where there is a patient site presenter and sufficient technology and medical equipment to allow for an adequate physical evaluation, as appropriate for the patient's presenting complaint. It requires establishing a defined physician-patient relationship, as defined by §190.8(1)(L) of this title (relating to Violation Guidelines). A patient's private home is not considered an established medical site, except as provided in §174.6(d) of this title (relating to Telemedicine Medical Services Provided at an Established Medical Site). An established medical site includes all Mental Health and Mental Retardation Centers (MHMRs), and Community Centers, as defined by Health and Safety Code, Chapter 534, where the patient is a resident and the medical services provided are limited to mental health services.

(3) Face-to-face visit--An evaluation performed on a patient where the provider and patient are both at the same physical location or where the patient is at an established medical site.

(4) In-person evaluation--A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.

(5) Medium--Any mechanism of information transfer including electronic means.

(6) Patient site location--The patient site location is where the patient is physically located.

(7) Patient site presenter--The patient site presenter is the individual at the patient site location who introduces the patient to the distant site physician for examination and to whom the distant site physician may delegate tasks and activities. A patient site presenter must be:

(A) licensed or certified in this state to perform health care services or a qualified mental health professional-community services (QMHP-CS) as defined in 25 TAC §412.303(48); and

(B) delegated only tasks and activities within the scope of the individual's licensure or certification.

(8) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(9) Physician-patient e-mail--An interactive communication via an interactive electronic text messaging system between a physician (or their medical staff and patients within a professional relationship in which the physician has taken on an explicit measure of responsibility for the patient's care.

(10) Telemedicine medical service--The practice of medical care delivery, initiated by a distant site provider, who is physically located at a site other than the site where the patient is located, for the purposes of evaluation, diagnosis, consultation, or treatment which requires the use of advanced telecommunications technology that allows the distant site provider to see and hear the patient in real time.

(11) Group or Institutional Setting--These include residential treatment facilities, halfway houses, jails, juvenile detention centers, prisons, nursing homes, group homes, rehabilitation centers, and assisted living facilities.

Source Note: The provisions of this §174.2 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective June 29, 2006, 31 TexReg 5104; amended to be effective October 17, 2010, 35 TexReg 9085; amended to be effective June 4, 2015, 40 TexReg 3148.
§174.3. Telemedicine Medical Services.
(a) All physicians that use telemedicine medical services in their practices shall adopt protocols to prevent fraud and abuse through the use of telemedicine medical services. These standards must be consistent with those established by the Health and Human Services Commission pursuant to §531.02161 of the Government Code.

(b) In order to establish that a physician has made a good faith effort in the physician's practice to prevent fraud and abuse through the use of telemedicine medical services, the physician must implement written protocols that address the following:

(1) authentication and authorization of users;
(2) authentication of the origin of information;
(3) the prevention of unauthorized access to the system or information;
(4) system security, including the integrity of information that is collected, program integrity, and system integrity;
(5) maintenance of documentation about system and information usage;
(6) information storage, maintenance, and transmission; and
(7) synchronization and verification of patient profile data.

Source Note: The provisions of this §174.3 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective October 17, 2010, 35 TexReg 9085.

§174.5. Notice to Patients.
(a) Privacy Practices.

(1) Physicians that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the physicians' privacy practices prior to evaluation or treatment. In addition, a good faith effort must be made to obtain the patient's written acknowledgement, including by e-mail, of the notice.

(2) The notice of privacy practices shall include language that is consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.

(b) Limitations of Telemedicine. Physicians who use telemedicine medical services must, prior to providing services, give their patients notice regarding telemedicine medical services, including the risks and benefits of being treated via telemedicine, how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement, by the patient establishes a presumption of notice.

(c) Necessity of In-Person Evaluation. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of medicine at an acceptable level of safety and quality in the context of that particular medical encounter, then the distant site provider must make this known to the patient prior to the conclusion of the live telemedicine encounter and advise the patient, prior to the conclusion of the live telemedicine encounter, regarding the need for the patient to obtain an additional in-person medical evaluation reasonably able to meet the patient's needs.

(d) Complaints to the Board. Physicians that use telemedicine medical services must provide notice of how patients may file a complaint with the Board on the physician's website or with informed consent materials provided to patients prior to rendering telemedicine medical services. Written content and method of the notice must be consistent with §178.3 of this title (relating to Complaint Procedure Notification).

Source Note: The provisions of this §174.5 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective October 17, 2010, 35 TexReg 9085; amended to be effective June 4, 2015, 40 TexReg 3148.

§174.6. Telemedicine Medical Services Provided at an Established Medical Site.
(a) Telemedicine medical services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a defined proper physician-patient relationship between a distant site provider and a patient.

(b) For new conditions, a patient site presenter must be reasonably available onsite at the established medical site to assist with the provision of care. It is at the discretion of the distant site physician if a patient site presenter is necessary for follow-up evaluation or treatment of a previously diagnosed condition.

(1) A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter.

(2) A distant site provider delegating tasks to a patient site presenter shall ensure that the patient site presenter to whom delegation is made is properly supervised.

(c) If the only services provided are related to mental health services, a patient site presenter is not required, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions).
(d) For the purposes of this chapter the following shall be considered to be an established medical site:
   (1) The patient's home, including a group or institutional setting where the patient is a resident, if the medical services being provided in this setting are limited to mental health services;
   (2) For medical services, other than mental health services, to be provided at the patient's home, including a group or institutional setting where the patient is a resident, the following requirements must be met:
      (A) a patient site presenter is present;
      (B) there is a defined physician-patient relationship as set out in §174.8 of this title (relating to Evaluation and Treatment of the Patient);
      (C) the patient site presenter has sufficient communication and remote medical diagnostic technology to allow the physician to carry out an adequate physical examination appropriate for the patient's presenting condition while seeing and hearing the patient in real time. All such examinations will be held to the same standard of acceptable medical practices as those in traditional clinical settings; and
      (D) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient do not meet the requirements for subparagraph (C) of this paragraph.

Source Note: The provisions of this §174.6 adopted to be effective October 17, 2010, 35 TexReg 9085; amended to be effective June 4, 2015, 40 TexReg 3148.

§174.7. Telemedicine Medical Services Provided at Sites other than an Established Medical Site.
(a) A distant site provider who provides telemedicine medical services at a site other than an established medical site for a patient's previously diagnosed condition must either:
   (1) see the patient one time in a face-to-face visit before providing telemedicine medical care; or
   (2) see the patient without an initial face-to-face visit, provided the patient has received an in-person evaluation by another physician who has referred the patient for additional care and the referral is documented in the medical record.
(b) Patient site presenters are not required for pre-existing conditions previously diagnosed by a physician through a face-to-face visit.
(c) All patients must be seen by a physician for an in-person evaluation at least once a year.
(d) Telemedicine medical services may not be used to treat chronic pain with scheduled drugs at sites other than medical practice sites.

(e) A distant site provider may treat an established patient's new symptoms which are unrelated to a patient's preexisting condition provided that the patient is advised to see a physician in a face-to-face visit within 72 hours. A distant site provider may not provide continuing telemedicine medical services for these new symptoms to a patient who is not seen within 72 hours. If a patient's symptoms are resolved within 72 hours, such that continuing treatment for the acute symptoms is not necessary, then a follow-up face-to-face visit is not required.

Source Note: The provisions of this §174.7 adopted to be effective October 17, 2010, 35 TexReg 9085.

(a) Evaluation of the Patient. Distant site providers who utilize telemedicine medical services must ensure that a defined physician-patient relationship is established which at a minimum includes:
   (1) establishing that the person requesting the treatment is in fact who the person claims to be;
   (2) establishing a diagnosis through the use of acceptable medical practices, including documenting and performing patient history, mental status examination, and physical examination that must be performed as part of a face-to-face or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;
   (3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and
   (4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.
(b) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of acceptable medical practices as those in traditional in-person clinical settings.
(c) An online questionnaire or questions and answers exchange through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship.
TEXAS MEDICAL BOARD RULES
Chapter 174, Telemedicine

Source Note: The provisions of this §174.8 adopted to be effective October 17, 2010, 35 TexReg 9085; amended to be effective June 4, 2015, 40 TexReg 3148

(a) At a minimum, advanced communication technology must be used for all patient evaluation and treatment conducted via telemedicine.
(b) Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.
(c) Electronic Communications.
(1) Written policies and procedures must be maintained when using electronic mail for physician-patient communications. Policies must be evaluated periodically to make sure they are up to date. Such policies and procedures must address:
   (A) privacy to assure confidentiality and integrity of patient-identifiable information;
   (B) health care personnel, in addition to the physician, who will process messages;
   (C) hours of operation and availability;
   (D) types of transactions that will be permitted electronically;
   (E) required patient information to be included in the communication, such as patient name, identification number and type of transaction;
   (F) archival and retrieval; and
   (G) quality oversight mechanisms.
(2) All relevant patient-physician e-mail, as well as other patient-related electronic communications, must be stored and filed in the patient's medical record.
(3) Patients must be informed of alternative forms of communication for urgent matters.

Source Note: The provisions of this §174.9 adopted to be effective October 17, 2010, 35 TexReg 9085.

§174.10. Medical Records for Telemedicine Medical Services.
(a) Medical records must be maintained for all telemedicine medical services. Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.
(b) Distant site providers must obtain an adequate and complete medical history for the patient prior to providing treatment and must document this in the medical record.
(c) Medical records must include copies of all relevant patient-related electronic communications, including relevant patient-physician e-mail, prescriptions, laboratory and test results, evaluations and consultations, records of past care and instructions.

If possible, telemedicine encounters that are recorded electronically should also be included in the medical record.

Source Note: The provisions of this §174.10 adopted to be effective October 17, 2010, 35 TexReg 9085.

§174.11. On-call Services.
Physicians, who are of the same specialty and provide reciprocal services, may provide on-call telemedicine medical services for each other's active patients.

Source Note: The provisions of this §174.11 adopted to be effective October 17, 2010, 35 TexReg 9085.

Physicians who treat and prescribe through advanced communications technology are practicing medicine and must possess appropriate licensure in all jurisdictions where their patients presently reside. An out-of-state physician may provide episodic consultations without a Texas medical license, as provided in Texas Occupations Code, §151.056 and §172.12(f) of this title (relating to Out-of-State Telemedicine License-Exemptions).

Source Note: The provisions of this §174.12 adopted to be effective October 17, 2010, 35 TexReg 9085.
§175.1. Application and Administrative Fees.
The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:
   (A) Full physician license--$1,017.
   (B) Out-of-State Telemedicine license--$1,017.
   (C) Administrative medicine license--$1,017.
   (D) Distinguished Professor Temporary License--$1,017.
   (E) Conceded Eminence--$1,017.
   (F) Reissuance of license following revocation--$1,017.
   (G) Temporary license:
      (i) State health agency--$50.
      (ii) Visiting physician--$0.
      (iii) Visiting professor--$167.
      (iv) National Health Service Corps--$0.
      (v) Faculty temporary license--$752.
      (vi) Postgraduate Research Temporary License--$0.
   (vii) Provisional license--$107.

(H) Licenses and Permits relating to Graduate Medical Education:
   (i) Initial physician in training permit--$212.
   (ii) Physician in training permit for program transfer--$141.
   (iii) Evaluation or re-evaluation of postgraduate training program--$250.
   (iv) Physician in training permit for applicants performing rotations in Texas--$131.

(2) Physician Assistants:
   (A) Physician assistant license--$220.
   (B) Reissuance of license following revocation--$220.
   (C) Temporary license--$107.

(3) Acupuncturists/AcudetoxSpecialists/Continuing Education Providers:
   (A) Acupuncture licensure--$320.
   (B) Temporary license for an acupuncturist--$107.
   (C) Acupuncturist distinguished professor temporary license--$50.
   (D) Acudetox specialist certification--$52.
   (E) Continuing acupunture education provider--$50.
   (F) Review of a continuing acupuncture education course--$25.
   (G) Review of continuing acudetox acupuncture education courses--$50.

   (4) Non-Certified Radiologic Technician permit--$130.50.
   (5) Non-Profit Health Organization initial certification--$2,500.
   (6) Surgical Assistants:
      (A) Surgical assistant licensure--$315.
      (B) Temporary license--$50.
   (7) Criminal History Evaluation Letter--$100.
   (8) Certifying board evaluation--$200.

Source Note: The provisions of this §175.1 adopted to be effective January 25, 2006, 31 TexReg 389; amended to be effective March 16, 2008, 33 TexReg 2025; amended to be effective March 9, 2009, 34 TexReg 1590; amended to be effective September 10, 2009, 34 TexReg 6109; amended to be effective November 29, 2009, 34 TexReg 8533; amended to be effective November 24, 2010, 35 TexReg 10231; amended to be effective May 5, 2011, 36 TexReg 2728; amended to be effective September 18, 2011, 36 TexReg 5843; amended to be effective December 4, 2011, 36 TexReg 8031; amended to be effective June 5, 2014, 39 TexReg 4255

§175.2. Registration and Renewal Fees.
The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:
   (A) Initial biennial permit--$856.
   (B) Subsequent biennial permit--$852.
   (C) Additional biennial registration fee for office-based anesthesia--$210.

(2) Physician Assistant Registration Permits:
   (A) Initial annual permit--$272.50.
   (B) Subsequent annual permit--$268.50.

(3) Acupuncturists/Acudetox Specialists Registration Permits:
   (A) Initial annual permit for acupuncturist--$333.50.
   (B) Subsequent annual permit for acupuncturist--$333.50.
   (C) Annual renewal for acudetox specialist certification--$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal--$130.50.

(5) Non-Profit Health Organization biennial recertification--$1,125.

(6) Surgical Assistants registration permits:
   (A) Initial biennial permit--$561.
§175.3. Penalties.

In addition to any other application, registration, or renewal fees, the board shall charge the following late fee penalties:

(1) Physicians:
   (A) Physician's registration permit expired for 31 - 90 days--$75.
   (B) Physician's registration permit expired for longer than 90 days but less than one year--$150.

(2) Physician Assistants:
   (A) Physician assistant's registration permit expired for 90 days or less--half the registration fee.
   (B) Physician assistant's registration permit expired for longer than 90 days but less than one year--full registration fee.

(3) Acupuncturists/Acudetox Specialists:
   (A) Acupuncturist's registration permit expired for 90 days or less--half the registration fee.
   (B) Acupuncturist's registration permit expired for longer than 90 days but less than one year--full registration fee.
   (C) Renewal of acudetox specialist certification expired for less than one year--$25.

(4) Non-Certified Radiologic Technicians. Renewal of non-certified radiologic technician's registration expired for 1 - 90 days--$25.

(5) Certification as a Non-Profit Health Organization fee for a late application for biennial recertification--$1,000.

(6) Surgical Assistants:
   (A) Surgical Assistant's registration permit expired for 90 days or less--half the registration fee.
   (B) Surgical Assistant - registration permit expired for longer than 90 days but less than one year--full registration fee.

Source Note: The provisions of this §175.3 adopted to be effective January 25, 2006, 31 TexReg 389; amended to be effective May 1, 2006, 31 TexReg 3534; amended to be effective September 28, 2006, 31 TexReg 8093; amended to be effective September 10, 2009, 34 TexReg 6109; amended to be effective May 5, 2011, 36 TexReg 2728; amended to be effective September 18, 2011, 36 TexReg 5843; amended to be effective December 4, 2011, 36 TexReg 8031; amended to be effective June 5, 2014, 39 TexReg 4255

§175.5. Payment of Fees or Penalties.

(a) Method of Payment. Fees paid online must be submitted by credit card, electronic check, or debit card, as required by the online application. All other licensure fees or penalties must be submitted in the form of a money order, personal check, or cashier's check payable on or through a United States bank. Fees and penalties cannot be refunded except as provided in subsection (c) of this section. If a single payment is made for more than one individual permit, it must be made for the same class of permit and a detailed listing, on a form prescribed by the board, must be included with each payment.

(b) Additional Fees Based on Method of Payment.

(1) Online payments. Applicants and licensees who submit payments online may be subject to convenience fees set by the Department of Information Resources, that are in addition to the fees listed in §§175.1 - 175.3 of this title (relating to Application and Administrative Fees, Registration and Renewal Fees and Penalties).

(2) Payments submitted for hard-copy registration. Licensees who choose to register on paper if online processing is available will be subject to an additional fee of $50 collected by the board, in addition to the fees listed in §§175.1 - 175.3 of this title.

(c) Refunds. Refunds of fees may be granted under the following circumstances:

(1) Administrative error by the Board;

(2) Licensure applicants who do not appear before the Licensure Committee and who withdraw their applications and request a refund within 30 days of being notified by board staff that they are ineligible for licensure;

(3) Applicants who withdraw a licensure application after applying for multiple types of licensure at the same time but then either elect to pursue only one type of license or the Board approves one type of license before completing the review of the other applications;

(4) Applicants who apply for temporary licenses but do not receive a temporary license due to the issuance of full licensure;

(5) Licensees who retire or request cancellation of their licenses within 90 days of paying the registration fee;

(6) Applicants or licensees who die within 90 days of having paid a fee;

(7) If the applicant or licensee has died more than 90 days after having paid a fee and a spouse or personal representative has submitted a written request for a refund demonstrating good cause for a pro-rated refund; or
(8) Applicants who withdraw their applications within 45 days of initial application.

Source Note: The provisions of this §175.5 adopted to be effective September 28, 2006, 31 TexReg 8093; amended to be effective September 10, 2009, 34 TexReg 6109; amended to be effective March 3, 2010, 35 TexReg 1735; amended to be effective December 4, 2011, 36 TexReg 8021; amended to be effective May 13, 2012, 37 TexReg 3408; amended to be effective May 6, 2013, 38 TexReg 2759-60.
TEXAS MEDICAL BOARD
BOARD RULES
Texas Administrative Code, Title 22, Part 9
Chapter 176. Health Care Liability Lawsuits and Settlements
§§176.1-176.9

§176.1. Definitions.
For the purposes of this chapter:

(1) "Health care liability claim" means a cause of action against a licensee for treatment, lack of treatment, or other claimed departure from accepted standards of medical or health care or safety that proximately results in injury to or death of a patient, whether the patient's claim or cause of action sounds in tort or contract. This definition is consistent with Texas Civil Practices and Remedies Code §74.001(a)(13) (relating to medical liability).

(2) "Complaint" means a petition or complaint filed as a lawsuit on a health care liability claim.

(3) "Settlement" means:
   (A) a payment made by or on behalf of a licensee on a health care liability claim on which no lawsuit has been filed;
   (B) an agreement to settle a lawsuit on a health care liability claim for a specified amount to be paid by or on behalf of a licensee;
   (C) a dismissal or non-suit of a lawsuit on a health care liability claim with no payment; and
   (D) a final judgment in a lawsuit on a health care liability claim entered by the trial court.

(4) "Insurer" means any entity that provides health care liability coverage to a licensee and is not limited to insurance companies that are regulated by the Texas Department of Insurance.

(5) "Nonadmitted insurer" means an insurance company that is not admitted to do business in Texas, does business on a surplus lines basis, and is not otherwise subject to regulation by the Texas Department of Insurance.

(6) "Physician" means any person licensed to practice medicine in this state, including interns, residents, physicians acting as supervising physicians, on-call physicians, consulting physicians, and physicians who administer, read, or interpret laboratory tests, x-rays, and other diagnostic studies.

Source Note: The provisions of this §176.1 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314; amended to be effective May 17, 2015, 40 TexReg 2534

§176.2. Reporting Responsibilities.
(a) The reporting form set out in §176.9 of this chapter must be completed and forwarded to the Texas Medical Board for each defendant licensee against whom a health care liability complaint has been filed or a settlement has been made.

(b) The failure to report under this section may result in disciplinary action, but shall not be used to deny the licensee's registration permit.

Source Note: The provisions of this §176.2 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314.

§176.3. Separate Reports Required and Identifying Information.
One separate report shall be filed for each defendant insured licensee. When Part II is filed, it shall be accompanied by the completed Part I.

Source Note: The provisions of this §176.3 adopted to be effective January 8, 2004, 29 TexReg 97.

§176.4. Timeframes and Attachments.
(a) Part I of the form, reporting the filing of a lawsuit, shall be filed not later than the 30th day after

(1) An insurer shall report this information, as required by TEX. OCC. CODE §160.052(a).

(2) A licensee is ultimately responsible for assuring that this information is reported to the board, as required by TEX. OCC. CODE §160.052(b). The licensee shall report the required information if:
   (A) the licensee does not carry professional liability insurance as described in Chapter 1901 of the Texas Insurance Code;
   (B) is not covered by professional liability insurance;
   (C) is insured by a nonadmitted carrier;
   (D) is insured by any other entity providing medical liability coverage and the licensee has reason to know that the entity is not timely reporting the required information.

(3) In addition, as part of the registration process, each licensee shall report:
   (A) the name and address of any entity that provides the licensee coverage for health care liability claims;
   (B) any health care liability lawsuits that have been filed since the last registration, including the date that the licensee was served with the lawsuit, the cause number, court, and county of suit;
   (C) any settlements of health care liability claims or lawsuits that have been made since the last registration, including the date of the settlement, the amount paid by or on behalf of the licensee, and, if a lawsuit had been filed on the claim, the cause number, court, and county of suit.

(b) The failure to report under this section may result in disciplinary action, but shall not be used to deny the licensee's registration permit.

Source Note: The provisions of this §176.3 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314.
receipt of a complaint filed in a lawsuit against the licensee. A copy of the complaint and any expert report filed under Texas Civil Practices and Remedies Code Section 74.351, must be attached. If the expert report is not filed with the Court at the time the lawsuit is filed, the expert report shall be filed with the board, together with an updated Part I of the form, not later than the 30th day after receipt of the expert report.

(b) Part II of the form, reporting the settlement of a health care liability claim, shall be filed not later than the 30th day after the date of settlement of a health care liability claim, whether or not a lawsuit has been filed.

Source Note: The provisions of this §176.4 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314.

§176.5. Alternate Reporting Formats.
(a) The information may be reported either on the reporting form set out in Section 176.9 of this chapter or in an alternate format.
(b) If an alternate format is used, the information must include at least the information requested in the reporting forms and must be legible.
(c) If an alternate format is used for Part II of the reporting form and a lawsuit has been filed on the health care liability claim, there must be enough identification data provided to enable board staff to match the report to the original report of the lawsuit. The data required to accomplish this include:
   (1) name and license number of the defendant licensee;
   (2) name of plaintiff;
   (3) cause number;
   (4) court; and
   (5) county of suit.
(d) A court order or settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the report to the original report of the lawsuit. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

Source Note: The provisions of this §176.5 adopted to be effective January 8, 2004, 29 TexReg 97.

§176.6. Penalty.
Failure by a licensed insurer to report under this chapter shall be referred to the Texas Department of Insurance. Sanctions under Chapter 82 of the Texas Insurance Code, may be imposed for failure to report.

Source Note: The provisions of this §176.6 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314.

§176.7. Claims not Required to be Reported.
(a) Examples of claims that are not required to be reported under this chapter, but which may be reported, include the following:
   (1) product liability claims (i.e. where a licensee invented a medical device that may have injured a patient but the licensee has had no personal physician-patient relationship with the specific patient claiming injury by the device);
   (2) antitrust allegations;
   (3) allegations involving improper peer review activities;
   (4) civil rights violations; and
   (5) allegations of liability for injuries occurring on a licensee's property, but not involving a breach of duty in the physician-patient relationship (i.e. slip and fall accidents).
(b) Claims that are not required to be reported under this chapter may be voluntarily reported pursuant to the provision of the Medical Practice Act, TEX. OCC. CODE, Title 3, Subtitle B.

Source Note: The provisions of this §176.7 adopted to be effective January 8, 2004, 29 TexReg 97.

(a) In accordance with Section 164.201 of the Act, the board shall review the medical competency of a licensee against whom three or more expert reports under Texas Civil Practices and Remedies Code Section 74.351, have been filed in three separate lawsuits within a five-year period in the same manner as if a complaint against the licensee had been made to the board under Section 154.051.
(b) The board shall also review the medical competency of a licensee if three or more separate lawsuits and/or settlements are reported to the board based on health care liability claims within a five-year period in the same manner as if a complaint against the licensee had been made to the board under Section 154.051.

Source Note: The provisions of this §176.8 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314.

§176.9. Reporting Form.
The reporting form shall be as follows.
HEALTH CARE LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT LICENSEE.

PART I. COMPLETE FOR ANY COMPLAINT FILED IN A LAWSUIT.
Attach a copy of the Complaint and Expert Report. If an Expert Report is not filed with the Court at the time the lawsuit is filed, the Expert Report shall be filed with the Board within 30 days after it is received.

1. Name and address of insurer:________________________________________________________

2. Defendant Licensee:_______________________________________________________________
   License number: _________________________________________________________________

3. Plaintiff's name:_______________________________________________________________

4. Policy number: _________________________________________________________________

5. Date claim reported to insurer/self-insured licensee:_________________________________

6. Cause No. Court County of Suit
   ___________________________   ___________________________
   ___________________________   ___________________________

7. Initial reserve amount after investigation: __________________________________________
   (If a reserve is not determined within 30 days, report this data within 30 days after determination.)

   __________________________________________________

Person completing this report number Phone

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PART II. COMPLETE UPON SETTLEMENT OF THE CLAIM.
Attach a copy of any Court Order or Settlement Agreement. "Settlement" is defined in 22 TAC §176.1(3), and includes payment on a claim on which a lawsuit has not been filed and dismissal, settlement, or judgment in a lawsuit that is based on a health care liability claim.

8. Date of Settlement: _______________________________________________________________

9. Type of Settlement: (1) Payment or agreement to pay a claim or lawsuit

(2) Judgment in a lawsuit after trial

(3) Dismissal or Non-suit of a Lawsuit

(4) Other (please specify)

______________________________________________________________________________

10. Amount of indemnity agreed upon or ordered on behalf of this defendant: $_____________.

Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: $100,000/3)

11. Appeal, if known: _____ Yes _____ No. If yes, which party: ______

______________________________________________________________________________

Person completing this report number Phone

Source Note: The provisions of this §176.9 adopted to be effective January 8, 2004, 29 TexReg 97; amended to be effective September 20, 2007, 32 TexReg 6314.
§177.1 Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Act--The Texas Medical Practice Act, Texas Occupations Code Annotated, Title 3 Subtitle B.

(2) Actively engaged in the practice of medicine--The physician on a full-time basis is engaged in diagnosing, treating or offering to treat any mental or physical disease or disorder or any physical deformity or injury or performing such actions with respect to individual patients for compensation and shall include clinical medical research, the practice of clinical investigative medicine, the supervision and training of medical students or residents in a teaching facility or program approved by the Liaison Committee on Medical Education of the American Medical Association, the American Osteopathic Association or the Accreditation Council for Graduate Medical Education, and professional managerial, administrative, or supervisory activities related to the practice of medicine or the delivery of health care services. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(3) Board--Texas Medical Board.

(4) Board of Directors--The board of the health organization whether referred to as the board of directors, the board of trustees or other title.

(5) Certification by the Board--In accordance with Chapter 162, Texas Occupations Code Annotated, the Board shall certify a health organization as a nonprofit health organization; as a migrant, community, or homeless health center; or as a federally qualified health center.

(6) Chief Executive Officer--The officer of the health organization authorized in the articles of incorporation, the bylaws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which such officer may be designated by the health organization.

(7) Director--A member of a health organization's board of directors whether referred to as a director, trustee or other title.

(8) Member--A member of the health organization.

(9) Health Organization--An applicant for or holder of certification from the Texas Medical Board under the Act, §162.001(b) and (c).

(10) Rules--The rules, 22 Texas Administrative Code Chapters 161 - 200, promulgated by the Texas Medical Board pursuant to the Act.

(11) Supplier--

(A) A physician retained to provide medical services to or on behalf of the health organization; and

(B) any other person providing or anticipated to provide services or supplies to or on behalf of the health organization in excess of $10,000 during a twelve-month period.

Source Note: The provisions of this §177.1 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective March 8, 2001, 26 TexReg 1864; amended to be effective July 4, 2004, 29 TexReg 6089; amended to be effective March 16, 2008, 33 TexReg 2025.
§177.2. Initial Certification of 162.001(b) Health Organizations.

Any health organization meeting the qualifications specified in §177.3 of this title (relating to Qualifications for Certification as a 162.001(b) Health Organization) may seek certification by the board under the Act, §162.001(b), by the submission of an application as provided in §177.4 of this title (relating to Applications for Certification as a 162.001(b) Health Organization).

Source Note: The provisions of this §177.2 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective March 8, 2001, 26 TexReg 1864; amended to be effective July 4, 2004, 29 TexReg 6089.

§177.3. Qualifications for Certification as a 162.001(b) Health Organization.

A 162.001(b) health organization meeting the following qualifications shall be certified by the board:

1. the health organization is formed solely by persons licensed by the board;
2. the health organization is a non-profit corporation registered in Texas as a domestic corporation under the provisions of Bus. Org. Code Chapter 22;
3. the board of directors of the health organization consists solely of persons licensed by the board and actively engaged in the practice of medicine without restrictions on their Texas medical licenses;
4. 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; and
5. the health organization makes application, submits reports, pays fees and otherwise complies with the provisions of this chapter.

Source Note: The provisions of this §177.3 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective July 4, 2004, 29 TexReg 6089; amended to be effective March 16, 2008, 33 TexReg 2025.

§177.4. Applications for Certification as a 162.001(b) Health Organization.

A health organization seeking certification under §162.001(b) of the Act shall submit an application to the board, to the attention of the Non-Profits department, on a form approved by the board. The application shall include:

1. Initial Identification Statement. A statement signed and verified by the chief executive officer:
   A. indicating the name and mailing address of the health organization;
   B. indicating the names and mailing addresses of all members or that there are no members;
   C. indicating the names and mailing addresses of all officers; and
   D. indicating the names and mailing addresses of all directors.

2. Initial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation of the health organization and attaching a copy of the current by-laws of the health organization including provisions that:
   A. the health organization is organized for any or all of the following purposes:
      i. the carrying out of scientific research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, or related areas;
      ii. the supporting of medical education in medical schools through grants and scholarships;
      iii. the improving and developing of the abilities of individuals and institutions studying, teaching, and practicing medicine;
      iv. the delivery of health care to the public;
      v. the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community.
   B. the physician(s) organizing and incorporating the health organization shall select the initial board of directors consistent with the mission, goals, and purposes of the health organization;
   C. the by-laws of the health organization shall be interpreted in a manner that reserves to the health organization through its retained physicians the sole authority to engage in the practice of medicine and reserves to the health organization through its board of directors the sole authority to direct the medical, professional, and ethical aspects of the practice of medicine;
   D. each director is required to immediately report to the board any action or event which such director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules;
(E) each director is required to individually disclose to the member(s), if any, and to the board of directors (at the times of nomination and appointment) and to the board (at the times of initial application and biennial reports) the identity of each financial relationship known to such director, if any, which such director has with any member, any other director, any supplier of the health organization or any affiliate of any member, other director, or supplier of the health organization, and to provide a concise explanation of the nature of each such financial relationship; and

(F) the termination of the retention of any physician to provide medical services on behalf of the health organization during such physician's term of retention may be accomplished only by the board of directors or its physician designee(s) and such termination shall be subject to due process procedures adopted by the board of directors or its physician designee(s) or provided by the retention agreement between the health organization and the subject physician.

(3) Initial Director Statements. Statements signed and verified by each current director indicating that:

(A) such director is licensed by the board;
(B) such director is actively engaged in the practice of medicine and has no restrictions on his or her Texas medical license;
(C) such director will, as a director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;
(D) such director will, as a director, exercise best efforts to cause the health organization to comply with all relevant provisions of the Act and the Rules;
(E) such director will, as a director, immediately report to the board any action or event which such director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules; and

(F) such director has disclosed within such director's statement the identity of all of such director's financial relationships, if any, of the type described in paragraph (2)(E) of this subsection and provided a concise explanation of the nature of each such financial relationship within such director's statement.

(4) Initial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the health organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) Initial Fee Payment. A fee in the amount and form specified by §175.1 of this title (relating to Application Fees).

Source Note: The provisions of this §177.4 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective March 8, 2001, 26 TexReg 1864; amended to be effective July 4, 2004, 29 TexReg 6089; amended to be effective March 16, 2008, 33 TexReg 2025.

§177.5. Special Requirements for 162.001(b) Health Organizations.

(a) In addition to the general by-law requirements set forth herein for health organizations seeking certification under §162.001(b) of the Act, any health organization in which a member is either a person who is not a physician actively engaged in the practice of medicine or an entity or organization that is not wholly owned and controlled by physicians actively engaged in the practice of medicine must comply with the following requirement:

(1) All credentialing, quality assurance, utilization review and peer review policies shall be made exclusively by the board of directors; however, following consultation with the board of directors, the member(s) may retain the right to approve, or in the case of a health organization seeking to obtain or maintain tax exempt status the right to make, any financial decision of the health organization including, but not limited to, decisions regarding capital and operating budgets, physician compensation and benefits, expenditures of monies, and managed care contracts in which the health organization is at financial risk, the substance of which requirements shall be provided for in the by-laws of the health organization.

(2) Subsequent to the appointment of the initial board of directors, a member may not appoint or elect any director without the approval of at least a majority of the board of directors unless required by law including requirements to obtain or maintain tax exemption.

(3) Without the approval of at least a majority of the board of directors, the member may not unilaterally amend the bylaws of the health organization unless required by law including requirements to obtain or maintain tax exemption.

(b) The board of directors for the organization must develop policies and the organization must adopt, maintain, and enforce policies to ensure that physicians employed by the organization exercise independent medical judgment when providing care to patients. The policies must include policies relating to:
(1) credentialing and privileging;
(2) quality assurance;
(3) utilization review; and
(4) peer review.

(c) A health organization may not interfere with, control, or otherwise direct a physician's professional judgment in violation of the Act, Board rules, or any other provision of law. The health organization’s policies must reserve the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization. A physician retains independent medical judgment and discretion in providing and supervising care to patients. A health organization may not discipline a physician for reasonably advocating for patient care.

(d) The requirements set out in Texas Occupations Code, Chapter 162, Subchapter A, may not be voided or waived by contract. However, a member of a health organization may establish ethical and religious directives and a physician may contractually agree to comply with those directives.

Source Note: The provisions of this §177.5 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective July 4, 2004, 29 TexReg 6089; amended to be effective July 4, 2012, 37 TexReg 4928

§177.6. Biennial Reports for 162.001(b) Health Organizations.
Each health organization certified under the Act, §162.001(b), shall file with the board a biennial report in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year, and the biennial report shall include:

(1) Biennial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the health organization;
(B) indicating the names and mailing addresses of all members or that there are no members;
(C) indicating the names and mailing addresses of all officers;
(D) indicating the names and mailing addresses of all directors; and
(E) disclosing any changes in the composition of the board of directors since the last biennial report.

(2) Biennial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation and by-laws of the health organization if not already on file with the board and indicating:

(A) whether or not the by-laws or articles of incorporation of the health organization have been revised since the last biennial report;
(B) whether or not such revisions, if any, were recommended or approved by the board of directors; and
(C) a concise explanation of such revisions, if any.

(3) Biennial Director Statements. Statements signed and verified by each current director indicating that:

(A) such director is licensed by the board;
(B) such director is actively engaged in the practice of medicine and has no restrictions on his or her Texas medical license;
(C) such director will, as a director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;
(D) such director will, as a director, exercise best efforts to cause the health organization to comply with all relevant provisions of the Act and the Rules;
(E) such director will, as a director, immediately report to the board any action or event which such director reasonably and in good faith believes constitutes a violation or attempted violation of such Act or the Rules; and
(F) such director has disclosed within such director's statement the identity of all of such director’s financial relationships, if any, of the type described in §177.4(2)(E) of this title (relating to Applications for Certification as a 162.001(b) Health Organization) and provided a concise explanation of the nature of each such financial relationship within such director's statement.

(4) Biennial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the Health Organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) Biennial Fee Payment. A fee in the amount and form specified by §175.2 of this title (relating to Registration and Renewal Fees).

Source Note: The provisions of this §177.6 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective March 8, 2001, 26 TexReg 1864; amended to be effective July 4, 2004, 29 TexReg 6089; amended to be effective March 16, 2008, 33 TexReg 2025.
§177.7. Establishment of Fees.
(a) Fees established pursuant to §153.011 and §153.051 of the Act relating to initial certification, recertification, and late applications for recertification are set forth under Chapter 175 of this title (relating to Fees, Penalties, and Applications).

(b) In addition to all other requirements for continued certification under the Act, §162.001(b), if the health organization is more than 30 days late in submitting their completed biennial report and biennial fee as specified in §177.6 of this title (relating to Biennial Reports for 162.001(b) Health Organizations), the health organization will be required to pay a late fee penalty at the time of submission of their late biennial report in addition to the biennial fee in the form of a check or money order payable to the board.

(c) Fees shall not be refundable.

Source Note: The provisions of this §177.7 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective March 8, 2001, 26 TexReg 1864; amended to be effective July 4, 2004, 29 TexReg 6089.

§177.8. Failure to Submit Reports or Fees for 162.001(b) Health Organizations.
(a) The failure of a health organization seeking certification under the Act, §162.001(b), and the Rules to submit any required fee shall be grounds for the board to stop the processing of the application for certification and to deny the application.

(b) The failure of a health organization which is certified under the Act, §162.001(b), and the Rules to timely submit an accurate biennial report along with any required fee within 90 days of its due date may result in decertification at the next board meeting of the board.

(c) If a health organization has been decertified, it will be required to submit a new application for certification as a nonprofit health organization under §162.001(b) of the Act and applicable fee with the application for certification.

Source Note: The provisions of this §177.8 adopted to be effective January 12, 1996, 21 TexReg 107; amended to be effective March 8, 2001, 26 TexReg 1864; amended to be effective July 4, 2004, 29 TexReg 6089.

§177.9. Migrant, Community or Homeless Health Centers.
(a) Section 162.001(c), non-profit health organizations. Migrant, community, or homeless health centers organized and operated under the authority of and in compliance with 42 U.S.C. §254b or §254c, or federally qualified health centers under 42 U.S.C. §1396(d)(1)(2)(B), that are non-profit corporations under Bus. Org. Code, Chapter 22, and the Internal Revenue Code, §501(c)(3), and who wish to obtain approval and certification to contract with and employ physicians pursuant to the Medical Practice Act, §162.001(c), Texas Occupations Code Annotated, Title 3 Subtitle B, may do so by submitting an application on a form approved by the board to the permits department of the board with the following attached documentation:

(1) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(2) a copy of documentation verifying that a determination has been made that the organization is tax exempt under the Internal Revenue Code pursuant to §501(c)(3); and,

(3) a copy of documentation verifying that the organization is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §254b or §254c, or is a federally qualified health center under 42 U.S.C. §1396(d)(1)(2)(B).

(b) Initial Fee Payment. A fee in the amount and form specified by board rules.

(c) Biennial reports. Each organization approved and certified under the Act, §162.001(c), shall file with the board a completed biennial report on a board-approved form that contains updated and current information which would otherwise be required for initial approval and certification to contract with and employ physicians. The biennial report shall be submitted in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year. Failure to timely submit a required biennial report shall be grounds for denial of recertification to contract with and employ physicians pursuant to §177.10(e) of this chapter (relating to Review of Applications and Reports).

(d) Biennial Fee Payment. There is no biennial fee for health organizations certified pursuant to §162.001(c) of the Act.

Source Note: The provisions of this §177.9 adopted to be effective July 4, 2004, 29 TexReg 6089; amended to be effective March 16, 2008, 33 TexReg 2025.

§177.10. Review of Applications and Reports.
(a) Applications for certification and biennial reports under this section shall be initially reviewed by the permits and legal staffs of the board or other designees of the board to determine compliance with the requirements for certification.

(b) If an application for certification is insufficient or there is any other basis for denial, the health organization will be notified in writing that unless it
takes corrective action or remedies the insufficiency, the health organization's application will be denied. The health organization shall have 60 days from the date of the mailing by the board to submit the corrected application.

(c) If a biennial report is insufficient or there is any other basis for decertification, the health organization will be notified in writing that unless it takes corrective action, the health organization will be recommended for decertification at the next meeting of the board. The health organization shall have 60 days from the date of the mailing by the board to submit the corrected biennial report.

(d) If upon review of the application or biennial report and any supporting documentation, the applying or reporting appears to be in compliance for certification or continued certification, such certification or recertification shall be made upon approval of the board or a committee of the board.

(e) In the event that such compliance cannot be determined or is otherwise in question for any reason including complaints of actions by the health organization in contravention of this section or the Act, including but not limited to failure to provide due process or evidence of undue influence on the practice of medicine, the application or statement and any supporting documentation shall be submitted to the board or a committee of the board for further review, investigation, approval, denial, or decertification.

Source Note: The provisions of this §177.10 adopted to be effective July 4, 2004, 29 TexReg 6089.

§177.11. Denial of Certification.
Subject to due process procedures, the board may refuse to certify any health organization making application to the board if in the board's determination the applying health organization is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act.

Source Note: The provisions of this §177.11 adopted to be effective July 4, 2004, 29 TexReg 6089.

§177.12. Revocation of Certification.
(a) In the event that the board receives information about a health organization including complaints of actions by the Health Organization in contravention of this chapter or the Act, including but not limited to failure to provide due process or evidence of undue influence on the practice of medicine information, such information shall be referred to the board's investigation department.

(b) Subject to due process procedures, the board may impose an administrative penalty against a health organization under Chapter 165 of the Act or revoke a certification if in the board's determination the health organization is established, organized, or operated in contravention of or with the intent to circumvent any of the provisions of the Act or the board's rules.

(c) Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to revocation of certification where applicable. If the provisions of Chapter 187 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §177.12 adopted to be effective July 4, 2004, 29 TexReg 6089; amended to be effective December 22, 2011, 36 TexReg 8548

§177.13. Complaint Procedure Notification.
(a) Method of Notification. For the purpose of directing complaints to the board regarding health-care delivery by licensees of the board practicing through non-profit health organizations certified pursuant to the Medical Practice Act, §162.001, the non-profit health organizations which are certified or otherwise approved pursuant to the Medical Practice Act, §162.001(b) and (c), shall provide notification to the public of the name, mailing address, and telephone number of the board by displaying in a prominent location at each site of health-care delivery and readily visible to patients or potential patients, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules:
Attached Graphic
(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules:
Attached Graphic

Source Note: The provisions of this §177.13 adopted to be effective July 4, 2004, 29 TexReg 6089; amended to be effective March 16, 2008, 33 TexReg 2025; amended to be effective September 19, 2010, 35 TexReg 8353

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§177.14. Therapeutic Optometrists
(a) Pursuant to §162.051 of the Act, a physician and an optometrist or therapeutic optometrist, may, organize, jointly own, and manage any legal entity, including a partnership, limited partnership, and limited liability company.
(b) The authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

Source Note: The provisions of this §177.14 adopted to be effective December 22, 2011, 36 TexReg 8548

§177.15. Podiatrists
(a) Pursuant to §§22.056, 152.055, and 301.012 of the Business Organizations Code, a physician and a podiatrist may jointly form and own a health organization corporation, partnership, professional association, or professional limited liability company.
(b) The authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

Source Note: The provisions of this §177.15 adopted to be effective December 22, 2011, 36 TexReg 8548

§177.16. Physician Assistants
(a) Corporations.
(1) Pursuant to §22.0561 of the Business Organizations Code, a physician and a physician assistant may form a corporation to perform a professional service that falls within the scope of practice of those practitioners.
(2) A physician assistant may not:
   (A) be an officer of the corporation;
   (B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation;
   (C) direct the activities of a physician in the practice of medicine;
   (D) interfere with supervision of physician assistants by a physician owner or supervising physician;
   (E) own individually or in combination with other physician assistants more than a minority ownership interest in an entity created under this subsection; or
   (F) have an ownership interested that equals or exceeds the ownership interest of any physician owner.
(b) Partnerships.
(1) Pursuant to §152.0551 of the Business Organizations Code, physicians and physician assistants may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.
(2) A physician assistant may not:
   (A) be a general partner or participate in the management of the partnership;
   (B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership;
   (C) direct the activities of a physician in the practice of medicine;
   (D) interfere with supervision of physician assistants by a physician owner or supervising physician;
   (E) individually or in combination with other physician assistants have more than a minority ownership interest in the professional association or professional limited liability company; or
   (F) have an ownership interested that equals or exceeds the ownership interest of any physician owner.
(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.
(c) Professional Associations and Professional Limited Liability Companies.
(1) Pursuant to §301.012 of the Business Organizations Code, physicians and physician assistants may form and own a professional association or professional limited liability company to perform a professional service that falls within the scope of practice of those practitioners.
(2) A physician assistant may not:
   (A) be an officer in the professional association or professional limited liability company;
   (B) contract with or employ a physician to be a supervising physician of the physician assistant or
of any physician in the professional association or professional limited liability company;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the partnership; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(d) All physicians and physician assistants who jointly own an entity must annually submit a joint form to the Board providing date of formation of the entity, each licensee's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title (relating to Fees and Penalties).

(e) Physician assistants who solely own an entity or jointly own an entity with a non-physician must annually submit a form to the Board providing the date of formation of the entity, each person's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title.

(f) Restrictions on ownership interests, shall apply only to those entities formed on or after June 17, 2011. However, if the ownership interests of an entity changes, or an entity contracts with a new supervising physician to provide services, then the restrictions on ownership shall apply to the entity.

(g) This section shall not apply to pain management clinics owned and operated pursuant to Chapter 195 of this title (relating to Pain Management Clinics).

Source Note: The provisions of this §177.16 adopted to be effective December 22, 2011, 36 TexReg 8548; amended to be effective March 7, 2012, 37 TexReg 1514; amended to be effective January 20, 2014, 39 TexReg 282.
§177.17. Exceptions to Corporate Practice of Medicine Doctrine

(a) Corporate Practice of Medicine Doctrine. The corporate practice of medicine doctrine is a legal doctrine, which generally prohibits corporations, entities or non-physicians from practicing medicine. The prohibition on the corporate practice of medicine is based on numerous provisions of the Medical Practice Act, including §§155.001, 155.003, 157.001, 164.052(a)(8), (13), and 165.156. Section 165.156 of the Medical Practice Act makes it unlawful for any individual, partnership, trust, association or corporation by use of any letters, words, or terms, as an affix on stationery or advertisements or in any other manner, to indicate the individual, partnership, trust, association or corporation is entitled to practice medicine if the individual or entity is not licensed to do so.

(b) Applicability. Upon satisfaction of the requirements of their physician employment enabling statute and to the extent authorized by their enabling statutes, the following entities may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at:

1. A hospital that primarily provides medical care to children younger than 18 years of age as provided under §311.061 of the Health and Safety Code, and that:
   - (A) is owned or operated by a nonprofit fraternal organization;
   - (B) has a governing body the majority of members of which belong to a nonprofit fraternal organization.
2. A hospital, including health care facilities owned or operated by the hospital, that is:
   - (A) designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1395i-4;
   - (B) a sole community hospital, as that term is defined by 42 U.S.C. §1395ww(d)(5)(D)(iii); or
   - (C) located in a county with a population of 50,000 or less.
3. Baylor County Hospital District (Texas Special District Code, §1005.063)
4. Bexar County Hospital District (Texas Health and Safety Code, §281.0283)
5. Burleson County Hospital District (Texas Special District Code, §1010.059)
6. City of Amarillo Hospital District (Texas Special District Code, §1001.060)
7. Dallam-Hartley Counties Hospital District (Texas Special District Code, §1018.061)
8. Dallas County Hospital District (Texas Health and Safety Code, §281.0282)
9. El Paso County Hospital District (Health and Safety Code, §281.0285)
10. Frio Hospital District (Texas Special District Code, §1030.063)
11. Harris County Hospital District (Texas Health and Safety Code, §281.0283)
12. Jackson County Hospital District (Texas Special District Code, §1046.062)
13. Martin County Hospital District (HB 4730, 81st session)
14. Matagorda County Hospital District (Texas Special District Code, §1057.057)
15. Mitchell County Hospital District (Texas Special District Code, §1062.060)
16. Moore County Hospital District (Texas Special District Code, §1005.063)
17. North Wheeler County Hospital District (Texas Special District Code, §1083.062)
18. Ochiltree County Hospital District (Texas Special District Code, §1071.062)
19. Travis County Healthcare District (Texas Health and Safety Code, §281.0281)
20. Commissioners court of a county with a population of 3.3 million or more for the purpose of providing health care services to inmates in the custody of the sheriff
22. Private non-profit medical school (Texas Occupations Code, Chapter 162)
23. School districts (Texas Education Code, §33.208 and §38.016)
24. State institutions:
   - (A) academic institution as defined under §172.8 of this title (relating to Faculty Temporary Permits);
   - (B) state hospitals as defined under Chapter 552 of the Texas Health and Safety Code; and
   - (C) prisons.
25. Rural health clinics operated in accordance with 42CFR491.8 of the Rural Health Services Clinic Act;
26. Angleton-Danbury Hospital District (Texas Special District Code, §1002.061); and
27. Nacogdoches County Hospital District (Texas Special District Code, §1069.0605).

(c) Reports to the Board. To the extent required by their enabling statutes, entities permitted to hire
physicians, shall appoint or otherwise ensure that a physician is selected to be the chief medical officer or member of a hospital district medical executive board, and the chief medical officer or members of the hospital district medical executive board shall report to the Texas Medical Board any action or event that they reasonably and in good faith believe constitutes a compromise of the independent medical judgment of a physician in caring for a patient. The Texas Medical Board may provide such reports to the Department of State Health Service and other regulatory agencies as necessary.

(d) Discontinuation of Eligibility. If an entity no longer meets the criteria to employ physicians, the entity must change its contractual relationships with physicians in order to establish an independent contractor relationship with the physicians.

(e) Professional Liability Coverage. If a hospital provides professional liability coverage for a physician employed by the hospital, the physician shall have the following rights, to the extent required by the hospital's enabling statute:

(1) the physician may participate in the selection of the professional liability coverage;
(2) the physician has the right to an independent defense if the physician pays for that independent defense; and
(3) the physician shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

Source Note: The provisions of this §177.17 adopted to be effective December 22, 2011, 36 TexReg 854822; amended to be effective March 7, 2012, 37 TexReg 1514; amended to be effective January 27, 2013, 38 TexReg 294; amended to be effective January 20, 2014, 39 TexReg 282
NOTICE CONCERNING COMPLAINTS REGARDING NON-PROFIT HEALTH ORGANIZATIONS

The provision of medical care at this location is through a non-profit health organization which has been approved and certified by the Texas Medical Board. Complaints about the delivery of medical care through this organization and/or its physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address:

Texas Medical Board  
Attention: Investigations  
333 Guadalupe, Tower 3, Suite 610  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number:

1-800-201-9353

For more information, please visit our web site at www.tmb.state.tx.us.

(c) Approved Spanish Notification Statement.
The following notification statement in Spanish is approved by the board for purposes of these rules:

AVISO SOBRE QUEJAS DE ORGANIZACIONES MÉDICAS SIN FINES DE LUCRO

La atención médica en esta instalación se brinda a través de una organización médica sin fines de lucro, aprobada y certificada por la Junta de Médicos de Texas. Las quejas sobre la atención médica prestada por esta organización y/o sus médicos, así como por otros profesionales acreditados e inscritos en la Junta de Examinadores Médicos del Estado de Texas, incluyendo asistentes de médicos, practicantes de acupuntura, y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas:

Texas Medical Board  
Attention: Investigations  
333 Guadalupe, Tower 3, Suite 610  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018

Si necesita ayuda para presentar una queja, llame al:

1-800-201-9353

Para más información, visite nuestro sitio web en www.tmb.state.tx.us.
§178.1. Purpose and Scope.
(a) Purpose. Pursuant to §§154.051 - 154.058 of the Medical Practice Act, the Board is authorized to adopt rules relating to complaint procedures. The purpose of this chapter is to provide a system of procedures for the initiation, filing and appeals of complaints that will promote their just and efficient disposition.

(b) Scope. This chapter shall govern the initiation, filing, referral, resolution and appeal of all complaints before the board.

Source Note: The provisions of this §178.1 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 20, 2009, 34 TexReg 338

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

(1) Act--Title 3, Subtitle B, Chapter 151-165, Texas Occupations Code Annotated for physicians; Title 3, Subtitle C, Chapter. 204, Texas Occupations Code Annotated for physician assistants; Title 3 Subtitle C, Chapter 206, Texas Occupations Code Annotated for surgical assistants; and Title 3, Subtitle C, Chapter 205, Texas Occupations Code Annotated for acupuncturists.

(2) Address of record--The mailing address of each subject licensee as provided to the board pursuant to the Act.

(3) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.

(4) Baseless or unfounded--Not based on any evidence or fact.

(5) Board--The appointed members of the Texas Medical Board for physicians and surgical assistants, the Texas Physician Assistant Board for physicians assistants, and the Texas State Board of Acupuncture for acupuncturists.

(6) Complaint--Information provided to the board that alleges a violation of the Act.

(7) Complainant--Any person, including an individual, partnership, association, corporation, or other entity, who initiates a complaint with the board against a licensee. A complainant may be a patient, a family member of a patient, a health care professional, or any other person who has information regarding the possible violation of the Act.

(8) Jurisdictional--A matter over which the board has authority.

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

(10) Official Investigation--An investigation conducted by the agency of a complaint that, after preliminary investigation, has been determined to be jurisdictional and has been officially filed.

(11) Preliminary Investigation--An investigation conducted by the agency upon the initiation of a complaint to determine whether the complaint is jurisdictional and whether the complaint should be filed and an official investigation conducted.

(12) Subject licensee--The licensee against whom a complaint is filed.

Source Note: The provisions of this §178.2 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective December 4, 2011, 36 TexReg 8031

§178.3. Complaint Procedure Notification.
(a) Methods of Notification.

(1) Complaints against licensees. Pursuant to the Act, for the purpose of directing complaints to the board, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number of the board by one or more of the following methods:

(A) displaying in a prominent location at a licensee’s place of business, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement; or

(B) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point 12-pitch typewriter print on each bill for services by a licensee with no alterations, deletions, or additions to the language of the board-approved statement; or

(C) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch
typewriter print on each registration form, application, or written contract for services of a licensee with no alterations, deletions, or additions to the language of the board-approved statement.

(2) A private autopsy facility, as defined under §617A.001 of the Health and Safety Code, must post notice in a conspicuous place in a public area of the facility that substantially complies with the notice of subsection (b) of this section with included language on filing complaints against physicians who perform autopsy services.

(b) Approved English Notification Statement.

(1) Complaints against licensees. The following notification statement in English is approved by the board for purposes of these rules and the Act: NOTICE CONCERNING COMPLAINTS, Complaints about physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address: Texas Medical Board, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353. For more information, please visit our website at www.tmb.state.tx.us.

(2) Complaints against licensees that own or operate autopsy facilities. The following notification statement in Spanish is approved by the board for purposes of these rules and the Act: AVISO SOBRE LAS QUEJAS, Las quejas sobre personas que hacen autopsias, se pueden presentar en la siguiente dirección para ser investigadas: Texas Medical Board, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Si necesita ayuda para presentar una queja, llame al: 1-800-201-9353, Para obtener más información, visite nuestro sitio web en www.tmb.state.tx.us.

(c) Approved Spanish Notification Statement.

(1) Complaints against licensees. The following notification statement in Spanish is approved by the board for purposes of these rules and the Act: AVISO SOBRE LAS QUEJAS, Las quejas sobre médicos, así como sobre otros profesionales acreditados e inscritos del Consejo Médico de Tejas, incluyendo asistentes de médicos, practicantes de acupuntura y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas: Texas Medical Board, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Si necesita ayuda para presentar una queja, llame al: 1-800-201-9353, Para obtener más información, visite nuestro sitio web en www.tmb.state.tx.us.

(d) Figures 1 - 4 are samples of the type print referenced in subsection (a)(1) and (2) of this section.

Source Note: The provisions of this §178.3 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective December 4, 2011, 36 TexReg 8031; amended to be effective May 13, 2012, 37 TexReg 3409
NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address:

Texas Medical Board
Attention: Investigations
333 Guadalupe, Tower 3, Suite 610
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number:

1-800-201-9353

For more information please visit our website at

www.tmb.state.tx.us
NOTICE CONCERNING COMPLAINTS

Complaints about persons who perform autopsies may be reported for investigation at the following address:

Texas Medical Board  
Attention: Investigations  
333 Guadalupe, Tower 3, Suite 610  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number:

1-800-201-9353

For more information please visit our website at

www.tmb.state.tx.us

AVISO SOBRE LAS QUEJAS

Las quejas sobre personas que hacen autopsias, se pueden presentar en la siguiente dirección para ser investigadas:

Texas Medical Board  
Attention: Investigations  
333 Guadalupe, Tower 3, Suite 610  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018

Si necesita ayuda para presentar una queja, llame al:

1-800-201-9353

Para obtener más información, visite nuestro sitio web en

www.tmb.state.tx.us
§178.4. Complaint Initiation.
(a) A complainant may initiate a complaint by submitting the information concerning the complaint to the board. This information should include at a minimum:

1. The name and contact information of the complainant;
2. The name of the licensee against whom the complaint is filed;
3. The time and place of the alleged violation of the Act; and
4. If applicable, the name and birth date of the patient whom the physician has allegedly harmed.

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

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

(d) A peer review committee, licensee, and all other groups named in §§160.003, 204.208, 205.304, and 206.159 of the Act shall report relevant information to the board relating to acts of the licensee in this state if, in their opinion, that licensee poses a continuing threat to the public welfare through the licensee’s continued practice. The report shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based; and it shall be made to the board as soon as possible after the threat is identified and the relevant information can be assembled.

Section Note: The provisions of this §178.4 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective December 4, 2011, 36 TexReg 8031

§178.5. Preliminary Investigation of a Complaint.
(a) Once a complaint has been received by the board, agency staff shall conduct a preliminary investigation of the complaint within 45 days. If the complaint alleges a violation of the standard of care, the staff member conducting the preliminary investigation of the complaint shall be a licensed health care provider in Texas.

(b) As part of the preliminary investigation of each complaint, the following minimum additional evidence will be gathered:

1. The history of the subject licensee collected and maintained by the board; and
2. The history of the subject licensee maintained by the National Practitioner’s Data Bank.

(c) During this preliminary investigation, the agency staff may make reasonable efforts to contact the complainant concerning the complaint. Any additional information received from the complainant will be added to the information maintained on the complaint.

(d) During this preliminary investigation, the subject licensee may be given the opportunity to respond to the allegations. If the subject licensee is given this opportunity, the response must be received within the time prescribed by agency staff. Any additional information received from the subject licensee will be added to the information maintained on the complaint.

(e) At the conclusion of the preliminary investigation, agency staff shall determine whether a complaint is jurisdictional and whether there is probable cause to justify further investigation.

(f) If a complaint is determined to be nonjurisdictional, the complaint may be referred to another government agency for investigation.

(g) If a complaint is determined to be nonjurisdictional, the complainant will be notified of this decision.

Section Note: The provisions of this §178.5 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective December 4, 2011, 36 TexReg 8031

§178.6. Complaint Filing.
(a) If the preliminary investigation shows that a complaint is jurisdictional and that there is probable cause to justify further investigation, the complaint will be filed with the agency and an official investigation shall be conducted.

(b) Once a complaint has been filed, a priority will be assigned to the complaint as provided in Sec. 154.056(a)(1) of the Act.

(c) Once a complaint is filed, the subject licensee and the complainant will be notified of the filing of the complaint.

(d) After a complaint has been filed, the complaint will be investigated as provided in Chapter 179 of this title (relating to Investigations), to include the
appropriate referral to Expert Physician Reviewers, as provided in Chapter 182 of this title (relating to Use of Experts).

(e) Complaints received based on information and facts that have previously been or are currently being investigated will not warrant additional investigation.

Source Note: The provisions of this §178.6 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390.

§178.7. Complaint Resolution.

(a) After sufficient information and evidence has been gathered, a determination will be made as to whether the information and evidence gathered indicate that a violation of the Act has occurred.

(b) If the information and evidence gathered indicate that a violation of the Act has occurred, the investigation will be referred for an Informal Show Compliance and Settlement Conference (ISC). This hearing must be scheduled not later than the 180th day after the complaint has been filed, unless good cause is shown for scheduling the meeting after that date. Once the ISC is scheduled, the complaint shall be governed by Chapter 187 of this title (relating to Procedural Rules).

(c) If the information and evidence gathered is insufficient to support that a violation of the Act has occurred, the investigation will be referred to a disciplinary committee of the board for evaluation. If the disciplinary committee of the board determines there is insufficient evidence to support that a violation of the Act has occurred, the case will be recommended to the board for the dismissal of the complaint. If the board approves the disciplinary committee of the board’s recommendation, the complaint will be dismissed.

(d) If a complaint is dismissed, a letter shall be sent to the complainant explaining the reason for the dismissal.

(e) If the complaint is dismissed, a letter shall be sent to the address of record of the subject licensee informing him of the dismissal. The board may inform the subject licensee of any recommendations that may improve the subject licensee’s practice.

(f) If the complaint is determined to be baseless or unfounded, the complaint shall be dismissed and a letter shall be sent to the address of record of the subject licensee informing him that the complaint was dismissed due to the fact that it was baseless and unfounded.

Source Note: The provisions of this §178.7 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390.

§178.8. Appeals.

(a) Initiation. Following the receipt of the notice of dismissal of a complaint, the complainant may appeal the dismissal to the board. To be considered by the board, the appeal must:

(1) be in writing; and

(2) list the reason(s) for the appeal. The appeal should provide sufficient information to indicate that additional review is warranted.

(b) Review of an Appeal. Appeals will be considered by a disciplinary committee of the board. Upon review of an appeal, subject to the approval of the board, a disciplinary committee of the board may determine any of the following:

(1) The investigation should remain closed;

(2) Additional information needs to be obtained before a determination on the appeal can be made;

(3) Additional information needs to be obtained before a determination can be made as to whether a violation of the Act occurred; and

(4) The case should be referred to an ISC for a determination.

(c) Personal Appearances. The complainant has the right to personally appear before a disciplinary committee of the board. This appearance must be scheduled through agency staff. This appearance may be limited in time and scope by the chair of the disciplinary committee of the board that the appeal is before.

(d) Notice. The complainant shall be notified of the Board’s decision concerning the appeal.

(e) Appeals Limited. Only one appeal shall be allowed for each complaint.

Source Note: The provisions of this §178.8 adopted to be effective November 30, 2003, 28 TexReg 10489; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective June 29, 2006, 31 TexReg 5104.

§178.9 Statute of Limitations

(a) Standard of Care.

(1) The board may not consider or act on a complaint involving care provided more than seven years before the date on which the complaint is received by the board unless the care was provided to a minor. If the care was provided to a minor, the board may not consider or act on a complaint involving the care after the later of:

(A) the date the minor is 21 years of age; or
(B) the seventh anniversary of the date of care.

(2) Notwithstanding paragraph (1) of this subsection, a complaint previously investigated relating to an alleged standard of care violation that occurred more than seven years from the date a new complaint is filed with the board, may be considered by the board with a new complaint for the purpose of determining whether there is a pattern of practice violating the Act.

(3) The statute of limitations relating to standard of care violation shall only apply to licensees and not applicants for licensure.

(b) Other Violations. There is no statute of limitations for the filing of complaints in relation to any other violation including action by another state licensing entity or criminal conduct.

Source Note: The provisions of this §178.9 adopted to be effective December 4, 2011, 36 TexReg 8031
§179.1. Purpose and Scope.
(a) Purpose. Pursuant to §154.056 of the Medical Practice Act, the Board is authorized to adopt rules relating to the investigation of complaints filed with the Board. The purpose of this chapter is to provide a system of procedures for the investigation of jurisdictional complaints that will promote their just and efficient disposition.

(b) Scope. This chapter shall govern the investigation of all jurisdictional complaints before the board.

Source Note: The provisions of this §179.1 adopted to be effective November 30, 2003, 28 TexReg 10491; amended to be effective January 20, 2009, 34 TexReg 339.

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


(2) Address of record--The mailing address of each subject licensee as provided to the board pursuant to the Act.

(3) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.

(4) Agency representative--An investigator, other agency staff, board member, or agent of the agency.

(5) Baseless or unfounded--Not based on any evidence or fact.

(6) Board--The appointed members of the Texas Medical Board for physicians and surgical assistants, the Texas Physician Assistants Board for physicians assistants, and the Board of Acupuncture for acupuncturists.

(7) Complaint--Information provided to the board that alleges a violation of the Act.

(8) Complainant--Any person, including a partnership, association, corporation, or other entity, who files a complaint with the board against a licensee. A complainant may be a patient, a family member of a patient, a health care professional, or any other person who has information regarding the possible violation of the Act.

(9) Jurisdictional--A matter over which the board has the authority to investigate and act upon.

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

(11) Subject licensee--The licensee against whom a complaint is filed.

Source Note: The provisions of this §179.2 adopted to be effective November 30, 2003, 28 TexReg 10491; amended to be effective January 25, 2006, 31 TexReg 390.

§179.3. Confidentiality.
All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board shall be confidential as provided by the Medical Practice Act ("the Act"), Title 3 Subtitle B Tex. Occ. Code Ann. and no employee, agent, or member of the board may disclose information contained in such files except in the following circumstances:

(1) to the appropriate licensing authorities in other states, the District of Columbia, or a territory or country in which the physician is licensed or is applying for licensure;

(2) to a peer review committee considering a physician's application to obtain or retain privileges;

(3) to appropriate law enforcement agencies if the information is relevant to an active criminal investigation or if the investigative information indicates a crime may have been committed;

(4) to a health care entity upon receipt of written request, if there is a current complaint under active investigation that has been assigned by the executive director to a person authorized by the board to pursue legal action.

(5) to other persons if required during the course of the investigation;

(6) to other regulatory agencies as required by law; and

(7) a person who has provided a statement may receive a copy of the statement.

Source Note: The provisions of this §179.3 adopted to be effective November 30, 2003, 28 TexReg 10491;
amended to be effective January 25, 2006, 31 TexReg 390.

§179.4. Request for Information and Records from Physicians.
(a) Medical records. Upon the request by the board or board representatives, a licensee shall furnish to the board copies of medical records or the original records within a reasonable time period, as prescribed at the time of the request. "Reasonable time," as used in this section, shall mean fourteen calendar days or a shorter time if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed.

(b) Application for license renewal and registration permits. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal or registration permit, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of receipt of the board's request.

(c) Impaired licensees/applicants.
(1) Pursuant to §164.056 of the Medical Practice Act, the Board is required to adopt guidelines to enable the Board to evaluate circumstances in which a physician or an applicant may be required to submit to an examination for mental or physical heath conditions, alcohol and substance abuse, or professional behavior problems.

(2) A licensee shall report to the board if the licensee is aware of another licensee who poses a continuing threat to the public welfare because the said licensee is unable to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or a mental or physical condition.

(3) If the board has probable cause to believe that a licensee/applicant is impaired, the board shall require a licensee/applicant to submit to a mental and/or physical examination by a physician or physicians designated by the board. Under the Act, an impaired licensee/applicant is considered to be one who is unable to practice within his field with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:
(A) sworn statements from two people, willing to testify before the board, that a certain licensee/applicant is impaired;
(B) a sworn statement from a representative of the Texas Medical Association's or the Texas Osteopathic Medical Association's impaired physician program, stating that the representative is willing to testify before the board that a certain licensee/applicant is impaired;
(C) evidence that a licensee/applicant left a treatment program for alcohol or chemical dependency before a completion of that program;
(D) evidence that a licensee/applicant has engaged in the intemperate use of drugs or alcohol at a time and under circumstances that would lead a reasonable person to believe that the licensee is impaired;
(E) evidence of repeated arrests of a licensee/applicant for intoxication or drug use;
(F) evidence of recurring temporary commitments to a mental institution of a licensee/applicant;
(G) medical records showing that a licensee/applicant has an illness or condition that results in the inability to function properly in his or her practice; or
(H) actions or statements by a licensee/applicant at a hearing conducted by the Board that gives the Board reason to believe that the licensee has an impairment.

(4) Upon presentation to the Executive Director of probable cause, the Board authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination, the physician or physicians the Executive Director has approved to conduct such examinations, and the date by which the examination and the results are to be received by the Board.

(5) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the Board, through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(6) At the show cause hearing provided in for in paragraph (5) of this subsection, a panel of the Board's representatives shall determine whether the licensee/applicant shall submit to an evaluation or that the matter shall be closed with no examination required.
(A) At the hearing, the licensee/applicant and the licensee/applicant's attorney, if any, are entitled...
to present testimony and other evidence showing that the licensee/applicant should not be required to submit to the examination.

(B) If, after consideration of the evidence presented at the show cause hearing, the panel determines that the licensee/applicant shall submit to an examination, the Board's representatives shall, through its Executive Director, issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. A licensee is entitled to cross-examine an expert who offers testimony at hearing before the Board.

(C) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(D) The results of any Board-ordered mental or physical examination are confidential shall be presented to the Board under seal for it to take whatever action is deemed necessary and appropriate based on the results of the mental or physical examination. A licensee shall be provided the results of an examination and given the opportunity to provide a response at least 30 days before the Board takes action.

(7) In fulfilling its obligations under §164.056 of the Act, the Board shall refer the licensee/applicant to the most appropriate medical specialist for evaluation. The Board may not require a licensee/applicant to submit to an examination by a physician having a specialty specified by the Board unless medically indicated. The Board may not require a licensee/applicant to submit to an examination by a physician having a specialty specified by the Board unless medically indicated. The Board may not require a licensee/applicant to submit to an examination by a physician having a specialty specified by the Board unless medically indicated. The Board may not require a licensee/applicant to submit to a medical examination to be conducted an unreasonable distance from the person's home or place of business unless the licensee/applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(8) The guidelines adopted under this subsection do not impair or remove the Board's power to make an independent licensing or disciplinary decision unless a temporary suspension is convened.

(d) Prescription drugs and controlled substances. The board or its authorized representative shall have the power to inspect a licensee's inventory of prescription drugs and obtain samples of those substances, and to inspect and copy records of purchases and disposals of drugs, including those listed in the Texas Controlled Substances Act or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(e) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a physician or license holder of the board shall respond in writing to all written board requests for information within 10 days of receipt of such request. Failure to timely respond may be grounds for disciplinary action by the board.

Source Note: The provisions of this §179.4 adopted to be effective November 30, 2003, 28 TexReg 10491; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective January 20, 2009, 34 TexReg 339; amended to be effective November 29, 2009, 34 TexReg 8534; amended to be effective September 19, 2010, 35 TexReg 8354.

§179.5. Investigation of Professional Review Actions. A written report of a professional review action taken by a medical peer review committee or a health care entity provided to the board as required by §§160.002, 204.208, and 205.304 of the Tex. Occ. Code Ann., must contain the results and circumstances of the professional review action. Such results and circumstances shall include:

1. the specific basis for the professional review action, whether such action was directly related to care of individual patients; and
2. the specific limitations imposed upon the physician's clinical privileges, or upon the physician's membership in the professional society or association, and the duration of such limitations.

Source Note: The provisions of this §179.5 adopted to be effective November 30, 2003, 28 TexReg 10491.

§179.6. Time Limits.

(a) Each investigation shall be completed before the passage of the 180th day after the complaint has been filed and an official investigation opened, unless there is good cause as to why the investigation could not be completed within that time. Good cause shall include, but shall not be limited to:

1. the unavailability of pertinent documents that the agency has made all reasonable efforts to obtain;
2. the refusal of the subject licensee to cooperate during the course of the investigation;
3. the necessity of additional investigation as determined by the Board's internal Quality Assurance Committee or DPRC;
4. delinquency in reviewing the case and submitting a report by an Expert Physician Reviewer;
5. delinquency in reviewing the case and submitting a report by an Expert Physician Reviewer;
6. additional complaints pending investigation regarding the licensee; and
7. other events beyond the control of the agency.
(b) The board may not dismiss a complaint solely on the grounds that an investigation has not been completed and/or the case has not been scheduled for hearing within 180 days.

(c) If an investigation has not been completed and/or the case has not been scheduled for hearing within 180 days, the board must notify the parties to the complaint as to why these deadlines were not met. This notice is not required if it would jeopardize an investigation.

(d) There is no time limit from the time at which a violation of the Act occurred by which the board must investigate a complaint.

Source Note: The provisions of this §179.6 adopted to be effective November 30, 2003, 28 TexReg 10491; amended to be effective January 25, 2006, 31 TexReg 390; amended to be effective January 20, 2009, 34 TexReg 339.

§179.7. Past Complaints.
Past complaints made against a subject licensee and investigations conducted by the board concerning the subject licensee may be examined during the course of a new investigation concerning the subject licensee to determine if there is a pattern or practice of behavior on the part of the subject licensee.

Source Note: The provisions of this §179.7 adopted to be effective November 30, 2003, 28 TexReg 10491.

§179.8. Alcohol and Drug Screening During Investigation for Substance Abuse.
(a) To protect the public, it is important that the board initiate, as soon as possible, a program of alcohol and drug screening for any licensee that shows signs of impairment based on substance abuse. In addition, an impaired licensee who sincerely desires to begin recovery will benefit from a program of alcohol and drug screening, because successful compliance with the program will be evidence of cooperation with the board as well as evidence of recovery. The board adopts this rule to encourage licensees who may be impaired to submit to the Board's program of alcohol and drug screening as soon as possible.

(b) If the agency has cause to believe, either through a self-report or otherwise, that a licensee has used alcohol or drugs in an intemperate manner, the Executive Director may offer the licensee the opportunity to participate in the board's program for alcohol and drug screening during an investigation.

(c) A licensee who wishes to accept the offer must submit an acceptance on a form approved by the Executive Director that, at a minimum, includes the agreement that the licensee will:

(1) abstain from the use of alcohol and drugs;
(2) submit to, comply with, and pay any costs associated with the board's program for alcohol and drug screening;
(3) not self-prescribe or prescribe for the licensee's immediate family any controlled substance or dangerous drug with potential for addiction or abuse or dispense, administer, or authorize any such drug except in compliance with the prescription, orders, and direction of another physician for legitimate medical purposes; and
(4) agree that the licensee's compliance or non-compliance with the terms of the agreement and the program of alcohol and drug screening may be considered in any disciplinary or rehabilitative action by the board.

(d) The offer, acceptance, and all documents and activities of the agency relating to compliance with the agreement contained in the acceptance that are created by or provided to the agency shall be considered to be investigative information and privileged and confidential, in accordance with §164.007(c), Texas Occupations Code.

(e) The offer to a licensee to submit to alcohol and drug screening shall not limit the authority of the board to initiate a temporary suspension proceeding, in accordance with §164.059, Texas Occupations Code, if the investigation produces evidence that the licensee would, by the licensee's continuation in practice, constitute a continuing threat to the public welfare.

(f) If the licensee does not accept the offer by the Executive Director, the agency shall expedite an investigation to allow the board to take disciplinary or rehabilitative action as soon as possible, if the investigation produces evidence that the licensee is impaired.

Source Note: The provisions of this §179.8 adopted to be effective September 28, 2006, 31 TexReg 8093.
§180.1. Purpose.
Purpose of chapter. The purpose of this chapter is to establish the Texas Physician Health Program for the purpose of encouraging the wellness of program participants pursuant to the Medical Practice Act ("Act"), Texas Occupations Code Annotated §§167.001 - 167.011.

Source Note: The provisions of this §180.1 adopted to be effective November 29, 2009, 34 TexReg 8534.

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

(1) Acupuncture Board--Texas State Board of Acupuncture Examiners.

(2) Agency--the medical board, physician assistant board, and acupuncture board collectively.

(3) Committee--TXPHP Advisory Committee, also referred to as the Physician Health and Rehabilitation Advisory Committee under Texas Occupations Code §167.004.

(4) Governing board--the governing board of the program.

(5) License--includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.

(6) Medical Board--the Texas Medical Board.

(7) Medical director--a physician licensed by the board who has expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders, and who provides clinical and policy oversight for the program.

(8) PA Board--the Texas Physician Assistant Board.

(9) Program--the Texas Physician Health Program.

(10) Program participant--a physician, physician assistant, acupuncturist, or surgical assistant who is licensed or who has applied for licensure and who receives services under the program.

Source Note: The provisions of this §180.2 adopted to be effective November 29, 2009, 34 TexReg 8534; amended to be effective September 19, 2010, 35 TexReg 8354

§180.3. Texas Physician Health Program.
(a) Governing Board.
§180.3. Responsibilities of the Governing Board.

The governing board shall:

(A) provide advice and counsel to the Medical Board; and

(B) establish policy and procedures for the operation and administration of the program.

(3) Conflicts of Interest. A governing board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the governing board member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(b) TXPHP Advisory Committee.

(1) Appointments.

(A) The governing board shall appoint physicians and mental health care providers actively licensed in Texas with at least five years experience in disorders commonly affecting program participants to the TXPHP Advisory Committee.

(B) Appointees shall serve at the pleasure of the Governing Board.

(C) If there is a vacancy on the committee, the Governing Board with the advice of the president of the Medical Board and the presiding officer of the PA Board may appoint a new committee member.

(2) Responsibilities of the Committee. The committee shall provide opinions upon request of the governing board or program staff.

(3) Conflicts of Interest.

(A) A committee member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the committee member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(B) A committee member must request to be recused in any decision relating to a program participant that the committee member had treated or is currently treating.

(c) Medical Director Qualifications. The medical director:

(1) serves at the pleasure of the Medical Board;

(2) must be licensed by the Medical Board;

(3) must have expertise in a field of medicine relating to disorders commonly affecting program participants; and

(4) may not treat or supervise a program participant.

Source Note: The provisions of this §180.3 adopted to be effective November 29, 2009, 34 TexReg 8534; amended to be effective September 19, 2010, 35 TexReg 8354

§180.4. Operation of Program.

(a) Referrals.

(1) The program shall accept a self-referral from a licensure applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, the medical board, physician assistant board, or the acupuncture board.

(2) In addition to confidential referrals to the program, the medical board, physician assistant board, and acupuncture board may publicly refer an applicant or licensee to the program after a contested case hearing or through an agreed order. Unless good cause is found, an applicant or licensee that has been subject to disciplinary action in another state based on alcohol or substance abuse related violations shall be referred to the program through a public referral.

(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or an alcohol/substance use disorder is eligible to participate in the program. For individuals who have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of, or placed on deferred adjudication community supervision or deferred disposition for a felony, the medical board may publicly refer such individuals through the entry of a disciplinary order that addresses the standard of care, boundary, and/or criminal law related violations.

(c) Drug Testing.

(1) The program's drug testing shall be provided under contract for services with the vendor approved by the Texas Medical Board.

(2) The program shall adopt policies and protocols for drug-testing that are consistent with those of the agency in effect on December 31, 2009, or as approved by the Texas Medical Board.

(3) The agency may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

(d) Reports to the Agency.

(1) If an individual who has been referred by the agency or a third party to the program and does not enter into an agreement for services or is found to have committed a substantive violation of an agreement, the governing board shall report that individual to the agency for possible disciplinary action.

(2) A positive drug screen that is not attributed to a prescription by a physician, shall be determined to be substantive violation of an agreement by the program participant.
(3) A committee of the Board shall review the report and may direct that an ISC be scheduled to review of the individual’s interactions with the program. After consideration of any evidence presented at the ISC, the agency has the option of referring the individual back to the program. The referral of the individual back to the program shall be a public referral through the entry of an agreed order. The agency may pursue other disciplinary action through the agency's disciplinary process in lieu of or in addition to referral back to the program.

(e) Fees.

(1) Program participants shall pay an annual fee of $1,200. This fee is in addition to costs owed by program participants for medical care, primary treatment, continuing care, and required evaluations to include costs for drug testing associated with a program participant's Physician Health Program agreement.

(2) The governing board may waive all or part of the annual fee for a program participant upon a showing of good cause.

(f) Process.

(1) Interview by Medical Director.

(A) Upon receipt of a referral as described in subsection (a) of this section, the applicant or licensee shall be invited to meet in person with the TXPHP medical director or a member of the advisory committee designated by the medical director for an interview to determine eligibility for the PHP.

(B) The interview may be conducted by telephone if the individual is out of state or not physically able to meet in person.

(C) An interview may be waived if the medical director determines that good cause exists. Advisory committee members are to be given records only in relation to those individuals that they have been assigned to review.

(2) Review by Case Advisory Panel.

(A) A case advisory panel shall include three members. These members shall be the Presiding Officer of the Governing Board, the Secretary of the Governing Board, and another member of the Governing Board who shall serve for a four-month term on a rotating basis with the other members. In the event that the Presiding Officer and/or the Secretary is unavailable or must recuse themselves, one or two additional members of the Governing Board shall be asked to serve on the panel.

(B) After an interview by the medical director has occurred, a case advisory panel may be convened at the discretion of the Medical Director, for the purpose of seeking advice and direction from the case advisory panel to advise in cases relating to applicants or program participants.

(C) All cases reviewed by a case advisory panel shall be reported on at the next scheduled meeting of the Governing Board.

(3) After the requirements in paragraph (1) of this subsection have been completed, the applicant or licensee shall be offered an agreement, be determined ineligible for the program, or be found to not need the services of the PHP.

(4) Agreements are effective upon signature by the program participant.

(5) All agreements are subject to review by the Governing Board.

(g) Evaluations. The PHP may request that an applicant or licensee undergo a clinically appropriate evaluation after the person has been interviewed. The evaluation shall be considered a term of an agreement and the person will be considered a program participant at that time. If an individual refuses to undergo an evaluation, he or she may be referred to the agency as described in subsection (d) of this section.

(h) Agreements. Agreements between program participants and the PHP may include but are not limited to the following terms and conditions:

(1) abstinence from prohibited substances and drug testing;

(2) agreement to not treat one's own family, except under emergency situations;

(3) agreement not to manage one's own medical care;

(4) participation in self-help groups such as Alcoholics Anonymous;

(5) participation in support groups for recovering professionals;

(6) worksite monitor;

(7) worksite restrictions; and

(8) treatment by an appropriate health care provider.

(i) Interventions. Upon receipt of credible information, the medical director may investigate and, if indicated, initiate, or otherwise facilitate, an intervention for the purpose of assisting an individual in obtaining treatment for a mental or physical condition or substance use problem. All information obtained as a part of the intervention process shall be considered confidential.

Source Note: The provisions of this §180.4 adopted to be effective March 14, 2010, 35 TexReg 2004; amended to be effective September 19, 2010, 35 TexReg 8354; amended to be effective December 18, 2011, 36 TexReg 8378; amended to be effective December 23, 2012, 37 TexReg 9774; amended to be effective July 9, 2015, 40 TexReg 4353.
§180.7. Rehabilitation Orders.

(a) Rehabilitation orders entered into on or before January 1, 2010, shall be governed by this section only.

(b) Purposes of rehabilitation orders.

(1) To provide an incentive to a licensee or applicant to seek early assistance with drug or alcohol-related problems or mental or physical conditions that present a potentially dangerous limitation or inability to practice medicine with reasonable skill and safety.

(2) To protect the public by requiring the impaired licensee or applicant to obtain treatment and/or limit or refrain from the practice of medicine while suffering from an impairment.

(c) Eligibility for rehabilitation order. The board may issue a rehabilitation order for a licensee or applicant, as a prerequisite for issuing a license, for the following reasons:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the licensee or applicant self-reported intemperate use of drugs or alcohol as set out in subsection (f) of this section, and has not previously been the subject of a substance abuse-related order of the board;

(3) a court has determined that the licensee or applicant is of unsound mind;

(4) the licensee or applicant has an impairment as determined by a mental or physical examination; or

(5) an admission by the licensee or applicant of an illness or a physical or mental condition that limits or prevents the person's practice of medicine with reasonable skill and safety.

(d) Factors for board consideration in proposing a rehabilitation order.

(1) General. In determining whether to recommend a rehabilitation order to an otherwise eligible licensee or applicant, the board shall consider all relevant factors.

(2) Federal and state drug and alcohol laws. Absent a showing of good cause by the licensee or applicant, the board may not grant a rehabilitation order if any of the following factors exist:

(A) the licensee or applicant has been found guilty, pled guilty, or received deferred adjudication of any felony or misdemeanor related to the intemperate use of drugs or alcohol at issue;

(B) the licensee or applicant was required to or voluntarily surrendered his/her drug license(s) or certification(s) issued by the Federal Drug Enforcement Administration (DEA), Texas Department of Public Safety (DPS) or comparable authority of another state in connection with a criminal investigation related to the intemperate use of drugs or alcohol at issue; and

(C) the licensee's or applicant's intemperate use of drugs or alcohol led to a violation of Chapters 481 and 483 of the Texas Health and Safety Code or a violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

(3) The licensee or applicant and board staff may present information to the Board's representatives relevant to whether any violation of the standard of care is a result of the intemperate use of drugs or alcohol. The Board's representatives may not recommend a confidential rehabilitation order if they determine that a violation of the standard of care was a result of the intemperate use of drugs or alcohol. The board shall have complete discretion to determine whether any violation of the standard of care was a result of the intemperate use of drugs or alcohol.

(4) Additional factors to be established by a licensee or applicant. Licensees or applicants otherwise eligible for a rehabilitation order should provide evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) steps taken to prevent potential future harm to the public that may include a treatment and monitoring plan;

(B) existence of rehabilitative potential;

(C) a clinical diagnosis of a physical or mental condition and supporting medical records;

(D) that the licensee or applicant cooperated with board staff during the course of the investigation; and

(E) applicability of any other mitigating factors set forth in §190.15(b) of this title (relating to Aggravating and Mitigating Factors).

(5) Additional factors to be established by board staff. If applicable, board staff shall present evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care;

(B) a complaint alleging intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care has been received by the board, and the status of the investigation of the complaint;

(C) licensee or applicant caused harm to any individual or entity;

(D) licensee or applicant has a disciplinary history, including criminal convictions, disciplinary orders with board or other state medical boards, disciplinary actions by other state or federal
regulatory agencies, and peer review actions by hospitals or medical societies;

(E) licensee or applicant inappropriately self-treated or self-prescribed;

(F) licensee or applicant violated provisions of the Act other than §§164.051(a)(4), (a)(5) and 164.052(a)(5);

(G) applicability of any other aggravating factors set forth in §190.15(a) of this title.

(e) Concurrent public agreed order. The board may approve a public agreed order that does not relate to standard of care violations to run concurrently with any confidential rehabilitation order, authorized by this section.

(f) Requirements for self-reports. To be eligible for a rehabilitation order based on a self-report of intemperate use of drugs or alcohol:

(1) the self-report must have been made to the board:

(A) within five years after the last commission of intemperate use of drugs or alcohol;

(B) before the filing of any criminal charges involving drugs or alcohol use; and

(C) before the board receives a complaint or other report of intemperate use;

(2) the licensee or applicant making the self-report has no prior board orders based on use of drugs or alcohol;

(3) the licensee or applicant has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(4) no valid complaint with regard to the licensee or applicant based on intemperate use of drugs or alcohol in a manner affecting the standard of care has been received by the board prior to the time the licensee or applicant signs the proposed rehabilitation order. If the board receives any complaint regarding the standard of care before the licensee or applicant signs the proposed rehabilitation order, the licensee or applicant is not eligible for a rehabilitation order unless the board makes a determination that the licensee or applicant did not violate the standard of care as a result of the intemperate use of drugs or alcohol;

(5) self-reports of intemperate use of drugs or alcohol by licensees or applicants must be made through a written statement by the licensee or applicant, or the authorized agent of the licensee or applicant, submitted to the board or board staff by mail, email, messenger, telefacsimile transmission, or hand-delivery. The self-report may be made through responses provided as part of an application for a license or writing submitted for purposes of licensure renewal; and

(6) the licensee or applicant must provide a complete self-report of the intemperate use of alcohol or drugs that includes, but is not limited to, the following information:

(A) the approximate dates of intemperate use;

(B) the extent of intemperate use;

(C) the substance(s) used;

(D) the method(s) of ingestion;

(E) all history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received; and

(F) a description of any incident that a reasonably prudent physician would believe could result in an allegation of the physician's violation of the standard of care that occurred during the time of intemperate use or, if no violation of the standard of care has occurred, a statement that no violation of the standard of care occurred during the time of intemperate use.

(g) Guidelines for determination of a mental or physical condition.

(1) Mental condition. Absent a showing of good cause, a licensee or applicant suffering from a mental condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician or mental health care provider of a condition listed under DSM-IV.

(2) Physical condition. Absent a showing of good cause, a licensee or applicant suffering from a physical condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician.

(3) Additional factors for consideration. A licensee's or applicant's diagnosis shall be considered along with the licensee's or applicant's:

(A) current and past levels of functioning;

(B) concurrent medical disorders;

(C) complicating factors such as substance-related disorders;

(D) compliance with treatments;

(E) response to treatment;

(F) prognosis; and

(G) stage of recovery from the illness.

(4) Hearing. An informal show compliance proceeding shall be considered an evidentiary hearing for the purposes of this subsection and in accordance with §164.202 of the Act.

(h) Confidentiality. Consideration of proposed agreed rehabilitation orders shall be conducted so as to keep the identity of the licensee or applicant confidential.

(1) Confidentiality may be preserved through one or more of the following:

(A) confidential informal show compliance proceedings;
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(B) confidential modification and termination requests and proceedings;
(C) executive sessions by the board and board committee; and/or,
(D) redaction of identifying information when such orders are considered in open session.

(2) The rehabilitation order may require the licensee or applicant to participate in activities or programs provided by a local or statewide private medical association. If the board makes such a requirement, the board shall:

(A) inform the association of the licensee's duties under the order, including specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation;
(B) provide to the association any information, including confidential information, that the board determines to be necessary, including a copy of the rehabilitation order; and
(C) advise the association that the information provided by the board is and remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board, in accordance with §164.205(b), Texas Occupations Code.

(3) The board, board staff, and agents of the board will attempt in good faith to ensure that the terms and conditions of a rehabilitation order remain confidential. However, in order to ensure compliance with a rehabilitation order, it may be necessary to disrupt the activities of a licensee or applicant and to contact the licensee or applicant, including but not limited to telephone calls, mail, or unannounced visits to the licensee's or applicant's place of employment or residence.

(4) Upon a determination by the board that licensee or applicant has violated a rehabilitation order, the rehabilitation order may become a public document and subject to the Texas Public Information Act.

*Source Note: The provisions of this §180.7 adopted to be effective November 29, 2009, 34 TexReg 8534.*
§181.1. Purpose.
These rules are promulgated under the authority of the Medical Practice Act, Texas Occupations Code Ann., Title 3, Subtitle B, and the Texas Contact Lens Prescription Act, Texas Occupations Code Ann., Title 3, Subtitle F, Chapter 353, to set forth the criteria under which a patient may request and receive a contact lens prescription and under which a physician shall provide such prescription.

Source Note: The provisions of this §181.1 adopted to be effective March 4, 1998, 23 TexReg 1950; amended to be adopted March 7, 2002, 27 TexReg 1488.

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

(1) Contact lens prescription--a written prescription that contains the following information:
   (A) the patient's name;
   (B) the date the prescription was issued;
   (C) the contact lens manufacturer, if needed;
   (D) the expiration date of the prescription, which shall be one year or more unless the health of the patient requires an earlier expiration date;
   (E) the signature of the physician or a verification of the prescription as described by Tex. Occ. Code Section 353.1015;
   (F) the total number of lenses authorized and recommended replacement if the prescription is for disposable contact lenses;
   (G) the brand name or model type of the lens prescribed;
   (H) the lens power;
   (I) the base curve measurements; and
   (J) the diameter.

(2) Disposable contact lenses--soft contact lenses that:
   (A) are dispensed in sealed packages;
   (B) are sterilized and sealed by the manufacturer; and
   (C) according to the wearing instructions suggest the lenses be replaced at an interval of less than three months.

Source Note: The provisions of this §181.2 adopted to be effective March 4, 1998, 23 TexReg 1950; amended to be adopted March 7, 2002, 27 TexReg 1488; amended to be effective September 20, 2007, 32 TexReg 6315.

§181.3. Release of Contact Lens Prescription.
(a) Except as provided in subsection (d) of this section, each physician who performs an eye examination and fits a patient for contact lenses shall, on request, prepare and give a contact lens prescription to the patient, and as directed by any person designated to act on behalf of the patient, provide the prescription or verify the prescription as provided by Tex. Occ. Code Section 353.1015. The physician may exclude categories of contact lenses if the exclusion is clinically indicated. The physician may not charge the patient a fee for providing the contact lens prescription but may charge a fee for examination and a fee for fitting of contact lenses as a condition for giving a contact lens prescription to the patient.

(b) If a patient requests a contact lens prescription during an initial or annual examination, the physician must prepare and give the contact lens prescription to the patient at the time the physician determines all of the parameters of the contact lens prescription, as that term is defined in section 181.2 of this title (relating to definitions). If the physician has delegated the fitting of the contact lens as authorized by the Texas Contact Lens Prescription Act, the physician is not required to provide the prescription for the patient.

(c) If the patient does not request or receive an original contact lens prescription during the patient’s initial or annual examination, the patient may request the patient’s contact lens prescription at any time during which the prescription is valid. On receipt of a request, the physician shall provide the patient with a contact lens prescription if the physician has fit the patient. If the patient requests the physician to deliver the prescription to the patient or to another person, the physician may charge the cost of delivery to the patient.

(d) A physician may refuse to give a contact lens prescription to a patient if:
   (1) the patient’s ocular health presents a contraindication for contact lenses;
   (2) refusal is warranted due to potential harm to the patient’s ocular health;
   (3) the patient has not paid for the examination and fitting, or has not paid other financial obligations to the physician if the patient would have been required to make an immediate or similar payment if the examination revealed that ophthalmic goods were not required;
(4) the patient has an existing medical condition that indicates that the patient's ocular health would be damaged if the prescription were released to the patient, or if further monitoring of the patient is needed; or
(5) the request is made after the first anniversary date of the patient's last eye examination.

(e) Subsection (d) of this section does not prohibit a physician from giving a patient the patient's contact lens prescription.

(f) A physician may not condition the availability to a patient of an eye examination, a fitting for contact lenses, the issuance or verification of a contact lens prescription, or any combination of these services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from the physician.

(g) Unless a shorter prescription period is warranted by the patient's ocular health or by a potential harm to the patient's ocular health, a physician may not issue a contact lens prescription that expires before the first anniversary of the date the person's prescription parameters are determined. The physician may extend the expiration date of the prescription without completing another eye examination or may require the patient to undergo another eye examination.

(h) If a physician refuses to give a patient the patient's contact lens prescription for a reason permitted under subsection (d) of this section or writes the prescription for a period of less than one year, the physician must:
(1) give the patient a verbal explanation of the reason for the action at the time of the action; and
(2) maintain in the patient's records a written explanation of the reason.

Source Note: The provisions of this §181.3 adopted to be effective March 4, 1998, 23 TexReg 1950; amended to be adopted March 7, 2002, 27 TexReg 1488; amended to be effective September 20, 2007, 32 TexReg 6315.

§181.4. Delegation of Fitting of Contact Lenses.
If a physician notes on a spectacle prescription "fit for contacts" or similar language and has specifically delegated to a specific optician the authority to make the additional measurements and evaluations necessary to derive the information required for a fully written contact lens prescription, the optician may dispense contact lenses to the patient even though the prescription is less than a fully written contact lens prescription.

Source Note: The provisions of this §181.4 adopted to be effective March 4, 1998, 23 TexReg 1950.

§181.5. Contact Lens Dispensing Permit Not Required of Physician or Physician's Employees.
Neither a physician nor an employee of a physician is required to obtain a permit if the employee performs contact lens dispensing services under the direct supervision and control of the physician.

Source Note: The provisions of this §181.5 adopted to be effective March 4, 1998, 23 TexReg 1950; amended to be adopted March 7, 2002, 27 TexReg 1488.

(a) These rules shall not be interpreted to prevent, or restrict a physician from treating or prescribing for the physician's patients or from directing or instructing others under the physician's control, supervision or instruction who assists those patients according to specific directions, orders, instructions, or prescriptions.

(b) If a physician's directions, instructions, orders, or prescriptions are to be performed or filled by an optician who is independent of the physician's office, the directions, instructions, orders or prescriptions must be:
(1) in writing or verified under Tex. Occ. Code Section 353.1015;
(2) of a scope and content and communicated to the optician in a form and manner that in the professional judgment of the physician best serves the health, safety, and welfare of the physician's patients; and
(3) in form in detail consistent with the particular optician's skill and knowledge.

(c) A person holding a contact lens dispensing permit may take measurements of the eye or cornea and may evaluate the physical fit of the lenses for a particular patient of the physician and may instruct the patient in the use and care of the contact lenses if the physician has delegated in writing those responsibilities with regard to that specific patient to the contact lens dispenser.

Source Note: The provisions of this §181.6 adopted to be effective March 4, 1998, 23 TexReg 1950; amended to be adopted March 7, 2002, 27 TexReg 1488; amended to be effective September 20, 2007, 32 TexReg 6315.

§181.7. Liability.
(a) A contact lens prescription may not contain, and a physician may not require a patient to sign a form or notice that waives or disclaims the liability of the physician for the accuracy of:
(1) the eye examination on which the contact lens prescription furnished to the patient is based; or
(2) the contact lens prescription provided to the patient.

(b) A physician is not liable for any subsequent use of a contact lens prescription by a patient if the physician does not reexamine the patient and the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in patient no longer being a proper candidate for the contact lens or lenses prescribed.

Source Note: The provisions of this §181.7 adopted to be effective March 4, 1998, 23 TexReg 1950; amended to be adopted March 7, 2002, 27 TexReg 1488.
§182.1. Purpose.
Pursuant to §§154.056 - 154.0561 of the Medical Practice Act, the board is authorized to adopt rules relating to the use of expert physicians in the review of complaints involving medical competency. This chapter is promulgated to establish procedures, qualifications and duties of those professionals serving as expert panel members, consultants and expert witnesses to the board.

Source Note: The provisions of this §182.1 adopted to be effective November 30, 2003, 28 TexReg 10492; amended to be effective January 20, 2009, 34 TexReg 339.

§182.2. Board's Role.
This chapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions pursuant to provisions of the Medical Practice Act Tex. Occ. Code, Annotated, Title 3, Subtitle B (the Act) related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act.

Source Note: The provisions of this §182.2 adopted to be effective November 30, 2003, 28 TexReg 10492.

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

(1) Consultant--An individual with specialized knowledge or training selected by the agency to review complaints and investigations and provide monitoring of compliance issues.

(2) Expert Physician Panel (or Expert Panel)--Physicians appointed by the board who may serve as Expert Physician Reviewers.

(3) Expert Physician Reviewer (or Reviewer)--A member of the Expert Panel selected to consider a particular complaint involving alleged violations of the standard of care as set out in §154.058 of the Act.

(4) Expert Witness--An individual with specialized knowledge or training who contracts with the board to provide expert opinions in the investigation and resolution of disciplinary matters.

Source Note: The provisions of this §182.3 adopted to be effective November 30, 2003, 28 TexReg 10492; amended to be effective January 25, 2006, 31 TexReg 393.

§182.4. Use of Consultants.
Consultants shall be utilized as needed by the agency.

Source Note: The provisions of this §182.4 adopted to be effective November 30, 2003, 28 TexReg 10492; amended to be effective January 25, 2006, 31 TexReg 393.

§182.5. Expert Panel.
(a) Physicians may be appointed by the board to the Expert Panel as follows:

(1) Composition. The Expert Panel shall be composed of physicians approved by the board to act as Expert Physician Reviewers.

(2) Qualifications. To be eligible to serve on the Expert Panel, a physician must meet the following criteria:

(A) licensed to practice medicine in Texas;

(B) certification by the American Board of Oral and Maxillofacial Surgery or an organization that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(C) no history of licensure restriction;

(D) no history of peer discipline;

(E) acceptable malpractice complaint history; and

(F) in active practice as defined by §163.11 of this title (relating to the Active Practice of Medicine).

(b) Term; Resignation; Removal.

(1) An Expert Physician Reviewer shall serve on the Expert Panel until resignation or removal from the Expert Panel.

(2) An Expert Physician Reviewer may resign from the Expert Panel at any time.

(3) An Expert Physician Reviewer may be removed from the Expert Panel for good cause at any time on order of the Executive Director. Good cause for removal includes:

(A) failure to maintain the eligibility requirements set forth above;

(B) failure to inform the board of potential or apparent conflicts of interest;

(C) repeated failure to timely review complaints or timely submit reports to the board;

(D) repeated failure to prepare the reports in the prescribed format.

(c) Duties of the Expert Physician Panel. The Expert Physician Panel members will assist the board...
with complaints, investigations, and disciplinary actions relating to medical competency.

Source Note: The provisions of this §182.5 adopted to be effective November 30, 2003, 28 TexReg 10492; amended to be effective November 7, 2004, 29 TexReg 10112; amended to be effective January 25, 2006, 31 TexReg 393; amended to be effective July 3, 2007, 32 TexReg 3993; amended to be effective January 20, 2009, 34 TexReg 339.

§182.6. Use of expert witnesses.
Expert witnesses shall be utilized as needed by the agency.

Source Note: The provisions of this §182.6 adopted to be effective November 30, 2003, 28 TexReg 10492.

§182.7. Interim Appointment.
A member of the Executive Committee may make an interim appointment of an Expert Physician Reviewer to serve the board until the Reviewer can be considered for appointment by the board at the next board meeting.

Source Note: The provisions of this §182.7 adopted to be effective May 5, 2005, 30 TexReg 2513; amended to be effective January 25, 2006, 31 TexReg 393.

(a) Selection of Reviewers. Any complaint alleging a possible violation of the standard of care will be referred to Expert Physician Reviewers who will review all the medical information and records collected by the board and shall report findings in the prescribed format.

(1) Reviewers shall be randomly selected from among those Expert Panel members who practice in the same specialty as the physician who is the subject of the complaint. The practice area or specialty declared by the subject physician as his area of practice may be the specialty of the expert reviewers.

(2) If there are no Expert Panel Members in the same specialty or if the randomly selected Reviewer has a potential or apparent conflict of interest that would prevent the Reviewer from providing a fair and unbiased opinion, that Reviewer shall not review the case and another Reviewer shall be randomly selected from among those Expert Panel members who practice in the same or similar specialty as the physician who is the subject of the complaint, after excluding the previously selected Reviewer.

(A) A potential conflict of interest exists if the selected Reviewer practices medicine in the same geographical medical market as the physician who is the subject of the complaint and

(i) is in direct competition with the physician or

(ii) knows the physician.

(B) An apparent conflict of interest exists if the Reviewer:

(i) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(ii) has a familial relationship within the third degree of affinity with any party or witness; or

(iii) determines that the Reviewer has knowledge of information that has not been provided by the Board and that the Reviewer cannot set aside that knowledge and fairly and impartially consider the matter based solely on the information provided by the Board.

(3) Notwithstanding the provisions of subsection (a)(2) of this section, if no Reviewer agrees to review the case who can qualify under the requirements of that subsection, a Reviewer who has a potential conflict may review the case, provided the Expert Reviewers’ Report discloses the nature of the potential conflict.

(4) If any selected Reviewer has a potential or apparent conflict of interest, the Reviewer shall notify board staff of the potential or apparent conflict.

(b) Procedures for Expert Physician Review. The procedure for the use of Reviewers shall comply with Section 154.0561, Tex. Occ. Code. Reviewers shall be specifically informed that they may communicate with other Reviewers selected to review the case and that they should communicate with other Reviewers to attempt to reach a consensus.

(c) Expert Reviewers’ Report. A report shall be prepared by the Expert Physician Reviewers to include the following:

(1) the general qualifications of each Reviewer; and

(2) the opinions agreed to by at least a majority of the Reviewers regarding:

(A) relevant facts concerning the medical care rendered;

(B) applicable standard of care;

(C) application of the standard of care to the relevant facts;

(D) a determination of whether the standard of care has been violated; and

(E) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports; and

(3) Notice to Respondent: " PURSUANT TO SECTION 164.007 OF THE MEDICAL PRACTICE ACT, THIS DOCUMENT CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND CONFIDENTIAL. THIS
(d) An Expert Reviewers' Report is:

(1) "investigative information" and an "investigative report" and is privileged and confidential, in accordance with §164.007(c), Texas Occupations Code; and

(2) an investigative report by a consulting-only expert as defined by Texas Rules of Civil Procedure §192.3(e) and §192.7(d).

Source Note: The provisions of this §182.8 adopted to be effective January 25, 2006, 31 TexReg 393; amended to be effective January 20, 2009, 34 TexReg 339; amended to be effective September 28, 2014, 39 TexReg 7580
§183.1. Purpose.
(a) These rules are promulgated under the authority of the Medical Practice Act, Title 3 Subtitle B Tex. Occ. Code and the Acupuncture Act, Chapter 205 Tex. Occ. Code, to establish procedures and standards for the training, education, licensing, and discipline of persons performing acupuncture in this State so as to establish an orderly system of regulating the practice of acupuncture in a manner which protects the health, safety, and welfare of the public.
(b) The Acupuncture board's functions include but are not limited to the following:
   (1) Establish standards for the practice of acupuncture.
   (2) Regulate the practice of acupuncture through the licensure and discipline of acupuncturists.
   (3) Interpret the Acupuncture Act and the Acupuncture board Rules acupuncturists and the public to ensure informed professionals, allied health professionals, and consumers.
   (4) Receive complaints and investigate possible violations of the Acupuncture Act and the Acupuncture board Rules.
   (5) Discipline violators through appropriate legal action to enforce the Acupuncture Act and the Acupuncture board Rules.
   (6) Provide a mechanism for public comment with regard to the Acupuncture Act and the Acupuncture board Rules.
   (7) Review and modify the Acupuncture board rules when necessary and appropriate, subject to approval of the Medical Board.
   (8) Examine and license qualified applicants to practice acupuncture in Texas in a manner that ensures that applicable standards are maintained.
   (9) Provide recommendations to the legislature concerning appropriate changes to the Acupuncture Act to ensure that the acts are current and applicable to changing needs and practices.
   (10) Provide informal public information on licensees.
   (11) Maintain data concerning the practice of acupuncture.

Source Note: The provisions of this §183.1 adopted to be effective May 16, 1994, 19 TexReg 3366; amended to be effective September 21, 2000, 25 TexReg 9217; amended to be effective March 6, 2003, 28 TexReg 1883; amended to be effective May 1, 2006, 31 TexReg 3534.

§183.2. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.
   (1) Ability to communicate in the English language--An applicant who has met the requirements set out in §183.4(a)(8) of this title (relating to Licensure).
   (2) Acceptable approved acupuncture school--Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Tex. Occ. Code:
      (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 Oriental Medicine (ACAOM) 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 masters 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 herboyogy 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;
      (B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAOM or another accrediting body recognized by the Texas Higher Education Coordinating Board, offered a masters 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 herboyogy 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 American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an evaluation requested by the board may be utilized when making a determination of substantial equivalence.

(3) Acupuncture Act or "the Act"--Chapter 205 of the Texas Occupations Code.

(4) Acupuncture--

(A) The insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition, including the evaluation and assessment of the condition; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by subparagraph (A) of this paragraph.

(5) Acupuncture board or "board"--The Texas State Board of Acupuncture Examiners.

(6) Acupuncturist--A licensee of the acupuncture board who directly or indirectly charges a fee for the performance of acupuncture services.

(7) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.


(9) Applicant--A party seeking a license from the board.

(10) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board,

(i) all forms and addenda requiring a written response must be printed in ink or typed;

(ii) photographs must meet United States Government passport standards;

(B) a fingerprint card, furnished by the acupuncture board, completed by the applicant, that must be readable by the Texas Department of Public Safety;

(C) all documents required under §183.4(c) of this title (relating to Licensure Documentation); and

(D) the required fee, payable by check through a United States bank.

(11) Assistant Presiding Officer--A member of the acupuncture board elected by the acupuncture board to fulfill the duties of the presiding officer in the event the presiding officer is incapacitated or absent, or the presiding officer's duly qualified successor under Robert's Rules of Order Newly Revised or board rules.

(12) Board member--One of the members of the acupuncture board, appointed and qualified pursuant to §§205.051 - 205.053 of the Act.

(13) Chiropractor--A licensee of the Texas State Board of Chiropractic Examiners.

(14) Contested case--A proceeding, including but not restricted to, licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(15) Documents--Applications, petitions, complaints, motions, protests, replies, exceptions, answers, notices, or other written instruments filed with the medical board or acupuncture board in a licensure proceeding or by a party in a contested case.

(16) Eligible for legal practice and/or licensure in country of graduation--An applicant who has completed all requirements for legal practice of acupuncture and/or licensure in the country in which the school is located except for any citizenship requirements.

(17) Executive Director--The executive director of the agency or the authorized designee of the executive director.

(18) Full force--Applicants for licensure who possess a license in another jurisdiction must have it in full force and not restricted, canceled, suspended or revoked. An acupuncturist with a license in full force may include an acupuncturist who does not have a current, active, valid annual permit in another jurisdiction because that jurisdiction requires the acupuncturist to practice in the jurisdiction before the annual permit is current.

(19) Full NCCAOM examination--The National Certification Commission for Acupuncture and Oriental Medicine 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.

(20) Good professional character—An applicant for licensure must not be in violation of or have committed any act described in the Act, §205.351.

(21) Administrative Law Judge (ALJ)—An individual appointed to preside over administrative hearings pursuant to the APA.

(22) License—Includes the whole or part of any board permit, certificate, approval, registration, or similar form of permission required by law; specifically, a license and a registration.

(23) Licensing—Includes the medical board's and acupuncture board's process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(24) Medical board—The Texas Medical Board.

(25) Misdemeanors involving moral turpitude—Any misdemeanor of which fraud, dishonesty, or deceit is an essential element; burglary; robbery; sexual offense; theft; child molesting; substance diversion or substance abuse; an offense involving baseness, vileness, or depravity in the private social duties one owes to others or to society in general; or an offense committed with knowing disregard for justice or honesty.

(26) Party—The acupuncture board and each person named or admitted as a party in a SOAH hearing or contested case before the acupuncture board.

(27) Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(28) Physician—A licensee of the medical board.

(29) Pleading—Written documents filed by parties concerning their respective claims.

(30) Presiding officer—The member of the acupuncture board appointed by the governor to preside over acupuncture board proceedings or the presiding officer's duly qualified successor in accordance with Robert's Rules of Order Newly Revised or board rules.

(31) Register—The Texas Register.

(32) Rule—Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. This definition includes substantive regulations.

(33) Secretary—The secretary-treasurer of the acupuncture board.

(34) Substantially equivalent to a Texas acupuncture school—A school or college of acupuncture that is an institution of higher learning designed to select and educate acupuncture students; provide students with the opportunity to acquire a sound basic acupuncture education through training; to develop programs of acupuncture education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual and practical environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The school of acupuncture shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The school of acupuncture shall include, but not be limited to, the following characteristics:

(A) the facilities for didactic and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) the admissions standards shall be substantially equivalent to a Texas school of acupuncture.

(C) the basic curriculum shall include courses substantially equivalent to those delineated in the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) core curriculum at the time of applicant's graduation.

(D) the curriculum shall be of at least 1800 hours in duration.

Source Note: The provisions of this §183.2 adopted to be effective May 16, 1994, 19 TexReg 3366; amended to be effective December 20, 1994, 19 TexReg 9598; amended to be effective January 12, 1996, 21 TexReg 108; amended to be effective October 22, 1996, 21 TexReg 9828; amended to be effective September 15, 1997, 22 TexReg 8998; amended to be effective May 10, 1998, 23 TexReg 4266; amended to be effective September 21, 2000, 25 TexReg 9217; amended to be effective May 6, 2001, 26 TexReg 3217; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective March 6, 2003, 28 TexReg 1883; amended to be effective September 12, 2004, 29 TexReg 8511; amended to be effective January 9, 2005, 29TexReg12188; amended to be effective May 1, 2006,
§183.3. Meetings.

(a) The acupuncture board may meet up to four times a year to carry out the mandates of the Act.

(b) Special meetings may be called by the presiding officer of the acupuncture board, by resolution of the acupuncture board, or upon written request to the presiding officer of the acupuncture board signed by at least three members of the board.

(c) Acupuncture board and committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the acupuncture board adopts a different procedure.

(d) All elections and any other issues requiring a vote of the acupuncture board shall be decided by a simple majority of the members present. A quorum for transaction of any business by the acupuncture board shall be one more than half the acupuncture board's membership at the time of the meeting. If more than two candidates contest an election or if no candidate receives a majority of the votes cast on the first ballot, a second ballot shall be conducted between the two candidates receiving the highest number of votes.

(e) The acupuncture board, at a regular meeting or special meeting, may elect from its membership an assistant presiding officer and a secretary-treasurer to serve a term of one year or for a term of a set duration established by majority vote of the acupuncture board.

(f) The acupuncture board, at a regular meeting or special meeting, upon majority vote of the members present may remove the assistant presiding officer or secretary-treasurer from office.

(g) The following are standing and permanent committees of the acupuncture board. Each committee, with the exception of the Executive Committee, shall consist of at least one board member who is a licensed physician, one board member who is a licensed acupuncturist, and one public board member. In the event that a committee does not have a representative of one or more of these groups, the presiding officer shall appoint additional members as necessary to maintain this composition. The Executive Committee shall include the presiding officer, the assistant presiding officer, and the secretary-treasurer, plus additional members so that the committee consists of a minimum of two board members who are licensed acupuncturists, one board member who is a licensed physician, and one public board member. The responsibilities and authority of these committees shall include those duties and powers as set forth below and such other responsibilities and authority which the acupuncture board may from time to time delegate to these committees.

1. Licensure Committee:
   (A) draft and review proposed rules regarding licensure, and make recommendations to the acupuncture board regarding changes or implementation of such rules;
   (B) draft and review proposed application forms for licensure, and make recommendations to the acupuncture board regarding changes or implementation of such rules;
   (C) oversee the application process for licensure;
   (D) receive and review applications for licensure;
   (E) make determinations of eligibility, present the results of reviews of applications for licensure and make recommendations to the acupuncture board regarding licensure of applicants;
   (F) oversee and make recommendations to the acupuncture board regarding any aspect of the examination process including the approval of an appropriate licensure examination and the administration of such an examination and documentation and verification of records from all applicants for licensure;
   (G) draft and review proposed rules regarding any aspect of the examination;
   (H) maintain communication with Texas acupuncture schools;
   (I) make recommendations to the acupuncture board regarding matters brought to the attention of the Licensure Committee.

2. Discipline and Ethics Committee:
   (A) draft and review proposed rules regarding the discipline of acupuncturists and enforcement of Subchapter H of the Act;
   (B) oversee the disciplinary process and give guidance to the acupuncture board and staff regarding methods to improve the disciplinary process and more effectively enforce Subchapter H of the Act;
   (C) monitor the effectiveness, appropriateness, and timeliness of the disciplinary process;
   (D) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the acupuncture board regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations;
   (E) draft and review proposed ethics guidelines and rules for the practice of acupuncture, and make recommendations to the acupuncture board
regarding the adoption of such ethics guidelines and rules;

(F) make recommendations to the acupuncture board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of Subchapter H of the Act; and

(G) make recommendations to the acupuncture board regarding matters brought to the attention of the Discipline and Ethics Committee.

(3) Education Committee:

(A) draft and propose rules regarding educational requirements for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(B) draft and propose rules regarding training required for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(C) draft and propose rules regarding continuing education requirements for renewal of a Texas license and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(D) consult with the Texas Higher Education Coordinating Board regarding educational requirements for schools of acupuncture, oversight responsibilities of each entity, degrees which may be offered by schools of acupuncture;

(E) maintain communication with acupuncture schools;

(F) plan and make visits to acupuncture schools at specified intervals, with the goal of promoting opportunities to meet with the students so they may become aware of the board and its functions;

(G) develop information regarding foreign acupuncture schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;

(H) draft and propose rules which would set the requirements for degree programs in acupuncture;

(I) be available for assistance with problems relating to acupuncture school issues which may arise within the purview of the board;

(J) offer assistance to the Licensure Committee in determining eligibility of graduates of foreign acupuncture schools for licensure;

(K) study and make recommendations regarding documentation and verification of records from foreign acupuncture schools;

(L) make recommendations to the acupuncture board regarding matters brought to the attention of the Education Committee.

(4) Executive Committee:

(A) review agenda for board meetings;

(B) ensure records are maintained of all committee actions;

(C) review requests from the public to appear before the board and to speak regarding issues relating to acupuncture;

(D) review inquiries regarding policy or administrative procedures;

(E) delegate tasks to other committees;

(F) take action on matters of urgency that may arise between board meetings;

(G) assist the medical board in the organization, preparation, and delivery of information and testimony to the Legislature and committees of the Legislature;

(H) formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment;

(I) study and make recommendations to the board regarding the role and responsibility of the board offices and committees;

(J) study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board pursuant to the Occupations Code, §205.102(b);

(K) make recommendations to the board regarding matters brought to the attention of the executive committee.

(h) Meetings of the acupuncture board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to the Open Meetings Act and the Act. In order that board meetings may be conducted safely, efficiently, and with decorum, members of the public shall refrain at all times from smoking or using tobacco products, eating, or reading newspapers and magazines. Members of the public may not engage in disruptive activity that interferes with board proceedings, including, but not limited to, excessive movement within the meeting room, noise or loud talking, and resting of feet on tables and chairs. The public shall remain within those areas of the board's offices designated as open to the public. Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(i) Journalists have the same right of access as other members of the public to acupuncture board meetings conducted in open session, and are also subject to the rules of conduct described in subsection (h) of this section. Observers of any board meeting may make audio or visual recordings of such proceedings conducted in open session subject to the following
limitations: the acupuncture board's presiding officer may request periodically that camera operators extinguish their artificial lights to allow excessive heat to dissipate; camera operators may not assemble or disassemble their equipment while the board is in session and conducting business; persons seeking to position microphones for recording board proceedings may not disrupt the meeting or disturb participants; journalists may conduct interviews in the reception area of the board's offices or, at the discretion of the acupuncture board's presiding officer, in the meeting room after recess or adjournment; no interview may be conducted in the hallways of the board's offices; and the acupuncture board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in conduct described in this subsection and subsection (h) of this section.

(j) The assistant presiding officer of the acupuncture board shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(k) In the absence or incapacity of both the presiding officer and the assistant presiding officer, the secretary-treasurer shall assume the duties of the presiding officer.

(l) In the event of the absence or incapacity of the presiding officer, the assistant presiding officer, and secretary-treasurer, the members of the acupuncture board may elect another member to act as the presiding officer of a board meeting or may elect an interim acting presiding officer for the duration of the absences or incapacity or until another presiding officer is appointed by the governor.

(m) Upon the death, resignation, or permanent incapacity of the assistant presiding officer or the secretary-treasurer, the acupuncture board shall elect from its membership an officer to fill the vacant position. Such an election shall be conducted as soon as practicable at a regular or special meeting of the acupuncture board.

(n) Committee minutes shall be approved by the full board with a quorum of the committee members present to vote on approval of the minutes.

Source Note: The provisions of this §183.3 adopted to be effective May 16, 1994, 19 TexReg 3366; amended to be effective December 20, 1994, 19 TexReg 9598; amended to be effective October 22, 1996, 21 TexReg 9828; amended to be effective September 21, 2000, 25 TexReg 9217; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective March 6, 2003, 28 TexReg 1883; amended to be effective June 29, 2003, 28 TexReg 4633; amended to be effective May 1, 2006, 31 TexReg 3534; amended to be effective February 28, 2011, 36 TexReg 1276

§183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character as defined in §183.2 of this title (relating to Definitions);

(3) has successfully completed 60 semester hours of general academic college level courses, other than in acupuncture school, that are not remedial and would be acceptable at the time they were completed for credit on an academic degree at a two or four year institution of higher education within the United States accredited by an agency recognized by the Higher Education Coordinating Board or its equivalent in other states as a regional accrediting body. Coursework completed as a part of a degree program in acupuncture or Oriental medicine may be accepted by the acupuncture board if, in the opinion of the acupuncture board, such coursework is substantially equivalent to the required hours of general academic college level coursework;

(4) is a graduate of an acceptable approved acupuncture school;

(5) has taken and passed, within five attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination. If an applicant submits to multiple attempts on a component before and on or after June 1, 2004, the number of attempts shall be combined based on the subject matter tested;

(6) has taken and passed the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination;

(7) for applicants who apply for a license on or after September 1, 2007, passes a jurisprudence examination (“JP exam”), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the acupuncture profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) Questions for the JP Exam shall be prepared by agency staff with input from the Acupuncture board and the agency staff shall make arrangements for a facility by which applicants can take the examination.

(B) Applicants must pass the JP exam with a score of 75 or better within three attempts, unless the Board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the Licensure Committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is
at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(C) An examinee shall not be permitted to bring medical books, compend, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(D) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(E) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(8) is able to communicate in English as demonstrated by one of the following:

(A) passage of the NCCAOM examination taken in English;

(B) passage of the TOEFL (Test of English as a Foreign Language) with a score of at least "intermediate" on the Reading and Listening sections and a score of at least "fair" on the Speaking and Writing sections of the Internet Based Test (iBT®), or a score of 550 or higher on the paper based test (PBT);

(C) passage of the TSE (Test of Spoken English) with a score of 45 or higher;

(D) passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher;

(E) graduation from an acceptable approved school of acupuncture located in the United States or Canada;

(F) at the discretion of the acupuncture board, passage of any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board or with results otherwise subject to verification by direct contact between the testing service and the acupuncture board.

(9) can demonstrate current competence through the active practice of acupuncture.

(A) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively treated persons, been a student at an acceptable approved acupuncture school, or been on the active teaching faculty of an acceptable approved acupuncture school, within either of the last two years preceding receipt of an application for licensure.

(B) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(C) Applicants who do not meet the requirements of subparagraphs (A) and (B) of this paragraph may, in the discretion of the executive director or board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions:

(i) limitation of the practice of the applicant to specified components of the practice of acupuncture and/or exclusion of specified components of the practice of acupuncture;

(ii) remedial education; or

(iii) such other remedial or restrictive conditions or requirements that, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice acupuncture.

(10) Alternative License Procedure for Military Spouse.

(A) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(B) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(i) holds an active unrestricted medical license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas acupuncture license; or

(ii) within the five years preceding the application date held an acupuncture license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(C) Applications for licensure from applicants qualifying under paragraph (9)(A) and (B) of this subsection shall be expedited by the board's licensure division.

(D) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraph (9)(A) and (B) of this subsection:

(i) are not required to comply with subsection (c)(1) of this section; and

(ii) notwithstanding the one year expiration in subsection (b)(1)(B) of this section, are
allowed an additional 6 months to complete the application prior to it becoming inactive; and
(iii) notwithstanding the 60 day deadline in subsection (b)(1)(G) of this section, may be considered for permanent licensure up to 5 days prior to the board meeting.
(b) Procedural rules for licensure applicants. The following provisions shall apply to all licensure applicants.
(1) Applicants for licensure:
   (A) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;
   (B) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:
   (i) Delay by board staff in processing an application;
   (ii) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;
   (iii) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;
   (iv) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;
   (v) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;
   (C) who in any way falsify the application may be required to appear before the acupuncture board. It will be at the discretion of the acupuncture board whether or not the applicant will be issued a Texas acupuncture license;
   (D) on whom adverse information is received by the acupuncture board may be required to appear before the acupuncture board. It will be at the discretion of the acupuncture board whether or not the applicant will be issued a Texas license;
   (E) shall be required to comply with the acupuncture board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;
(F) may be required to sit for additional oral, written, or practical examinations or demonstrations that, in the opinion of the acupuncture board, are necessary to determine competency of the applicant;
(G) must have the application for licensure completed and legible in every detail 60 days prior to the acupuncture board meeting in which they are to be considered for licensure unless otherwise determined by the acupuncture board based on good cause.
(2) Applicants for licensure who wish to request reasonable accommodation due to a disability must submit the request at the time of filing the application.
(3) Applicants who have been licensed in any other state, province, or country shall complete a notarized oath or other verified sworn statement in regard to the following:
   (A) whether the license, certificate, or authority has been the subject of proceedings against the applicant for the restriction for cause, cancellation for cause, suspension for cause, or revocation of the license, certificate, or authority to practice in the state, province, or country, and if so, the status of such proceedings and any resulting action; and
   (B) whether an investigation in regard to the applicant is pending in any jurisdiction or a prosecution is pending against the applicant in any state, federal, national, local, or provincial court for any offense that under the laws of the state of Texas is a felony, and if so, the status of such prosecution or investigation.
(4) An applicant for a license to practice acupuncture may not be required to appear before the acupuncture board or any of its committees unless the application raises questions about the applicant's:
   (A) physical or mental impairment;
   (B) criminal conviction; or
   (C) revocation of a professional license.
(c) Licensure documentation.
(1) Original documents/interview. Upon request, any applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in paragraph (2) of this subsection.
(2) Required documentation. Documentation required of all applicants for licensure shall include the following:
   (A) Birth certificate/proof of age. Each applicant for licensure must provide a copy of either a birth certificate and translation, if necessary, to prove that the applicant is at least 21 years of age. In instances
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where a birth certificate is not available, the applicant must provide copies of a passport or other suitable alternate documentation.

(B) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant must submit the original naturalization certificate by hand delivery or by certified mail to the board office for inspection.

(C) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the acupuncture board for all examinations used in Texas for purposes of licensure in Texas.

(D) Dean's certification. Each applicant for licensure must have a certificate of graduation submitted directly from the school of acupuncture on a form provided by the acupuncture board. The applicant shall attach to the form a recent photograph, meeting United States Government passport standards, before submitting it to the school of acupuncture. The school shall have the Dean or the designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(E) Diploma or certificate. All applicants for licensure must submit a copy of their diploma or certificate of graduation.

(F) Evaluations. All applicants must provide, on a form furnished by the acupuncture board, evaluations of their professional affiliations for the past ten years or since graduation from acupuncture school, whichever is the shorter period.

(G) Preacupuncture school transcript. Each applicant must have the appropriate school or schools submit a copy of the record of their undergraduate education directly to the acupuncture board. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in acupuncture school, the applicant must obtain coursework verification by submitting documentation to the acupuncture board for a determination as to the adequacy of such education or to a two or four year institution of higher education within the United States. The institution must be preapproved by the board's executive director and accredited by an agency recognized as a regional accrediting body by the Texas Higher Education Coordinating Board or its equivalent in another state.

(H) School of acupuncture transcript. Each applicant must have his or her acupuncture school submit a transcript of courses taken and grades obtained directly to the acupuncture board. Transcripts must clearly demonstrate completion of 1,800 instructional hours, with at least 450 hours of herbal studies.

(I) Fingerprint card. Each applicant must submit his or her fingerprints according to the procedure prescribed by the board.

(J) Other verification. For good cause shown, with the approval of the acupuncture board, verification of any information required by this subsection may be made by a means not otherwise provided for in this subsection.

(3) Additional documentation. Applicants may be required to submit other documentation, including but not limited to the following:

(A) Translations. An accurate certified translation of any document that is in a language other than the English language along with the original document or a certified copy of the original document which has been translated.

(B) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition from the arresting authority and submitted by that authority directly to the acupuncture board.

(C) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant shall submit the following:

(i) a completed liability carrier form furnished by the acupuncture board regarding each claim filed against the applicant's insurance;

(ii) for each claim that becomes a malpractice suit, a letter from the attorney representing the applicant directly to this board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement, unless release of such information is prohibited by law or an order of a court with competent jurisdiction. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(iii) a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(D) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance abuse or mental illness must submit the following:

(i) an applicant's statement explaining the circumstances of the hospitalization;
(ii) an admitting summary and discharge summary, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts or agreements signed with any licensing authority.

(E) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse or mental illness must submit the following:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts or agreements signed with any licensing authority.

(F) Additional documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure.

(G) DD214. A copy of the DD214 indicating separation from any branch of the United States military.

(H) Other verification. For good cause shown, with the approval of the acupuncture board, verification of any information required by this subsection may be made by a means not otherwise provided for in this subsection.

(I) False documentation. Falsification of any affidavit or submission of false information to obtain a license may subject an acupuncturist to denial of a license or to discipline pursuant to the Act, §205.351.

(4) Substitute documents/proof. The acupuncture board may, at its discretion, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the acupuncture board, a board committee, or the board's executive director on an individual case-by-case basis.

(d) Temporary license.

(1) Issuance. The acupuncture board may, through the executive director of the agency, issue a temporary license to a licensure applicant who:

(A) appears to meet all the qualifications for an acupuncture license under the Act, but is waiting for the next scheduled meeting of the acupuncture board for review and for the license to be issued; or

(B) has not, on a full-time basis, actively practiced as an acupuncturist as defined under subsection (a)(9) of this section but meets all other requirements for licensure.

(2) Duration/renewal. A temporary license shall be valid for 100 days from the date issued and may be extended only for another 30 days after the date the initial temporary license expires. Issuance of a temporary license may be subject to restrictions at the discretion of the executive director and shall not be deemed dispositive in regard to the decision by the acupuncture board to grant or deny an application for a permanent license.

(e) Distinguished professor temporary license.

(1) Issuance. The acupuncture board may issue a distinguished professor temporary license to an acupuncturist who:

(A) holds a substantially equivalent license, certificate, or authority to practice acupuncture in another state, province, or country;

(B) agrees to and limits any acupuncture practice in this state to acupuncture practice for demonstration or teaching purposes for acupuncture students and/or instructors, and in direct affiliation with an acupuncture school that is a candidate for accreditation or has accreditation through the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) at which the students are trained and/or the instructors teach;

(C) agrees to and limits practice to demonstrations or instruction under the direct supervision of a licensed Texas acupuncturist who holds an unrestricted license to practice acupuncture in this state;

(D) pays any required fees for issuance of the distinguished professor temporary license; and

(E) passes the JP Exam, as provided in subsection (a)(7) of this section.

(2) Duration. The distinguished professor temporary license shall be valid for a continuous one-year period; however, the permit is revocable at any time the board deems necessary. The distinguished professor temporary license shall automatically expire one year after the date of issuance. The distinguished professor temporary license may not be renewed or reissued.

(3) Disciplinary action. A distinguished professor temporary license may be denied, terminated, canceled, suspended, or revoked for any violation of acupuncture board rules or the Act, Subchapter H.

(f) Relicensure. If an acupuncturist's license has been expired for one year, it is considered to have been canceled, and the acupuncturist may not renew the license. The acupuncturist may submit an application for relicensure and must comply with the requirements and procedures for obtaining an original license.
§183.5. Annual Renewal of License.

(a) Acupuncturists licensed under the Act shall register annually and pay a fee. An acupuncturist may renew an unexpired license by submitting the required form and by paying the required renewal fee to the acupuncture board on or before the expiration date each year. The fee shall accompany a written application which legibly sets forth the licensee's name, mailing address, the place or places where the licensee is engaged in the practice of acupuncture, and other necessary information prescribed by the acupuncture board.

(b) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject an acupuncturist to denial of a license renewal or to discipline pursuant to §205.351 of the Act.

(c) If the renewal fee and completed application form are not received on or before the expiration date, penalty fees will be imposed as outlined in §175.3(3) of this title (relating to Penalties).

(d) If a acupuncturist's permit has been expired for 90 days or less, the acupuncturist may obtain a new permit by submitting to the board a completed permit application, the registration fee, as defined in §175.2(3) of this title and the penalty fee, as defined in §175.3(3)(A) of this title.

(e) If a acupuncturist's permit has been expired for more than 90 days but less than one year, the acupuncturist may obtain a new permit by submitting to the board a completed permit application, the registration fee, as defined in §175.2(3) of this title and the penalty fee, as defined in §175.3(3)(B) of this title.

(f) If a acupuncturist's registration permit has been expired for one year or longer, the acupuncturist's license is automatically canceled, unless an investigation is pending, and the acupuncturist may not register for a new permit.

(g) Practicing acupuncture after a acupuncturist's permit has expired under subsection (c) of this section without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing acupuncture without a license.

Source Note: The provisions of this §183.5 adopted to be effective May 17, 1994, 14 TexReg 10799; amended to be effective May 5, 1997, 22 TexReg 3651; amended to be effective May 10, 1998, 23 TexReg 4266; amended to be effective March 5, 2000, 25 TexReg 1625; amended to be effective September 21, 2000, 25 TexReg 9217; amended to be effective May 6, 2001, 26 TexReg 3217; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective March 31, 2002, 27 TexReg 2236; amended to be effective September 19, 2002, 27 TexReg 8770; amended to be effective March 6, 2003, 28 TexReg 1883; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 4, 2007, 31 TexReg 10799; amended to be effective May 6, 2009, 34 TexReg 2675; amended to be effective May 2, 2010, 35 TexReg 3279; amended to be effective July 4, 2012, 37 TexReg 4929; amended to be effective December 7, 2014, 39 TexReg 9344; amended to be effective July 9, 2015, 40 TexReg 4354

Source Note: The provisions of this §183.4 adopted to be effective May 5, 1997, 22 TexReg 3651; amended to be effective May 10, 1998, 23 TexReg 4266; amended to be effective March 5, 2000, 25 TexReg 1625; amended to be effective September 21, 2000, 25 TexReg 9217; amended to be effective May 6, 2001, 26 TexReg 3217; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective January 4, 2007, 31 TexReg 10799

§183.6. Denial of License; Discipline of Licensee.

(a) An applicant for a license under the Act shall be subject to denial of the application pursuant to the provisions of §205.351 of the Act.

(b) An acupuncturist who holds a license issued under authority of the Act shall be subject to discipline, including revocation of license, pursuant to §205.351 of the Act.

(c) The denial of licensure or the imposition of disciplinary action by the acupuncture board pursuant to §205.351 of the Act shall be in accordance with the Act, the procedures set forth in Chapters 187 and 190 of this title (relating to Procedural Rules and Disciplinary Guidelines), the Administrative Procedure Act, and the rules of the State Office of Administrative Hearings. Chapters 187 and 190 of this title (relating to Procedural Rules and Disciplinary Guidelines) shall be applied to acupuncturists to the extent applicable. If the provisions of Chapter 187 or Chapter 190 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

(d) Disciplinary guidelines.

(1) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to acupuncturists regulated under this chapter and be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:

(A) practice inconsistent with public health and welfare;

(B) unprofessional or dishonorable conduct;

(C) disciplinary actions by state boards and peer groups;

(D) repeated and recurring meritorious health care liability claims;

(E) aggravating and mitigating factors; and
§183.7. Scope of Practice.

(a) An acupuncturist may perform acupuncture on a person who has been evaluated by a physician or dentist, as appropriate, for the condition being treated within twelve months before the date acupuncture was performed.

(b) The holder of a license may perform acupuncture on a person who was referred by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners if the licensee commences the treatment within 30 days of the date of the referral. The licensee shall refer the person to a physician after performing acupuncture 20 times or for two months, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

(c) Notwithstanding subsections (a) and (b) of this section, an acupuncturist holding a current and valid license may perform acupuncture on a person for smoking addiction, weight loss, alcoholism, chronic pain, or substance abuse.

(d) A licensed acupuncturist must recommend an evaluation by a licensed Texas physician or dentist, if after performing acupuncture 20 times or for two months, whichever occurs first, there is no substantial improvement of the patient's chronic pain.

(e) A licensed acupuncturist shall recommend an evaluation by a licensed Texas physician or dentist, as appropriate, if after performing acupuncture 20 times or for two months, whichever occurs first, there is no substantial improvement of the patient's alcoholism or substance abuse.

Source Note: The provisions of this §183.6 adopted to be effective September 21, 2000, 25 TexReg 9217; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective March 6, 2003, 28 TexReg 1883; amended to be effective May 1, 2006, 31 TexReg 3534; amended to be effective July 9, 2015, 40 TexReg 4354

§183.8. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received, or gathered by the board shall be confidential and no employee, agent, or member of the board may disclose information contained in such files except in the following circumstances:

(1) to the appropriate licensing authorities in other states, the District of Columbia, or a territory or country in which the acupuncturist is licensed;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed;

(3) to a health care entity upon receipt of the written request. Disclosures by the board to a health care entity shall include only information about a complaint filed against an acupuncturist that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis of and current status of any complaint under active investigation; and

(4) to other persons if required during the conduct of the investigation.

(b) Request for Information and Records.

(1) Patient records. Upon the request of the board or board representatives, a licensee shall furnish to the board legible copies of patient records in English or the original records within 14 days of the date of the request.

(2) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the medical board or acupuncture board. This explanation shall include all details as the medical board or acupuncture board may request and shall be furnished within 14 days of the date of the medical or acupuncture board's request.

(c) Professional Liability Suits and Claims. Following receipt of a notice of claim letter or a complaint filed in court against a licensee that is reported to the acupuncture board, the licensee shall furnish to the medical or acupuncture board the following information within 14 days of the date of receipt of the medical or acupuncture board's request for said information:

(1) a completed questionnaire to provide summary information concerning the suit or claim;

(2) a completed questionnaire to provide information deemed necessary in assessing the licensee's competency;
(3) true, legible, and complete copies of the licensee's office patient records and hospital records, if applicable, concerning the patient on whose behalf damages are sought; and

(4) current information on the status of any suit or claim previously reported to either board.

(d) Investigation of Professional Review Actions. A written report of a professional review action taken by a peer review committee or a health care entity provided to the acupuncture board must contain the results and circumstances of the professional review action. Such results and circumstances shall include:

(1) the specific basis for the professional review action, whether or not such action was directly related to care of individual patients; and

(2) the specific limitations imposed upon the acupuncturist's clinical privileges, upon membership in the professional society or association, and the duration of such limitations.

(e) Other Reports.

(1) Relevant information shall be reported to the acupuncture board indicating that an acupuncturist's practice poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that an acupuncturist's practice constitutes a continuing threat to the public welfare shall be made to the acupuncture board as soon as possible after the peer review committee, licensed acupuncturist or acupuncturist student involved reaches that conclusion and is able to assemble the relevant information.

(f) Reporting Professional Liability Claims.

(1) Reporting responsibilities. The reporting form must be completed and forwarded to the acupuncture board for each defendant acupuncturist against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for an acupuncturist. If a nonadmitted insurance carrier does not report or if the acupuncturist has no insurance carrier, reporting shall be the responsibility of the acupuncturist.

(2) Separate reports required and identifying information. One separate report shall be filed for each defendant acupuncturist insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

(3) Timeframes and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(4) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(A) If the reporter elects to use a reporting format other than the acupuncture board's form for data required in Part II, there must be enough identification data available to board staff to match the closure report to the original file. The data required to accomplish this include:

(i) name and license number of defendant acupuncturist(s); and

(ii) name of plaintiff;

(B) A court order or settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(5) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance. Sanctions under the Insurance Code, Article 1.10, section 7, may be imposed for failure to report.

(6) Definition. For the purposes of this subsection a professional liability claim or complaint shall be defined as a cause of action against an acupuncturist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) product liability claims (i.e. where an acupuncturist invented a device which may have injured a patient but the acupuncturist has had no personal acupuncturist-patient relationship with the specific patient claiming injury by the device);

(B) antitrust allegations;

(C) allegations involving improper peer review activities;

(D) civil rights violations; or

(E) allegations of liability for injuries occurring on an acupuncturist's property, but not involving a breach of duty to the patient (i.e. slip and fall accidents).
(8) Claims that are not required to be reported under this chapter may, however, be voluntarily reported.

(9) The reporting form shall be as follows:

Source Note: The provisions of this §183.8 adopted to be effective March 6, 2003, 28 TexReg 1883.
FILE ONE REPORT FOR EACH DEFENDANT ACUPUNCTURIST.

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer:
   __________________________________________________
   __________________________________________________

2. Defendant acupuncturist:
   __________________________________________________

   License number:________________

3. Plaintiff's name:
   __________________________________________________

4. Policy number:
   __________________________________________________

5. Date claim reported to insurer/self-insured acupuncturist:
   __________________________

6. Type of complaint:_________ claim only ____________ lawsuit

7. Initial reserve amount after investigation:
   __________________________________________________
   (If this is not determined within 30 days, report this data within 105 days of filing the Part I report with T.S.B.A.E.)

Person completing this report __________________________ Phone number
PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH T.S.B.A.E. WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.

8. Date of disposition:________________

9. Type of Disposition:

_____ (1) Settlement

_____ (2) Judgment after trial

_____ (3) Other (please specify)

____________________________________________________________

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

$ ________________. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: $100,000/3)

11. Appeal, if known: _____Yes _____ No. If yes, which party:

____________________________________________________________

____________________________________________________________

Person completing this report ___________ Phone number
§183.9. Impaired Acupuncturists.

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(a) Mental or physical examination requirement.

(1) The board may require a licensee or applicant to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee or applicant is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the acupuncture board, or the State Office of Administrative Hearings that a certain licensee or applicant is impaired;

(B) a sworn statement from an official representative of the Texas Association of Acupuncturists or the Texas Association of Acupuncture and Oriental Medicine stating that the representative is willing to testify before the board that a certain licensee or applicant is impaired;

(C) evidence that a licensee or applicant left a treatment program for alcohol or chemical dependency before completion of that program;

(D) evidence that a licensee or applicant is guilty of intemperate use of drugs or alcohol;

(E) evidence of repeated arrests of a licensee or applicant for intoxication;

(F) evidence of recurring temporary commitments of a licensee or applicant to a mental institution; or

(G) medical records indicating that a licensee or applicant has an illness or condition which results in the inability to function properly in his or her practice.

(H) actions or statements by a licensee or applicant at a hearing conducted by the Board that gives the Board reason to believe that the licensee or applicant has an impairment.

(3) Upon presentation to the Executive Director of probable cause, the Board authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination, the medical specialists the Executive Director has approved to conduct such examinations, and the date by which the examination and the results are to be received by the Board.

(4) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the Board, through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(5) At the show cause hearing provided in for in paragraph (4) of this subsection, a panel of the Board's representatives shall determine whether the licensee/applicant shall submit to an evaluation or that the matter shall be closed with no examination required.

(A) At the hearing, the licensee/applicant and the licensee/applicant's attorney, if any, are entitled to present testimony and other evidence showing that the licensee/applicant should not be required to submit to the examination.

(B) If, after consideration of the evidence presented at the show cause hearing, the panel determines that the licensee/applicant shall submit to an examination, the Board's representatives shall, through its Executive Director, issue an order requiring the examination within 60 days after the date of the entry of the order requesting examination. A licensee is entitled to cross-examine an expert who offers testimony at hearing before the Board.

(C) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(D) The results of any Board-ordered mental or physical examination are confidential shall be presented to the Board under seal for it to take whatever action is deemed necessary and appropriate based on the results of the mental or physical examination. A licensee shall be provided the results of an examination and given the opportunity to provide a response at least 30 days before the Board takes action.

(6) In fulfilling its obligations under Section 205.3523 of the Act, the Board shall refer the licensee/applicant to the most appropriate medical specialist for evaluation. The Board may not require a licensee/applicant to submit to an examination by a physician having a specialty specified by the Board unless medically indicated. The Board may not require a licensee/applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the licensee/applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(7) The guidelines adopted under this subsection do not impair or remove the Board's power...
to make an independent licensing or disciplinary decision unless a temporary suspension is convened.

(b) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) shall be applied to acupuncturists who are believed to be impaired and eligible for the Texas Physician Health Program. Rehabilitation orders entered into on or before January 1, 2010 shall be governed by law as it existed immediately before that date.

Source Note: The provisions of this §183.9 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective May 2, 2010, 35 TexReg 3279.


(a) Acupuncturists licensed under the Act shall keep and maintain adequate records of all patient visits or consultations which shall, at a minimum, be written in English and include:

(1) the patient's name and address;

(2) vital signs to include body temperature, pulse or heart rate, respiratory rate, and blood pressure on initial presentation of the patient, and those vital signs as deemed appropriate by the practitioner for follow-up treatment;

(3) the chief complaint of the patient;

(4) a patient history;

(5) a treatment plan for each patient visit or consultation;

(6) a notation of any herbal medications, including amounts and forms, and other modalities used in the course of treatment with corresponding dates for such treatment;

(7) a system of billing records which accurately reflect patient names, services rendered, the date of the services rendered, and the amount charged or billed for each service rendered;

(8) a written record regarding whether or not a patient was evaluated by a physician or dentist, as appropriate, for the condition being treated within 12 months before the date acupuncture was performed as required by §183.7(a) of this title (relating to Scope of Practice);

(9) a written record regarding whether or not a patient was referred to a physician after the acupuncturist performed acupuncture 20 times or for two months whichever occurs first, as required by §183.7(b) of this title (relating to Scope of Practice) in regard to treatment of patients upon referral by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners;

(10) in the case of referrals to the acupuncturist of a patient by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners, the acupuncturist shall record the date of the referral and the most recent date of chiropractic treatment prior to acupuncture treatment; and,

(11) reasonable documentation that the evaluation required by §183.7 of this title (relating to Scope of Practice) was performed or, in the event that the licensee is unable to determine that the evaluation took place, a written statement signed by the patient stating that the patient has been evaluated by a physician within the required time frame on a copy of the following form:

Attached Graphic

Attached Graphic

(b) Pursuant to §205.302 of the Act, an acupuncturist shall not be required to keep and maintain the documentation set forth in subsection (a)(11) of this section when performing acupuncture on a patient only for smoking addiction, substance abuse, alcoholism, chronic pain, or weight loss.

(c) Maintenance of Medical and Billing Records.

(1) A licensed acupuncturist shall maintain adequate medical and billing records of a patient for a minimum of five years from the anniversary date of the date of last treatment by the acupuncturist.

(2) If a patient was younger than 18 years of age when last treated by the acupuncturist, the medical and billing records of the patient shall be maintained by the acupuncturist until the patient reaches age 21 or for five years from the date of last treatment, whichever is longer.

(3) Acupuncturists shall retain medical and billing records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) An acupuncturist may destroy medical and billing records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved and the records have been maintained at least as long as required by paragraphs (1) - (3) of this subsection.

(d) Consent for the release of confidential information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code Subtitle C, Title 7, Health and Safety Code; the Persons with Mental Retardation Act, Subtitle D, Title 7, Health and Safety Code; Chapter 452, Health and Safety Code, (relating to Treatment of Chemically Dependent Persons); Chapter 5, Texas Probate Code, and Chapter

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11, Family Code; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(1) the information or records to be covered by the release;
(2) the reason or purposes for the release; and
(3) the person to whom the information is to be released.

(e) The patient, or other person authorized to consent, has the right to withdraw his or her consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(f) Any person who receives information made confidential by this act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(g) An acupuncturist shall furnish legible copies of patient records requested, or a summary or narrative of the records in English, pursuant to a written consent for release of the information as provided by subsection (d) of this section, except if the acupuncturist determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The acupuncturist may delete confidential information about another person who has not consented to the release. The information shall be furnished by the acupuncturist within 30 days after the date of receipt of the request. Reasonable fees for furnishing the information shall be paid by the patient or someone on his or her behalf. If the acupuncturist denies the request, in whole or in part, the acupuncturist shall furnish the patient a written statement, signed and dated, stating the reason for denial. A copy of the statement denying the request shall be placed in the patient's records. In this subsection, "patient records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

Source Note: The provisions of this §183.10 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective September 14, 2003, 28 TexReg 7704; amended to be effective May 6, 2009, 34 TexReg 2675.
Form to be Completed by Patient, Notifying the Acupuncturist of Whether He/She Has Been Evaluated by a Physician, and Other Information.

(Pursuant to the requirements of 22 TAC §183.7 of the Texas State Board of Acupuncture Examiners’ rules (relating to Scope of Practice and Tex. Occ. Code Ann., §205.351, governing the practice of acupuncture.)

I (patient's name) ________________________________________, am notifying the acupuncturist (practitioner's name),

________________________________ of the following:

___ Yes ___ No I have been evaluated by a physician or dentist for the condition being treated within 12 months before the acupuncture was performed. I recognize that I should be evaluated by a physician or dentist for the condition being treated by the acupuncturist.

_____ (initials of patient) Date: ____________

___ Yes ___ No I have received a referral from my chiropractor within the last 30 days for acupuncture.

After being referred by a chiropractor, if after two months or 20 treatments, whichever comes first, no substantial improvement occurs in the condition being treated, I understand that the acupuncturist is required to refer me to a physician. It is my responsibility and choice whether to follow this advice.

Signature ________________________________ Date ____________

Optional Form to be Completed by Patient, Attesting that the Acupuncturist Has Referred Him/Her

(Pursuant to the requirement of 22 TAC §183.7 of the Texas State Board of Acupuncture Examiners’ rules (relating to Scope of Practice) and Tex. Occ. Code Ann. §205.351, governing the practice of acupuncture.)

The acupuncturist has referred me to see a physician. It is my responsibility and choice whether to follow his or her advice.

Patient's signature ________________________________ Date ____________

Acupuncturist’s signature ________________________________ Date ____________
§183.11. Complaint Procedure Notification. Pursuant to §205.152 of the Act, Chapter 178 of this title (relating to Complaints) shall govern acupuncturists with regard to methods of notification for filing complaints with the agency. If the provisions of Chapter 178 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §183.11 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective December 7, 2014, 39 TexReg 9344.

§183.12. Medical Board Review and Approval. (a) Pursuant to §205.202 of the Act, the acupuncture board shall issue a license to practice acupuncture in this state to a person who meets the requirements of the Act and the rules adopted pursuant to the Act without approval of the Medical Board.

(b) Pursuant to §205.352 of the Act, the acupuncture board shall take disciplinary action against a license holder without approval of the Medical Board.

(c) Pursuant to §205.101(b) of the Act, a rule adopted by the acupuncture board is subject to Medical board approval, which shall be memorialized in the minutes of the medical board, the minutes of a committee of the medical board, or in a writing signed by the medical board's presiding officer, secretary-treasurer, or authorized committee chairman after consideration of the recommendations of the acupuncture board.

Source Note: The provisions of this §183.12 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective May 1, 2006, 31 TexReg 3534.

§183.13. Construction. The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Act. In the event of a conflict between this chapter and the provisions of the Act, the provisions of the Act shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Act shall remain in effect.

Source Note: The provisions of this §183.13 adopted to be effective March 6, 2003, 28 TexReg 1883.

§183.14. Acudetox Specialist. (a) For purposes of this chapter, an "acudetox specialist" shall be defined as a person who is certified to practice auricular acupuncture for the limited purpose of treating alcoholism, substance abuse, and chemical dependency.

(b) Any person who does not possess a Texas acupuncture license or is not otherwise authorized to practice acupuncture under Tex. Occ. Code Ann. Title 3, Subtitle C, Chapter 205, may practice as an acudetox specialist for the sole purpose of the treatment of alcoholism, substance abuse, or chemical dependency upon obtaining certification as an acudetox specialist only under the following conditions listed in paragraphs (1) - (4) of this subsection:

1. after issuance of certification by the Medical Board, payment of any required fee and receipt of written confirmation of certification from the Medical Board;

2. after successful completion of a training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency, which has been approved by the Medical Board with advice from the acupuncture board. Such program in auricular acupuncture shall be 70 hours in length, and shall include a clean needle technique course or equivalent universal infection control precaution procedures course approved by the Medical Board;

3. if the individual holds an unrestricted and current license, registration, or certification issued by the appropriate Texas regulatory agency authorizing practice as a social worker, a licensed professional counselor, a licensed psychologist, a licensed chemical dependency counselor, a licensed vocational nurse, or a licensed registered nurse; provided, however, that such practice of acudetox is not prohibited by the regulatory agency authorizing such practice as a social worker, professional counselor, psychologist, chemical dependency counselor, licensed vocational nurse, or registered nurse; and,

4. if the individual works under protocol and has access to a licensed Texas physician or a licensed Texas acupuncturist readily available by telephonic means or other methods of communication.

(c) For purposes of this chapter, auricular acupuncture shall be defined as acupuncture treatment limited to the insertion of needles into five acupuncture points in the ear. These points being the liver, kidney, lung, sympathetic and shen men.

(d) Certification as an acudetox specialist shall be subject to suspension, revocation, or cancellation on any grounds substantially similar to those set forth in the Act, §205.351 or for practicing acupuncture in violation of this chapter.

(e) Practitioners certified as acudetox specialists shall keep records of patient care which at a minimum shall include the dates of treatment, the purpose for the treatment, the name of the patient, the points used, and the name, signature, and title of the certificate-holder.

(f) The fee for certification as an acudetox specialist for the treatment of alcoholism, substance
abuse, or chemical dependency shall be set in such an amount as to cover the reasonable cost of administering and enforcing this chapter without recourse to any other funds generated by the Medical or the Acupuncture Board. The application and renewal fees are defined under §175.1 and §175.2 of this title (relating to Application Fees and Registration and Renewal Fees).

(g) Certificate-holders under this chapter shall keep a current mailing and practice address on file with the Medical Board and shall notify the Medical Board in writing of any address change within ten days of the change of address.

(h) Individuals practicing as an acudetox specialist under the provisions of this chapter shall ensure that any patient receiving such treatment is notified in writing of the qualifications of the individual providing the acudetox treatment and the process for filing complaints with the Medical Board, and shall ensure that a copy of the notification is retained in the patient's record.

(i) Applications for certification as an acudetox specialist shall be submitted in writing on a form approved by the Medical Board which contains the information set forth in subsection (b) of this section and any supporting documentation necessary to confirm such information.

(j) Each individual who is certified as an acudetox specialist may annually renew certification by completing and submitting to the Medical Board an approved renewal form together with the following as listed in paragraphs (1) - (3) of this subsection:

1. documentation that the certification or license as required by subsection (b)(3) of this section is still valid;
2. proof of any Continuing Auricular Acupuncture Education (CAAE) obtained as provided for in §183.21 of this title (relating to Continuing Auricular Acupuncture Education for Acudetox Specialists); and,
3. payment of a certification renewal fee in the amount of $25.

(k) Each individual who obtains certification as an acudetox specialist under this section may only use the titles "Certified Acudetox Specialist" or "C.A.S." to denote his or her specialized training.

Source Note: The provisions of this §183.15 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective May 1, 2006, 31 TexReg 3534; amended to be effective September 21, 2009, 34 TexReg 6449.

§183.16. Texas Acupuncture Schools.

(a) A licensed Texas acupuncturist operating an acupuncture school in Texas which has not yet been accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or reached candidate status for accreditation by ACAOM, a licensed Texas acupuncturist with any ownership interest in such a school, or a licensed Texas acupuncturist who teaches in or operates such a school, shall ensure that students of the school and applicants to the school are made aware of the provisions of the Medical Practice Act governing acupuncture practice, the rules and regulations adopted by the Texas State Board of Acupuncture Examiners, and the educational requirements for obtaining a Texas acupuncture license to include the rules and regulations establishing the criteria for an approved acupuncture school for purposes of licensure as an acupuncturist by the Texas State Board of Acupuncture Examiners as set forth in subsection (b) of this section.

(b) Compliance with the provisions of subsection (a) of this section shall be accomplished by providing students and applicants with a copy of Subchapter H of the Act, a copy of Chapter 183 (Acupuncture) contained in the Rules of the Texas Medical Board, and the following typed statement:

§183.15. Use of Professional Titles.

(a) A licensee shall use the title "Licensed Acupuncturist," "Lic. Ac.," or "L. Ac.," immediately following his/her name on any advertising or other materials visible to the public which pertain to the licensee's practice of acupuncture, except as provided in subsection (b) of this section. Only persons licensed as an acupuncturist may use these titles. A licensee who is also licensed in Texas as a physician, dentist, chiropractor, optometrist, podiatrist, and/or veterinarian is exempt from the requirement that the licensee's acupuncture title immediately follow his/her name.

(b) If a licensee uses any additional title or designation, it shall be the responsibility of the licensee to comply with the provisions of the Healing Art Identification Act, Texas Occupations Code Annotated, Chapter 104, that require individuals to designate the authority under which the title is used or the college or honorary degree that gives rise to the use of the title. A licensee may use the additional title or designation in materials described in subsection (a) of this section, immediately before or after the title "Licensed Acupuncturist," "Lic. Ac.," or "L. Ac."

Source Note: The provisions of this §183.15 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective May 2, 2004, 29 TexReg 3962; amended to be effective January 4, 2007, 31 TexReg 10799; amended to be effective February 28, 2011, 36 TexReg 1278
ACUPUNCTURE TRAINING ADVISORY STATEMENT

You are advised that the practice of acupuncture in Texas requires licensure by the Texas State Board of Acupuncture Examiners and is governed by Chapter 205 of the Texas Occupations Code and the rules of the Texas Medical Board, 22 TAC §183.1 et. seq.

You are further advised that for an acupuncture school located in the United States or Canada to be considered to be an approved acupuncture school by the Texas State Board of Acupuncture Examiners for purposes of meeting the educational requirements for obtaining an acupuncture license, the school must comply and must meet the requirements set forth below:

Acceptable approved acupuncture school - Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Tex. Occ. Code and with the exception of the provisions outlined in §183.4(h) of this title (relating to Exceptions),

(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 Oriental Medicine (ACAOM), offered no more than a certificate 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 modification/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 ACAOM, offered a masters 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 through an evaluation by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).

You are additionally advised that _______________________ (name of institution) is not currently a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and is not currently accredited by ACAOM. If such candidate status or accreditation is not obtained by this institution by the time of your graduation, under the current rules of the Texas State Board of Acupuncture Examiners you will not be eligible for a Texas acupuncture license based on training received at this institution.
(c) A licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by ACAOM or is not a candidate for ACAOM accreditation shall not state directly or indirectly, explicitly or by implication, orally or in writing, either personally or through an agent of the acupuncturist or the school, that the school is endorsed, accredited, registered with, affiliated with, or otherwise approved by the Texas State Board of Acupuncture Examiners for any purpose.

(d) Failure to comply with the requirements or abide by the prohibitions of this section shall be grounds for disciplinary action against a licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by ACAOM or is not a candidate for ACAOM accreditation. Such disciplinary action shall be based on the violation of a rule of the Texas State Board of Acupuncture Examiners as provided for in the Act, §205.351(a)(6).

(e) For purposes of licensure and regulation of acupuncturists practicing in Texas, ACAOM approved acupuncture schools in Texas meeting the criteria set forth in §183.2 of this title (relating to Definitions) may issue masters of science in oriental medicine degrees in a manner consistent with the laws of the State of Texas. The Texas State Board of Acupuncture Examiners shall recognize any such lawfully issued degrees. For purposes of licensure and regulation of acupuncturists practicing in Texas, acupuncture schools in Texas which are ACAOM candidates for masters level programs in acupuncture and oriental medicine and who have issued diplomas or degrees during the period of candidacy, may upgrade such degrees to masters degrees upon obtaining full ACAOM accreditation. The Texas State Board of Acupuncture Examiners shall recognize any such lawfully upgraded degrees.

Source Note: The provisions of this §183.16 adopted to be effective March 6, 2003, 28 TexReg 1883; amended to be effective September 12, 2004, 29 TexReg 8511; amended to be effective May 1, 2006, 31 TexReg 3534.

§183.17. Compliance.
Chapter 189 of this title (relating to Compliance) shall be applied to acupuncturists who are under board orders. If the provisions of Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §183.17 adopted to be effective March 6, 2003, 28 TexReg 1883.

§183.18. Administrative Penalties.

(a) Pursuant to §205.352 of the Act and Chapter 165 of the Medical Practice Act, the board by order may impose an administrative penalty, subject to the provisions of the APA, against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act and the APA.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) Prior to the imposition of an administrative penalty by board order, a person must be given notice and opportunity to respond and present evidence and argument on each issue that is the basis for the proposed administrative penalty at a show compliance proceeding.

(d) The amount of the penalty shall be based on the factors set forth under Chapter 190 of this title (relating to Disciplinary Guidelines).

(e) If the board by order determines that a violation has occurred and imposes an administrative penalty on a person licensed or regulated under the Act, the board shall give notice to the person of the board's order which shall include a statement of the right of the person to seek judicial review of the order.

(f) An administrative penalty may be imposed under this section for the following:

(1) failure to timely comply with a board subpoena issued by the board shall be grounds for the imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(2) failure to timely comply with the terms, conditions, or requirements of a board order shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(3) failure to timely report a change of address to the board shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(4) failure to timely respond to a patient's communications shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(5) failure to comply with the complaint procedure notification requirements as set forth in §183.11 of this title (relating to Complaint Procedure Notification) shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;
(6) failure to provide show compliance proceeding information in the prescribed time shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation; and

(7) for any other violation other than quality of care that the board deems appropriate shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation.

(g) In the case of untimely compliance with a board order, the board staff shall not be authorized to impose an administrative penalty without an informal show compliance proceeding if the person licensed or regulated under the Act has not first been brought into compliance with the terms, conditions, and requirements of the order other than the time factors involved.

(h) Any order proposed under this section shall be subject to final approval by the board.

(i) Failure to pay an administrative penalty imposed through an order shall be grounds for disciplinary action by the board pursuant to the Act, §205.351(a)(10), regarding unprofessional or dishonorable conduct likely to deceive or defraud, or injure the public, and shall also be grounds for the executive director to refer the matter to the attorney general for collection of the amount of the penalty.

(j) A person who becomes financially unable to pay an administrative penalty after entry of an order imposing such a penalty, upon a showing of good cause by a writing executed by the person under oath and at the discretion of the Discipline and Ethics Committee of the board, may be granted an extension of time or deferral of no more than one year from the date the administrative penalty is due. Upon the conclusion of any such extension of time or deferral, if payment has not been made in the manner and in the amount required, action authorized by the terms of the order or subsection (i) of this section.

Source Note: The provisions of this §183.18 adopted to be effective March 6, 2003, 28 TexReg 1883.


(a) License number on print advertising. Except as provided for in subsection (b) of this section, all written advertising communicated by any means or medium which is authorized, procured, promulgated, or used by any acupuncturist shall reflect the current Texas acupuncture license number of the acupuncturist who authorized, procured, promulgated, or used the advertisement and/or is the subject of the advertising. In the event that more than one acupuncturist authorizes, procures, promulgates, uses, and/or is the subject of the advertising, each such acupuncturist shall ensure that any such print medium reflects the current Texas acupuncture license number of the acupuncturist.

(b) Exceptions. The following forms of advertising shall be exempt from the provisions of subsection (a) of this section:

1. business cards;
2. office, clinic, or facility signs at the office, clinic, or facility location;
3. single line telephone listings; and,
4. billboard advertising.

(c) Misleading or deceptive advertising. Acupuncturists shall not authorize or use false, misleading, or deceptive advertising, and, in addition, shall not engage in any of the following:

1. hold themselves out as a physician or surgeon or any combination or derivative of those terms unless also licensed by the medical board as a physician or surgeon as defined under the Medical Practice Act, Tex. Occ. Code Ann. §151.002(a)(13) (relating to Definitions);
2. use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification; or,
3. use the terms "board certified" or any similar words or phrases calculated to convey the same meaning if the advertised board certification has expired and has not been renewed at the time the advertising in question was published, broadcast, or otherwise promulgated.

Source Note: The provisions of this §183.19 adopted to be effective September 21, 2000, 25 TexReg 9217; amended to be effective January 6, 2002, 26 TexReg 10866.

§183.20. Continuing Acupuncture Education.

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing acupuncture education (CAE) for licensed Texas acupuncturists so as to further enhance their professional skills and knowledge.

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of CAE each year.

1. The required hours shall be from courses that meet one of the following criteria at the time the hours are taken:

(A) are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners based on a review and recommendation of the course content by the Education Committee of the board as described in subsection (n) of this section;
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(B) are offered by approved providers;
(C) have been approved for CAE credit for a minimum of three years by another state acupuncture board having first gone through a formal approval process;
(D) approved by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) for professional development activity credit; or
(E) are provided outside of the United States by a provider of continuing acupuncture education that are acceptable to the Board.

(2) At least eight hours shall be in general acupuncture in order to ensure that a licensee's CAE is comprehensive and that the licensee's overall acupuncture knowledge, skills, and competence are enhanced.

(3) At least one of the required hours shall be from a course in ethics.

(4) At least two of the required hours shall be in herbology. More than two hours shall be expected of a licensee whose primary practice includes prescriptions of herbs.

(5) Effective for licensees applying for renewal of their licensees on or after November 30, 2010, at least one hour of biomedicine.

(6) No more than two of the required hours may be from courses that primarily relate to practice enhancement or business or office administration.

(7) Courses may be taught through live lecture, distance learning, or the Internet.

(8) No more than a total of eight hours completed under paragraph (1)(D) or (E) of this subsection may be applied to the total hours required each registration period.

(c) Reporting Continuing Acupuncture Education. An acupuncturist must report on the licensee's annual registration form whether the licensee has completed the required acupuncture education during the previous year.

(d) Grounds for Exemption from Continuing Acupuncture Education. An acupuncturist may request in writing and may be exempt from the annual minimum continuing acupuncture education requirements for one or more of the following reasons:

(1) catastrophic illness;
(2) military service of longer than one year in duration;
(3) acupuncture practice and residence of longer than one year in duration outside the United States; and/or
(4) good cause shown on written application of the licensee which gives satisfactory evidence to the board that the licensee is unable to comply with the requirements of continuing acupuncture education.

(e) Exemption Requests. Exemption requests shall be subject to the approval of the executive director of the board, and shall be submitted in writing at least 30 days prior to the expiration of the license.

(f) Exemption Duration and Renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed annually upon written request submitted at least 30 days prior to the expiration of the current exemption.

(g) Verification of Credits. The board may require written verification of continuing acupuncture education hours from any licensee and the licensee shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board.

(h) Nonrenewal for Insufficient Continuing Acupuncture Education. Unless exempted under the terms of this section, the apparent failure of an acupuncturist to obtain and timely report the 17 hours of continuing education hours as required and provided for in this section shall result in nonrenewal of the license until such time as the acupuncturist obtains and reports the required hours; however, the executive director of the board may issue to such an acupuncturist a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the continuing acupuncture education hours of the acupuncturist and to allow the acupuncturist who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) Fee for Issuance of Temporary License. The fee for issuance of a temporary license pursuant to the provisions of this section shall be in the amount specified under §175.1 of this title (relating to Application Fees); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(j) Application of Additional Hours. Continuing acupuncture education hours that are obtained to comply with the requirements for the preceding year as a prerequisite for licensure renewal, shall first be credited to meet the requirements for that previous year. Once the requirements of the previous year are satisfied, any additional hours obtained shall be credited to meet the continuing acupuncture education requirements of the current year. A licensee may carry forward CAE hours earned prior to an annual registration report which are in excess of the 17-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 34 total excess hours may be carried
forward. Excess CAE hours may not be carried forward or applied to an annual report of CAE more than two years beyond the date of the annual registration following the period during which the hours were earned.

(k) False Reports/Statements. An intentionally false report or statement to the board by a licensee regarding continuing acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, §205.351(a)(2) and (6).

(l) Monetary Penalty. Failure to obtain and timely report the continuing acupuncture education hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 and §175.3 of this title (relating to Registration and Renewal Fees and Penalties).

(m) Disciplinary Action, Conditional Licensure, and Construction. This section shall be construed to allow the board to impose requirements for completion of additional continuing acupuncture education hours for purposes of disciplinary action and conditional licensure.

(n) Required Content for Continuing Acupuncture Education Courses. Continuing Acupuncture Education courses must meet the following requirements:

1. the content of the course, program, or activity is related to the practice of acupuncture or oriental medicine, and shall:
   a. be related to the knowledge and/or technical skills required to practice acupuncture; or
   b. be related to direct and/or indirect patient care;
2. the method of instruction is adequate to teach the content of the course, program, or activity;
3. the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;
4. the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity;
5. each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training;
6. the course, program, or activity is provided by a knowledgeable health care provider or reputable school, state, or professional organization;
7. the course description provides adequate information so that each participant understands the basis for the program and the goals and objectives to be met; and
8. the education provider obtains written evaluations at the end of each program, collate the evaluations in a statistical summary, and makes the summary available to the board upon request.

(o) Continuing Acupuncture Education Approval Requests. All requests for approval of courses, programs, or activities for purposes of satisfying CAE credit requirements shall be submitted in writing to the Education Committee of the board on a form approved by the board, along with any required fee, and accompanied by information, documents, and materials accurately describing the course, program, or activity, and necessary for verifying compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, supplemental information, documents, and materials may be requested as needed to obtain an adequate description of the course, program, or activity and to verify compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, inspection of original supporting documents may be required for a determination on an approval request. The Acupuncture Board shall have the authority to conduct random and periodic checks of courses, programs, or activities to ensure that criteria for education approval as set forth in subsection (n) of this section have been met and continue to be met by the education provider. Upon requesting approval of a course, program, or activity, the education provider shall agree to such checks by the Acupuncture Board or its designees, and shall further agree to provide supplemental information, documents, and material describing the course, program, or activity which, in the discretion of the Acupuncture Board, may be needed for approval or continued approval of the course, program, or activity. Failure of an education provider to provide the necessary information, documents, and materials to show compliance with the standards set forth in subsection (n) of this section shall be grounds for denial of CAE approval or recision of prior approval in regard to the course, program, or activity.

(p) Reconsideration of Denials of Approval Requests. Determinations to deny approval of a CAE course, program, or activity may be reconsidered by the Education Committee or the board based on additional information concerning the course, program, or activity, or upon a showing of good cause for reconsideration. A decision to reconsider a denial determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration shall be made in writing by the education provider, and may be made orally or in writing by board staff or a committee of the board.

(q) Reconsideration of Approvals. Determinations to approve a CAE course, program, or activity may be reconsidered by the Education Committee or the board
based on additional information concerning the course, program, or activity, or upon a showing of good cause. A decision to reconsider an approval determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration may be made in writing by a member of the public or may be made orally or in writing by board staff or a committee of the board.

(r) Criteria for Provider Approval.

(1) In order to be an approved provider, a provider shall submit to the board a provider application on a form approved by the board, along with any required fee. All provider applications and documentation submitted to the board shall be typewritten and in English.

(2) To become an approved provider, a provider shall submit to the board 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. In addition the provider must have no history of complaints or reprimands with the board.

(3) The approval of the provider shall expire three years after it is issued by the board and may be renewed upon the filing of the required application, along with any required fee.

(4) Acupuncture schools and colleges which have been approved by the board, as defined under §183.2(2) of this title (relating to Definitions), who seek to be approved providers shall be required to submit an application for an approved provider number to the board.

(s) Requirements of Approved Providers.

(1) For the purpose of this chapter, the title "approved provider" can only be used when a person or organization has submitted a provider application form, and has been issued a provider number unless otherwise provided.

(2) A person or organization may be issued only one provider number. When two or more approved providers co-sponsor a course, the course shall be identified by only one provider number and that provider shall assume responsibility for recordkeeping, advertising, issuance of certificates and instructor(s) qualifications.

(3) An approved provider shall offer CAE programs that are presented or instructed by persons who meet the minimum criteria as described in subsection (t) of this section.

(4) An approved provider shall keep the following records for a period of four years in one identified location:

(A) Course outlines of each course given.

(B) Record of time and places of each course given.

(C) Course instructor curriculum vitae or resumes.

(D) The attendance record for each course.

(E) Participant evaluation forms for each course given.

(5) An approved provider shall submit to the board the following within ten days of the board's request:

(A) A copy of the attendance record showing the name, signature and license number of any licensed acupuncturists who attended the course.

(B) The participant evaluation forms of the course.

(6) Approved providers shall issue, within 60 days of the conclusion of a course, to each participant who has completed the course, a certificate of completion that contains the following information:

(A) Provider's name and number.

(B) Course title.

(C) Participant's name and, if applicable, his or her acupuncture license number.

(D) Date and location of course.

(E) Number of continuing education hours completed.

(F) Description of hours indicating whether hours completed are in general acupuncture, ethics, herbology, biomedicine, or practice management.

(G) Statement directing the acupuncturist to retain the certificate for at least four years from the date of completion of the course.

(7) Approved providers shall notify the board within 30 days of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(8) Provider approval is non-transferable.

(9) The board may audit during reasonable business hours records, courses, instructors and related activities of an approved provider.

(t) Instructors.

(1) Minimum qualifications of an acupuncturist instructor. The instructor must:

(A) hold a current valid license to practice acupuncture in Texas or other state and be free of any disciplinary order or probation by a state licensing authority; and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through one of the following:

(i) hold a minimum of a master's degree from an accredited college or university or a
post-secondary educational institution, with a major in
the subject directly related to the content of the program
to be presented;

(ii) have experience in teaching
similar subject matter content within the last two years
in the specialized area in which he or she is teaching;

(iii) have at least one year's
experience within the last two years in the specialized
area in which he or she is teaching; or

(iv) have graduated from an
acceptable acupuncture school, as defined under
§183.2(2) of this title, and have completed 3 years of
professional experience in the licensed practice of
acupuncture.

(2) Minimum qualifications of a non-
acupuncturist instructor. The instructor must:

(A) be currently licensed or certified in his
or her area of expertise if appropriate;

(B) show written evidence of specialized
training or experience, which may include, but not be
limited to, a certificate of training or an advanced
degree in a given subject area; and

(C) have at least one year's teaching
experience within the last two years in the specialized
area in which he or she teaches.

(u) CAE Credit for Course Instruction. Instructors
of board-approved CAE courses or courses taught
through a program offered by an approved provider for
CAE credit may receive three hours of CAE credit for
each hour of lecture, not to exceed six hours of
continuing education credit per year, regardless of how
many hours taught. Participation as a member of a
panel presentation for the approved course shall not
entitle the participant to earn CAE credit as an
instructor. No CAE credit shall be granted to school
faculty members as credit for their regular teaching
assignments.

(v) Expiration, Denial and Withdrawal of
Approval.

(1) Approval of any CAE course shall expire
three years after the date of approval.

(2) The board may withdraw its approval of a
provider or deny an application for approval if the
provider is convicted of a crime substantially related to
the activities of a provider.

(3) Any material misrepresentation of fact by a
provider or applicant in any information required to be
submitted to the board is grounds for withdrawal of
approval or denial of an application.

(4) The board may withdraw its approval of a
provider after giving the provider written notice setting
forth its reasons for withdrawal and after giving the
provider a reasonable opportunity to be heard by the
board or its designee.

(5) Should the board deny approval of a
provider, the provider may appeal the action by filing a
letter stating the reason(s) with the board. The letter of
appeal shall be filed with the board within ten days of
the mailing of the applicant's notification of the board's
denial. The appeal shall be considered by the board.

Source Note: The provisions of this §183.20
adopted to be effective September 21, 2000, 25 TexReg
9217; amended to be effective January 6, 2002, 26
TexReg 10866; amended to be effective September 19,
2002, 27 TexReg 8770; amended to be effective June
29, 2003, 28 TexReg 4633; amended to be effective
September 14, 2003, 28 TexReg 7704; amended to be
effective March 6, 2005, 30 TexReg 1076; amended to
be effective January 4, 2007, 31 TexReg 10799;
amended to be effective May 6, 2009, 34 TexReg 2675;
amended to be effective February 28, 2011, 36 TexReg
1278; amended to be effective June 28, 2011, 36
TexReg 3918

§183.21. Continuing Auricular Acupuncture
Education for Acudetox Specialists.

(a) Purpose. This section is promulgated to
promote the health, safety, and welfare of the people of
Texas through the establishment of minimum
requirements for continuing auricular acupuncture
education (CAAE) for certified acudetox specialists so
as to further enhance their professional skills and
knowledge.

(b) Minimum continuing auricular acupuncture
education. As a prerequisite to the re-certification of an
acudetox specialist, the acudetox specialist shall
provide documentation to the Medical Board that the
individual has successfully met the continuing
education requirements established by the board which
includes the following listed in paragraphs (1)-(2) of
this subsection:

(1) At least six hours of CAAE each year shall
be in the practice of auricular acupuncture;

(2) The required hours shall be from courses
that are designated or otherwise approved for credit by
the Medical Board at the time the course was taken.

(c) Reporting continuing auricular acupuncture
education. An acudetox specialist must report on the
certificate-holder's re-certification form the number of
hours and type of continuing auricular acupuncture
education completed during the previous year.

(d) Grounds for exemption from continuing
auricular acupuncture education. An acudetox specialist
may request in writing and may be exempt from the
annual minimum continuing auricular acupuncture
education requirements for one or more of the
following reasons listed in paragraphs (1)-(2) of this
subsection:
(1) catastrophic illness; and/or
(2) military service of longer than one year in duration;
(e) Exemption requests. Exemption requests shall be subject to the approval of the executive director of the Medical Board, and shall be submitted in writing at least 30 days prior to the expiration of the certificate.
(f) Exemption duration and renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed annually upon written request submitted at least 30 days prior to the expiration of the current exemption.
(g) Verification of credits. The board may require written verification of continuing auricular acupuncture education hours from any certified acudetox specialist and the certificate-holder shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board.
(h) Approval of continuing auricular acupuncture education. Continuing Auricular Acupuncture Education (CAAE) credit hours shall be approved by the Medical Board and shall include education by an ACAOM accredited school or other nationally recognized institution, organization, or training program approved by the Medical Board. Approval of courses shall be by January 1, 1999. The first reporting of CAE shall be required for certification renewal in 2000. Approval shall be based on a showing by the education provider that:
(1) the content of the course, program, or activity is related to the practice of acudetox, and is not a course on practice enhancement, business, or office administration;
(2) the method of instruction is adequate to teach the content of the course, program, or activity;
(3) the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;
(4) the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity; and,
(5) each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training.
(i) False Reports/Statements. An intentionally false report or statement to the board by a certificate-holder regarding continuing auricular acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, §205.351(a)(2) and (6).
(j) Monetary penalty. Failure to obtain and timely report the continuing auricular acupuncture education hours for renewal of a certificate shall subject the certificate-holder to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Registration and Renewal Fees) and §175.3 of this title (relating to Penalties).
(k) Disciplinary action, conditional licensure, and construction. This section shall be construed to allow the board to impose requirements for completion of additional continuing auricular acupuncture education hours for purposes of disciplinary action and conditional licensure.

Source Note: The provisions of this §183.21 adopted to be effective September 21, 2000, 25 TexReg 9217; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective January 6, 2002, 26 TexReg 10866; amended to be effective March 23, 2014, 39 TexReg 1932.

§183.22. Language Requirements.
(a) All medical records and prescriptions are to be written in English with the exception of acupuncture terms, including herbs, that are more frequently known by their Chinese or Pinyin translation, if appropriate.
(b) All written instructions to patients must be in English. If the patient does not speak English then the acupuncturist shall make reasonable efforts to translate the patient's native language.

Source Note: The provisions of this §183.22 adopted to be effective September 14, 2003, 28 TexReg 7704.

§183.23. Voluntary Surrender of Acupuncture License.
Pursuant to Section 205.3522 of the Act, the Board may accept the voluntary surrender of an acupuncture license. Chapter 196 of this title (relating to Voluntary Surrender of a Medical License) shall govern the voluntary surrender of an acupuncture license in a similar manner as that chapter applies to a medical license. Section 183.4 of this title (relating to Licensure) shall govern reapplication after a voluntary surrender.

Source Note: The provisions of this §183.23 adopted to be effective May 1, 2006, 31 TexReg 3534.

§183.24 Procedure
Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to acupuncturists where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.
Source Note: The provisions of this §183.24 adopted to be effective June 28, 2011, 36 TexReg 3918
§184.1. Purpose.
These rules are promulgated under the authority of the Medical Practice Act Title 3, Subtitle B, Tex. Occ. Code and the Surgical Assistants Act, Tex. Occ. Code Ann. Ch. 206. The purpose of these rules is to establish requirements for the education, training, and professional behavior for persons who identify themselves as licensed surgical assistants without a financial burden to the people of Texas. Furthermore, the purpose of these rules and regulations is to also encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to licensed surgical assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in a surgical setting and who are not rendering services as a surgical assistant or identifying themselves as a licensed surgical assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. In addition, nothing in these rules and regulations shall be construed to require licensure as a surgical assistant for those individuals who are exempted, including registered nurses and physician assistants, under §206.002 of the Act.

Source Note: The provisions of this §184.1 adopted to be effective June 18, 2002, 27 TexReg 5205; amended to be effective August 10, 2008, 33 TexReg 6135.

§184.2. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
(2) Address of record--The mailing address of each licensee or applicant as provided to the agency pursuant to the Act.
(3) Advisory committee--An informal advisory committee to the board whose purpose is to advise the board regarding rules relating to the licensure, enforcement, and discipline of surgical assistants.
(5) Applicant--A person seeking a surgical assistant license from the board.
(6) Board--The Texas Medical Board.
(7) Delegating physician--A physician licensed by the board who delegates, to a licensed surgical assistant, surgical assisting and oversees and accepts responsibility for that surgical assisting.
(8) Direct supervision--supervision by a delegating physician who is physically present and personally directs delegated acts, and remains immediately available in the operating room to respond to any emergency until the patient is released from the operating room or care and has been transferred to another physician.
(9) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.
(10) Surgical assistant--A person licensed as a surgical assistant by the Texas Medical Board.
(11) Surgical or first assisting--providing aid under direct supervision in exposure, hemostasis, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient, including the delegated authority to provide local infiltration or the topical application of a local anesthetic at the operation site.
(12) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.
(13) Military spouse--A person who is married to a military service member who is currently on active duty.
(14) Military veteran--A person who served on active duty in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces and who was discharged or released from active duty under conditions other than dishonorable.

Source Note: The provisions of this §184.2 adopted to be effective April 28, 2002, 27 TexReg 3355; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective January 20, 2014, 39 TexReg 282

§184.3. Meetings.
(a) The advisory committee shall meet as requested by the board to carry out the mandates of the Act.
(b) A meeting may be held by telephone conference call.
(c) Special meetings may be called by the president of the board, by resolution of the board, or upon written request to the presiding officer of the board signed by at least three members of the board.

(d) Advisory committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the board adopts a different procedure.

(e) All issues requiring a vote of the committee shall be decided by a simple majority of the members present.

Source Note: The provisions of this §184.3 adopted to be effective April 28, 2002, 27 TexReg 3355.

§184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

1. submit an application on forms approved by the board;
2. pay the appropriate application fee;
3. certify that the applicant is mentally and physically able to function safely as a surgical assistant;
4. not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;
5. have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or uniformed service of the United States in which it was issued;
6. have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;
7. be of good moral character;
8. not have been convicted of a felony or a crime involving moral turpitude;
9. not use drugs or alcohol to an extent that affects the applicant's professional competency;
10. not have engaged in fraud or deceit in applying for a license;
11. pass an independently evaluated surgical or first assistant examination approved by the board;
12. have been awarded at least an associate's degree at a two or four year institution of higher education;
13. have successfully completed an educational program as set forth in subparagraphs (A) and (B) of this paragraph;
(A) A surgical assistant program accredited, for the entire duration of applicant’s attendance, by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or
(B) a substantially equivalent program that is one of the following:
   i. a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;
   ii. a registered nurse first assistant program that is approved or recognized by an organization recognized by the Texas Board of Nursing for purposes of licensure as a registered nurse first assistant; or
   iii. a post graduate clinical physician assistant program accredited, for the entire duration of applicant’s attendance, by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that committee's predecessor or successor entities designed to prepare the physician assistant for a surgical specialty.
(C) The curriculum of an educational program listed in subparagraphs (A) and (B) of this paragraph must include at a minimum, either as a part of that curriculum or as a required prerequisite, successful completion of college level instruction in the following courses:

   i. anatomy;
   ii. physiology;
   iii. basic pharmacology;
   iv. aseptic techniques;
   v. operative procedures;
   vi. chemistry;
   vii. microbiology; and
   viii. pathophysiology.
14. demonstrate to the satisfaction of the board the completion of full-time work experience performed in the United States under the direct supervision of a physician licensed in the United States consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of the application;
15. be currently certified by a national certifying board approved by the board; and
16. submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:

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.

(c) Alternative License Procedure for Military Spouse.

(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(A) holds an active unrestricted surgical assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas surgical assistant license; or

(B) within the five years preceding the application date held a surgical assistant license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(3) Applications for licensure from applicants qualifying under this section shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §184.5(a)(2) of this title (relating to Procedural Rules for Licensure Applicants), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the 20 day deadline in §184.5(a)(6) of this title, may be considered for permanent licensure up to five days prior to the board meeting; and

(C) the requirement to produce a copy of a valid and current certificate from a board approved national certifying organization in §184.6(b)(4) of this title (relating to Licensure Documentation), may substitute certification from a board approved national certifying organization if it is made on a valid examination transcript.

(d) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §184.2 of this title (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a surgical assistant license suspended or revoked by another state or a Canadian province;

(B) holds a surgical assistant license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

Source Note: The provisions of this §184.4 adopted to be effective September 19, 2002, 27 TexReg 8771; amended to be effective March 6, 2003, 28 TexReg 1884; amended to be effective January 8, 2004, 29 TexReg 97; amended to be effective July 3, 2007, 32 TexReg 3994; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective December 4, 2011, 36 TexReg 8033; amended to be effective January 20, 2014, 39 TexReg 282; amended to be effective August 3, 2014, 39 TexReg 5749; amended to be effective July 19, 2015, 40 TexReg 4461

§184.5. Procedural Rules for Licensure Applicants.

(a) An applicant for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements.
and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(3) who in any way falsifies the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(5) shall be required to comply with the board’s rules and regulations which are in effect at the time the completed application form and fee are received by the board;

(6) must have the application for licensure complete in every detail at least 20 days prior to the board meeting at which the applicant is considered for licensure. An applicant may qualify for a temporary license prior to being considered by the board for licensure, as required by §184.7 of this title (relating to Temporary Licensure); and

(7) must complete an oath swearing that the applicant has submitted an accurate and complete application.

(b) The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by the board’s licensure committee within 20 days of receipt of such notice, and the executive director may refer any application to the licensure committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons, shall be submitted to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge’s proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A surgical assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board’s action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Tex. Gov’t Code, Ch. 552. The board may disclose such reports to appropriate licensing authorities in other states.

Source Note: The provisions of this §184.5 adopted to be effective April 28, 2002, 27 TexReg 3355; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective December 4, 2011, 36 TexReg 8033


(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination verification. Each applicant for licensure must have the appropriate testing service that administered the surgical assistant examination submit directly to the board verification of the applicant's passage of the examination.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted directly from the program, unless the applicant qualifies for the special eligibility provision regarding education under §184.4(a)(13)(B) of this title (relating to Qualifications for Licensure).

(5) Transcripts. Each applicant must have his or her educational program(s) submit a transcript of courses taken and grades obtained to demonstrate compliance with curriculum requirements under §184.4(a)(13)(C) of this title.

(6) Evaluations.
(A) All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §184.4(a)(13) of this title, whichever is the shorter period.

(B) The evaluations must come from at least three physicians who have each supervised the applicant for more than 100 hours or a majority of the applicant's work experience.

(C) An exception to subparagraph (B) of this paragraph may be made for those applicants who provide adequate documentation that they have not been supervised by at least three physicians for the three years preceding the board's receipt of application or since graduation, whichever is the shorter period.

(7) Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(8) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, the applicant's license, registration, or certification that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this ______ day of ________, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance disorder or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(4) Outpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance disorder must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the
settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for medical licensure.

(d) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

Source Note: The provisions of this §184.6 adopted to be effective June 18, 2002, 27 TexReg 5205; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective March 6, 2003, 28 TexReg 1884; amended to be effective June 29, 2003, 28 TexReg 4634; amended to be effective August 10, 2008, 33 TexReg 6135; amended to be effective December 4, 2011, 36 TexReg 8033

§184.7. Temporary Licensure.

(a) The executive director of the board may issue a temporary license to an applicant:

(1) whose completed application has been filed, processed, and found to be in order; and

(2) who has met all other requirements for licensure under the Act but is waiting for the next scheduled meeting of the board for the license to be issued.

(b) A temporary license is valid for 100 days from the date issued and may be extended for not more than an additional 30 days after the expiration date of the initial temporary license.

Source Note: The provisions of this §184.7 adopted to be effective April 28, 2002, 27 TexReg 3355.

§184.8. License Renewal.

(a) Surgical assistants licensed by the board shall register biennially and pay a fee. A surgical assistant may, on notification from the board, renew an unexpired license by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, residence, the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board may prorate the length of the initial surgical assistant registration and registration fees, so that registrations expire on a single date, regardless of the board meeting at which the surgical assistant is licensed.

(c) The board shall provide written notice to each practitioner at the practitioner's address of record at least 30 days prior to the expiration date of the license.

(d) Within 30 days of a surgical assistant's change of mailing, residence or office address from the address on file with the board, a surgical assistant shall notify the board in writing of such change.

(e) A licensee shall furnish a written explanation of his or her affirmative answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(f) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

(g) Expired Annual Registration Permits.

(1) If a surgical assistant's registration permit has been expired for 90 days or less, the surgical assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, and the penalty fee, as defined in §175.3(6) of this title (relating to Penalties).

(2) If a surgical assistant's registration permit has been expired for longer than 90 days but less than one year, the surgical assistant may obtain a new permit by submitting a completed permit application, the registration fee, and a penalty fee, as defined in §175.3(6) of this title.

(3) If a surgical assistant's registration permit has been expired for one year or longer, the surgical assistant's license is automatically canceled, unless an investigation is pending, and the surgical assistant may not obtain a new permit.

(4) A surgical assistant may not hold himself out as a licensed surgical assistant if he holds an expired permit.

Source Note: The provisions of this §184.8 adopted to be effective June 18, 2002, 27 TexReg 5205; amended to be effective March 6, 2003, 28 TexReg 1884; amended to be effective November 30, 2003, 28 TexReg 10493; amended to be effective July 3, 2007, 32 TexReg 3994; amended to be effective June 18, 2002, 27 TexReg 5205; amended to be effective January 20, 2014, 39 TexReg 282
§184.9. Relicensure.
If a surgical assistant's license has been expired for one year or longer, the license is considered to have been canceled, unless an investigation is pending, and the person may not renew the license. The surgical assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Source Note: The provisions of this §184.9 adopted to be effective April 28, 2002, 27 TexReg 3355; amended to be effective August 10, 2008, 33 TexReg 6135.

§184.12. Surgical Assistant Scope of Practice.
The practice of surgical assisting is limited to surgical assisting performed under the direct supervision of a physician who delegates the acts. A surgical assistant may practice in any place authorized by a delegating licensed physician, including, but not limited to a clinic, hospital, ambulatory surgical center, or other institutional setting.

Source Note: The provisions of this §184.12 adopted to be effective April 28, 2002, 27 TexReg 3355.

To be authorized to supervise a surgical assistant, a physician must be currently licensed as a physician in this state by the medical board. The license must be unrestricted and active.

Source Note: The provisions of this §184.14 adopted to be effective April 28, 2002, 27 TexReg 3355; amended to be effective July 4, 2004, 29 TexReg 6090.

§184.15. Grounds for Denial of Licensure and for Disciplinary Action.
The board may refuse to issue a license to any person and may, following notice of hearing as provided for in the APA, take disciplinary action against any surgical assistant that:

1. fraudulently or deceptively obtains or attempts to obtain a license;
2. fraudulently or deceptively uses a license;
3. falsely represents that the person is a physician;
4. violates the Act, or any rules relating to the practice of surgical assisting;
5. is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;
6. habitually uses drugs or alcohol to the extent that, in the opinion of the board, the person cannot safely perform as a surgical assistant;
7. has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;
8. has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;
9. has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure any member of the public;
10. has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;
11. has committed any act that is in violation of the laws of this state if the act is connected with practice as a surgical assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the board under this section;
12. has had the person's license or other authorization to practice as a surgical assistant
suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a surgical assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) unlawfully advertises in a false, misleading, or deceptive manner as defined by §101.201 of the Tex. Occ. Code;

(14) alters, with fraudulent intent, any surgical assistant license, certificate, or diploma;

(15) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(16) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society is local, regional, state, or national in scope, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(17) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(18) sexually abuses or exploits another person during the licensee's practice as a surgical assistant.

Source Note: The provisions of this §184.15 adopted to be effective June 18, 2002, 27 TexReg 5205.

§184.16. Discipline of Surgical Assistants.

(a) The board, upon finding a surgical assistant has committed any of the acts set forth in §184.15 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), may enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice as a surgical assistant;

(2) administer a public reprimand;

(3) order revocation, suspension, limitation, or restriction of a surgical assistant's license, or other authorization to practice as a surgical assistant, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a surgical assistant or stipulating periodic board review;

(4) require a surgical assistant to submit to care, counseling, or treatment by a health care practitioner designated by the board;

(5) order the surgical assistant to perform public service;

(6) require the surgical assistant to complete additional training;

(7) require the surgical assistant to participate in continuing education programs; or

(8) assess an administrative penalty against the surgical assistant.

(b) The board may stay enforcement of any order and place the surgical assistant on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or to impose any other remedial measures or sanctions authorized by subsection (a) of this section in addition to or instead of enforcing the original order.

(c) The time period of an order shall be extended for any period of time in which the person subject to an order subsequently resides or practices outside this state or for any period during which the person's license is subsequently cancelled for nonpayment of licensure fees.

Source Note: The provisions of this §184.16 adopted to be effective April 28, 2002, 27 TexReg 3355; amended to be effective August 3, 2014, 39 TexReg 5749.

§184.17. Disciplinary Guidelines.

(a) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to surgical assistants regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:

(1) practice inconsistent with public health and welfare;

(2) unprofessional and dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) repeated and recurring meritorious health care liability claims; and

(5) aggravating and mitigating factors.

(b) If the provisions of Chapter 190 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §184.17 adopted to be effective September 19, 2002, 27 TexReg 8771.

§184.18. Administrative Penalties.

(a) Pursuant to §206.351 of the Act, the board by order may impose an administrative penalty, in accordance with and subject to §§187.75 - 187.82 of
this title (relating to the Imposition of Administrative Penalty), against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on the factors set forth under the Act, §206.351(c) and Chapter 190 of this title (relating to Disciplinary Guidelines).

(d) Consistent with the Act, §206.351(e), if the board by order determines that a violation has occurred and imposes an administrative penalty on a person licensed or regulated under the Act, the board shall give notice to the person of the board's order which shall include a statement of the right of the person to seek judicial review of the order.

(e) An administrative penalty may be imposed under this section for the following:

(1) failure to timely comply with a board subpoena issued by the board pursuant to §206.308 of the Act and board rules shall be grounds for the imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(2) failure to timely comply with the terms, conditions, or requirements of a board order shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(3) failure to timely report a change of address to the board shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(4) failure to timely respond to a patient's communications shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(5) failure to comply with the complaint procedure notification requirements as set forth in §184.19 of this title (relating to Complaint Procedure Notification) shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(6) failure to provide show compliance proceeding information in the prescribed time shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation; and

(7) for any other violation other than quality of care that the board deems appropriate shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation.

(f) In the case of untimely compliance with a board order, the board staff shall not be authorized to impose an administrative penalty without an informal show compliance proceeding if the person licensed or regulated under the Act has not first been brought into compliance with the terms, conditions, and requirements of the order other than the time factors involved.

(g) Any order proposed under this section shall be subject to final approval by the board.

(h) Failure to pay an administrative penalty imposed through an order shall be grounds for disciplinary action by the board pursuant to the Act, §206.302(a)(4), regarding unprofessional or dishonorable conduct likely to deceive or defraud, or injure the public, and shall also be grounds for the executive director to refer the matter to the attorney general for collection of the amount of the penalty.

(i) A person who becomes financially unable to pay an administrative penalty after entry of an order imposing such a penalty, upon a showing of good cause by a writing executed by the person under oath and at the discretion of the Disciplinary Process Review Committee of the board, may be granted an extension of time or deferral of no more than one year from the date the administrative penalty is due. Upon the conclusion of any such extension of time or deferral, if payment has not been made in the manner and in the amount required, action authorized by the terms of the order or subsection (h) of this section and the Act, §206.301(a)(4) may be pursued.
§184.20. Investigations.
(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline.
(b) Permitted disclosure of investigative information. Investigative information in the possession of the board or its employees or agents that relates to discipline of a licensee and information contained in such files may not be disclosed except in the following circumstances:
(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia or a territory or country where the surgical assistant is licensed, registered, or certified or has applied for a license or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges;
(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed and the board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of licensees by providing information relevant to the criminal investigation to the investigating agency and any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation;
(3) to a health-care entity upon receipt of written request. Disclosures by the board to a health-care entity shall include only information about a complaint filed against a surgical assistant that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action; and
(4) to other persons if required during the investigation.
(c) Reports to the Board.
(1) Relevant information required to be reported to the board pursuant to §206.159 of the Act, indicating that a surgical assistant's practice poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.
(2) A report that a surgical assistant’s practice constitutes a continuing threat to the public’s welfare shall be made as soon as possible after the peer review committee, quality assurance committee, surgical assistant, surgical assistant student, physician or any person usually present in the operating room, including a nurse or surgical technologist involved reaches that conclusion and is able to assemble the relevant information.

Source Note: The provisions of this §184.20 adopted to be effective September 19, 2002, 27 TexReg 8771; amended to be effective August 10, 2008, 33 TexReg 6125.

§184.21. Impaired Surgical Assistants.
(a) Mental or physical examination requirement. The board may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:
(1) sworn statements from two people, willing to testify before the board, medical board, or the State Office of Administrative Hearings that a certain licensee is impaired;
(2) a sworn statement from an official representative of the Texas Society of Surgical Assistants stating that the representative is willing to testify before the board that a certain licensee is impaired;
(3) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;
(4) evidence that a licensee is guilty of intemperate use of drugs or alcohol;
(5) evidence of repeated arrests of a licensee for intoxication;
(6) evidence of recurring temporary commitments of a licensee to a mental institution; or
(7) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice.
(b) Rehabilitation Order. The board through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee, or as a prerequisite for licensure, on any licensure applicant. Chapter 180 of this title (relating to Rehabilitation Orders) shall govern procedures relating to surgical assistants who are found eligible for a rehabilitation order. If the provisions of Chapter 180
conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §184.21 adopted to be effective September 19, 2002, 27 TexReg 8771; amended to be effective January 9, 2003, 28 TexReg 72.

§184.22. Procedure.
Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §184.22 adopted to be effective September 19, 2002, 27 TexReg 8771.

§184.23. Compliance.
Chapter 189 of this title (relating to Compliance) shall be applied to surgical assistants who are under board orders. If the provisions of Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §184.23 adopted to be effective September 19, 2002, 27 TexReg 8771.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Act and the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Acts, the provisions of the Acts shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Acts shall remain in effect.

Source Note: The provisions of this §184.24 adopted to be effective September 19, 2002, 27 TexReg 8771.

§184.25. Continuing Education.
(a) As a prerequisite to the registration of a surgical assistant's license, 18 hours of continuing education (CE) in surgical assisting or in courses that enhance the practice of surgical assisting are required to be completed every 12 months in the following categories:

(1) at least 9 of the annual hours are to be from formal courses that are:

(A) designated for AMA/PRA Category I credit by a CE sponsor accredited by the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the Association of Surgical Technologists/Association of Surgical Assistants, the American Board of Surgical Assistants, or the National Surgical Assistants Association;

(C) approved by the Texas Medical Association based on standards established by theAMA; or

(D) designated for AOA Category 1-A credit approved by the American Osteopathic Association.

(2) At least one of the annual formal hours of CE which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CE involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 9 hours each year may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CE, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A licensed surgical assistant must report on the license renewal application if he or she has completed the required continuing education since the licensee last registered with the board. A licensee who timely registers, may apply CE credit hours retroactively to the preceding year's annual requirement, however, those hours may be counted only toward one registration permit. A licensee may carry forward CE credit hours earned prior to a registration report which are in excess of the 18-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 36 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CE credit hours of any type may not be carried forward or applied to an annual report of CE more than two years beyond the date of the annual registration following the period during which the hours were earned.

(c) A licensed surgical assistant may request in writing an exemption for the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing education.

(d) Exemptions are subject to the approval of the executive director of the board and must be requested in writing at least 30 days prior to the expiration date of the license.
(e) An exception under subsection (c) of this section may not exceed one year but may be requested annually, subject to the approval of the executive director of the board.

(f) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of continuing education or of specific course subjects.

(g) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(h) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the 18 hours of CE as required annually and provided for in this section shall result in the denial of licensure renewal until such time as the licensee obtains and reports the required CE hours; however, the executive director of the board may issue to such a surgical assistant a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the surgical assistant who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) CE hours that are obtained to comply with the CE requirements for the preceding year as a prerequisite for obtaining licensure renewal, shall first be credited to meet the CE requirements for the previous year. Once the previous year's CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current year.

(j) A false report or statement to the board by a licensee regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §§206.302-.304 of the Act and §§164.051-.053 of the Medical Practice Act, Tex. Occ. Code Ann. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the surgical assistant's license, but in no event shall such action be less than an administrative penalty of $500.

(k) Administrative penalties for failure to timely obtain and report required CE hours may be determined by the Disciplinary Process Review Committee of the board as provided for in §184.19 of this chapter (relating to Administrative Penalties).

(l) Unless otherwise exempted under the terms of this section, failure to obtain and timely report CE hours for the renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in Chapter 175 of this title (relating to Fees, Penalties, and Applications). Any temporary CE licensure fee and any administrative penalty imposed for failure to obtain and timely report the 18 hours of CE required annually for renewal of a license shall be in addition to the applicable penalties for late registration or as set forth in Chapter 175 of this title (relating to Fees, Penalties and Applications).

Source Note: The provisions of this §184.25 adopted to be effective April 27, 2003, 28 TexReg 3326; amended to be effective November 30, 2003, 28 TexReg 10493.

Chapter 196 of this title (relating to Voluntary Relinquishment or Surrender of a Medical License) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 196 of this title conflict with the Surgical Assistant Act or rules under this chapter, the Surgical Assistant Act and provisions of this chapter shall control.

Source Note: The provisions of this §184.26 adopted to be effective July 3, 2007, 32 TexReg 3994; amended to be effective August 10, 2008, 33 TexReg 6135.
§185.1. Purpose.
(a) These rules are promulgated under the authority of the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code and the Physician Assistant Licensing Act, Chapter 204, Texas Occupations Code, to establish procedures and standards for the training, education, licensing, and discipline of persons performing as a physician assistant in this State so as to establish an orderly system of regulating the practice of a physician assistant in a manner that protects the health, safety, and welfare of the public.
(b) The functions of the physician assistant board include but are not limited to the following:
(1) Establish standards for the practice of a physician assistant.
(2) Regulate the practice of a physician assistant through the licensure and discipline of physician assistants.
(3) Interpret the Physician Assistant Licensing Act and the physician assistant board Rules to ensure that physician assistants, other allied health professionals, and consumers are properly informed.
(4) Receive complaints and investigate possible violations of the Physician Assistant Licensing Act and the physician assistant board Rules.
(5) Discipline violators through appropriate legal action to enforce the Physician Assistant Licensing Act and the physician assistant board Rules.
(6) Provide a mechanism for public comment with regard to the Physician Assistant Licensing Act and the physician assistant board Rules.
(7) Review and modify the physician assistant board Rules when necessary and appropriate.
(8) Examine and license qualified applicants to practice as a physician assistant in Texas in a manner that ensures that applicable standards are maintained.
(9) Provide recommendations to the legislature concerning appropriate changes to the Physician Assistant Licensing Act to ensure that the acts are current and applicable to changing needs and practices.
(10) Provide public information on licensees.
(11) Maintain data concerning the practice of a physician assistant.

Source Note: The provisions of this §185.1 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective June 29, 2006, 31 TexReg 5105.

§185.2. 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 Annotated, Title 3, Subtitle C, Chapter 204 as amended.
(2) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.
(3) Alternate physician--A physician providing appropriate supervision on a temporary basis.
(5) Applicant--A party seeking a license from the Texas Physician Assistant Board.
(6) Board or the "physician assistant board"--The Texas Physician Assistant Board.
(7) Executive Director--the Executive Director of the Agency or the authorized designee of the Executive Director.
(8) Good professional character--an applicant for licensure must not be in violation of or committed any act described in the Physician Assistant Licensing Act, §§204.302-204.304, Texas Occupations Code Annotated.
(9) Medical Board--The Texas Medical Board.
(10) Medical Practice Act--Texas Occupations Code Annotated, Title 3, Subtitle B, as amended.
(11) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.
(12) Military spouse--A person who is married to a military service member who is currently on active duty.
(13) Military veteran--A person who served on active duty in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces and who was discharged or released from active duty under conditions other than dishonorable.
(14) Open Meetings Act--Texas Government Code Annotated, Chapter 551 as amended.
(15) Party--The physician assistant board and each person named or admitted as a party in a hearing before the State Office of Administrative Hearings or contested case before the physician assistant board.
(16) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(17) Prescriptive authority agreement--An agreement entered into by a physician and an advanced practice registered nurse or physician assistant through which the physician delegates to the advanced practice registered nurse or physician assistant the act of prescribing or ordering a drug or device. Prescriptive authority agreements are required for the delegation of the act of prescribing or ordering a drug or device in all practice settings, with the exception of a facility-based practice, pursuant to §157.054 of the Act.

(18) Presiding Officer--The physician assistant member of the Board appointed by the Governor to serve as the presiding officer of the board.

(19) State--Any state, territory, or insular possession of the United States and the District of Columbia.

(20) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(21) Supervising physician--A physician licensed by the medical board who has an active and unrestricted license and assumes responsibility and legal liability for the services rendered by the physician assistant, and who has notified the Medical Board of the intent to supervise a specific physician assistant and of the termination of such supervision.

(22) Supervision--Overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision does not require the constant physical presence of the supervising physician but includes a situation where a supervising physician and the person being supervised are, or can easily be, in contact with one another by radio, telephone, or another telecommunication device.

(23) Unrestricted medical license--A license held by a physician issued by the Medical Board that is not subject to an order with restrictions that would impair a physician's ability to supervise a PA inconsistent with the public's well-being that could harm patients.

Source Note: The provisions of this §185.2 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective December 23, 1997, 22 TexReg 12492; amended to be effective May 9, 1999, 24 TexReg 3347; amended to be effective September 21, 2000, 25 TexReg 9218; amended to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective March 9, 2009, 34 TexReg 1590; amended to be effective June 5, 2014, 39 TexReg 4255; amended to be effective January 3, 2016, 40 TexReg 9640

§185.3. Meetings and Committees.

(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) Special meetings may be called by the presiding officer of the board, by resolution of the board, or upon written request to the presiding officer of the board signed by at least three members of the board.

(c) Board and committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the board adopts a different procedure.

(d) All elections and any other issues requiring a vote of the board shall be decided by a simple majority of the members present. A quorum for transaction of any business by the board shall be one more than half the board's membership at the time of the meeting. If more than two candidates contest an election or if no candidate receives a majority of the votes cast on the first ballot, a second ballot shall be conducted between the two candidates receiving the highest number of votes.

(e) The governor shall designate a physician assistant member of the physician assistant board as the presiding officer of the board to serve in that capacity at the will of the governor. The board, at a regular meeting or special meeting, shall elect from its membership a secretary for one year.

(f) The board, at a regular meeting or special meeting, upon majority vote of the members present, may remove the secretary from office.

(g) The following are standing and permanent committees of the board. Each committee, with the exception of the Executive Committee, shall consist of at least one board member who is a licensed physician, one board member who is a licensed physician assistant, and one public board member. In the event that a committee does not have a representative of one or more of these groups, the presiding officer shall appoint additional members as necessary to maintain this composition. The Executive Committee shall include the presiding officer, secretary, and other members as named by the presiding officer. The presiding officer shall name the chair and assign the members of the other committees. The responsibilities and authority of these committees shall include those duties and powers as defined in paragraphs (1) - (3) of this subsection and such other responsibilities and authority which the board may from time to time delegate to these committees.

(1) Licensure Committee.
(A) Draft and review proposed rules regarding licensure, and make recommendations to the board regarding changes or implementation of such rules.

(B) Draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the board regarding changes or implementation of such rules.

(C) Receive and review applications for licensure in the event the eligibility for licensure of an applicant is in question.

(D) Present the results of reviews of applications for licensure, and make recommendations to the board regarding licensure of applicants whose eligibility is in question.

(E) Make recommendations to the board regarding matters brought to the attention of the Licensure Committee.

(F) Oversee and make recommendations to the physician assistant board regarding any aspect of the examination process including the approval of an appropriate licensure examination and the administration of such an examination and documentation and verification of records from all applicants for licensure;

(2) Disciplinary Committee.

(A) Draft and review proposed rules regarding the discipline of physician assistants and enforcement of the Act.

(B) Oversee the disciplinary process and give guidance to the board and staff regarding methods to improve the disciplinary process and more effectively enforce the Act.

(C) Monitor the effectiveness, appropriateness, and timeliness of the disciplinary process.

(D) Make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the board regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations.

(E) Make recommendations to the board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Act.

(F) Make recommendations to the board regarding matters brought to the attention of the Disciplinary Committee.

(3) Executive Committee.

(A) Ensure records are maintained of all committee actions;

(B) Review requests from the public to appear before the board and provide opportunities for the public to speak regarding issues related to the regulations of practice of Physician Assistants;

(C) Review inquiries regarding policy or administrative procedure;

(D) Delegate tasks to other committees;

(E) Take action on matter of urgency that may arise between board meetings; such matters shall be presented to the board at the next board meeting;

(F) Assist the Medical Board in the organization, preparation, and delivery of information and testimony to the Legislators and committees of the Legislature;

(G) Formulate and make recommendations to the board regarding future board goals and objectives and the establishment of priorities and methods for their accomplishment;

(H) Study and make recommendations to the board regarding the role and responsibility of the board officers and committees;

(I) Review staff reports regarding finances and the budget; and

(J) Make recommendations to the board regarding matters brought to the attention of the Executive Committee.

(h) Meetings of the board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to the Open Meetings Act, the Act, or the Medical Practice Act. In order that board meetings may be conducted safely, efficiently, and with decorum, attendees may not engage in disruptive activity that interferes with board proceedings. The public shall remain within those areas of the board offices and board meeting room designated as open to the public. Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(i) Journalists have the same right of access as other members of the public to board meetings conducted in open session, and are also subject to the same rules. Observers of any board meeting may not disrupt the meeting or disturb participants. Observers may make audio or visual recordings of such proceedings conducted in open session as long as these activities do not disrupt the meeting and subject to the following limitations: the board's presiding officer may request periodically that camera operators extinguish their artificial lights to allow excessive heat to dissipate; camera operators may not assemble or disassemble their equipment while the board is in session and conducting business; persons seeking to position microphones for recording board proceedings may not disrupt the meeting or disturb participants. Journalists may conduct interviews in the reception area of the agency's offices or, at the discretion of the board's
presiding officer, in the meeting room after recess or adjournment; no interview may be conducted in the hallways of the agency's offices; and the board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in conduct described in this subsection and subsection (h) of this section.

(j) The secretary of the board shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(k) In the event of the absence or temporary incapacity of the presiding officer, and the secretary, the members of the board may elect another member to act as the presiding officer of a board meeting or may elect an interim acting presiding officer for the duration of the absences or incapacity or until another presiding officer is appointed by the governor.

(l) Upon the death, resignation, removal or permanent incapacity of the presiding officer or the secretary, the board shall elect a secretary from its membership an officer 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.

(m) Committee minutes shall be approved by the full board with a quorum of the committee members present to vote on approval of the minutes.

Source Note: The provisions of this §185.3 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2003, 28 TexReg 4634; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective April 7, 2011, 36 TexReg 2123; amended to be effective January 3, 2016, 40 TexReg 9640

§185.4. Procedural Rules for Licensure Applicants.

(a) Except as otherwise provided in this section, an individual shall be licensed by the board before the individual may function as a physician assistant. A license shall be granted to an applicant who:

1. submits an application on forms approved by the board;
2. pays the appropriate application fee as prescribed by the board;
3. has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that committee's predecessor or successor entities, and holds a valid and current certificate issued by the National Commission on Certification of Physician Assistants ("NCCPA");
4. certifies that the applicant is mentally and physically able to function safely as a physician assistant;
5. does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or on suspension or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the board takes that fact into consideration in determining whether to issue the license;
6. is of good moral character;
7. is of good professional character as defined under §185.2(8) of this title (relating to Definitions);
8. submits to the board any other information the board considers necessary to evaluate the applicant's qualifications;
9. meets any other requirement established by rules adopted by the board; and
10. must pass the national licensing examination required for NCCPA certification within no more than six attempts; and
11. must pass the jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The jurisprudence examination shall be developed and administered as follows:

A. The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

B. Applicants must pass the JP exam with a score of 75 or better within three attempts.

C. An examinee shall not be permitted to bring medical books, compendes, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

D. Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

E. An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion
of the committee to allow an applicant additional attempts to take the JP exam.

(F) A person who has passed the JP Exam shall not be required to retake the Exam for relicensure, except as a specific requirement of the board as part of an agreed order.

(b) The following documentation shall be submitted as a part of the licensure process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) Certification. Each applicant for licensure must submit:

(A) a letter of verification of current NCCPA certification sent directly from NCCPA, and

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the board.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Verification from other states. On request of board staff, an applicant must have any state, in which he or she has ever been licensed as any type of healthcare provider regardless of the current status of the license, submit to the board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters. The information must be sent directly from the state licensing entities.

(5) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition needs to be requested from the arresting authority and that authority must submit copies directly to the board.

(6) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant’s insurance;

(B) for each claim that becomes a malpractice claim, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(7) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure must be submitted.

(c) All physician assistant applicants shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the last two years preceding receipt of an application for licensure. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks during a given year. Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (4) of this subsection:

(1) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(3) remedial education; and

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(d) The executive director shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may within 20 days of receipt of such notice request a review of the executive director's recommendation by a committee of the board, to be conducted in accordance with §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility), and the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefore, shall be submitted to the board. The applicant
shall be notified of the panel or committee's determination and given the option to appeal the determination of ineligibility to the State Office of Administrative Hearings (SOAH) or accept the determination of ineligibility. An applicant has 20 days from the date the applicant receives notice of the board's determination of ineligibility to submit a written response to the board indicating one of those two options. If the applicant does not within 20 days of receipt of such notice submit a response either accepting the determination of ineligibility or providing notice of his or her intent to appeal the determination of ineligibility, the lack of such response shall be deemed as the applicant's acceptance of the board's ineligibility determination. If the applicant timely notifies the board of his or her intent to appeal the board's ineligibility determination to SOAH, a contested case before SOAH will be initiated only in accordance with §187.24 of this title (relating to Pleadings). The applicant shall comply with all other provisions relating to formal proceedings as set out in this title Chapter 187 Subchapter C (relating to Formal Board Proceedings at SOAH). If the applicant does not timely comply with such provisions, or if prior to the initiation of a contested case at SOAH, the applicant withdraws his or her notice of intent to appeal the board's ineligibility determination to SOAH, the applicant's failure to take timely action or withdrawal shall be deemed acceptance of the board's ineligibility determination. The committee may refer any application for determination of eligibility to the full board. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(e) Applicants for licensure:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application of licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §185.7 of this title (relating to Temporary License);

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(f) Alternative License Procedure for Military Spouse.

(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(A) holds an active unrestricted physician assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas physician assistant license; or

(B) within the five years preceding the application date held a physician assistant license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.
(3) Applications for licensure from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board’s licensure division.

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (d) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within one of the last three years preceding receipt of an Application for licensure;

(B) notwithstanding the one year expiration in subsection (e)(1) of this section, are allowed an additional 6 months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20 day deadline in subsection (e)(6) of this section, may be considered for permanent licensure up to 5 days prior to the board meeting.

(g) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §185.2 of this title (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a physician assistant license suspended or revoked by another state or a Canadian province;

(B) holds a physician assistant license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

(h) Re-Application for Licensure Prohibited. A person who has been determined ineligible for a license by the Licensure Committee may not reapply for a license prior to the expiration of one year from the date of the Board's ratification of the Licensure Committee's determination of ineligibility and denial of licensure.

Source Note: The provisions of this §185.4 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective December 12, 1996, 21 TexReg 11788; amended to be effective May 5, 1997, 22 TexReg 3654; amended to be effective September 15, 1997, 22 TexReg 8998; amended to be effective December 23, 1997, 22 TexReg 12492; amended to be effective September 21, 2000, 25 TexReg 9218; amended to be effective March 7, 2002, 27 TexReg 1488; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133; amended to be effective September 19, 2010, 35 TexReg 8354; amended to be effective May 5, 2011, 36 TexReg 2728; amended to be effective May 13, 2012, 37 TexReg 3409; amended to be effective June 5, 2014, 39 TexReg 4255; amended to be effective May 17, 2015, 40 TexReg 2534; amended to be effective January 3, 2016, 40 TexReg 9640

§185.5. Relicensure.

If a physician assistant's license has been expired for one year, it is considered to have been canceled, unless an investigation is pending. The physician assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Source Note: The provisions of this §185.5 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective September 21, 2000, 25 TexReg 9218.

§185.6. Annual Renewal of License.

(a) Physician assistants licensed under the Physician Assistant Licensing Act shall register annually and pay a fee. A physician assistant may, on notification from the board, renew an unexpired license by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the permit. The fee shall accompany the required form which legibly sets forth the licensee's name, mailing address, business address, and other necessary information prescribed by the board.

(b) The following documentation shall be submitted as part of the renewal process:

(1) Continuing Medical Education. As a prerequisite to the annual registration of a physician assistant's license, 40 hours of continuing medical education (CME) are required to be completed in the following categories:

(A) at least one-half of the hours are to be from formal courses:

(i) that are designated for Category I credit by a CME sponsor approved by the American Academy of Physician Assistants; or

(ii) approved by the board for course credit.

(B) The remaining hours may be from Category II 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, other than at a site that is the primary practice site of the licensee holder, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(C) A physician assistant shall receive one credit of continuing medical education for each hour of time spent up to 6 hours per year, as required by subparagraph (A) of this paragraph based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician assistant's competency or practice monitoring.

(2) A physician assistant must report on the annual registration form if she or he has completed the required continuing medical education during the previous year. A licensee may carry forward CME credit hours earned prior to annual registration which are in excess of the 40 hour annual requirement and such excess hours may be applied to the following years' requirements. 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. Excess CME credit hours of any type may not be carried forward or applied to an annual report of CME more than two years beyond the date of the annual registration following the period during which the hours were earned.

(3) A physician assistant may request in writing an exemption for the following reasons:

(A) catastrophic illness;
(B) military service of longer than one year's duration outside the United States;
(C) residence of longer than one year's duration outside the United States; or
(D) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.

(4) Exemptions are subject to the approval of the licensure committee of the board.

(5) A temporary exception under paragraph (3) of this subsection may not exceed one year but may be renewed annually, subject to the approval of the board.

(6) This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.

(7) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(8) Unless exempted under the terms of this section, a physician assistant licensee's apparent failure to obtain and timely report the 40 hours of CME as required and provided for in this section shall result in nonrenewal of the license until such time as the physician assistant obtains and reports the required CME hours; however, the executive director of the board may issue to such a physician assistant a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the physician assistant who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(c) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a physician assistant to denial of the renewal and/or discipline pursuant to the Act, §§204.301-303.

(d) If the renewal fee and completed application form are not received on or before the expiration date of the permit, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(e) The board shall not waive fees or penalties.

(f) The board shall stagger annual registration of physician assistants proportionally on a periodic basis.

(g) Practicing as a physician assistant as defined in the Act without an annual registration permit for the current year as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing as a physician assistant without a license.

(h) Physician assistants shall inform the board of address changes within two weeks of the effective date of the address change.

(i) Expired Annual Registration Permits.

(1) If a physician assistant's registration permit has been expired for less than one year, the physician assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, as defined in §175.2(2) of this title (relating to Registration and Renewal Fees) and the penalty fee, as defined in §175.3(2) of this title (relating to Penalties).

(2) If a physician assistant's registration permit has been expired for one year or longer, the physician assistant's license is automatically canceled, unless an investigation is pending, and the physician assistant may not obtain a new permit.

(3) A person whose license has expired may not engage in activities that require a license until the license has been renewed. Practicing as a physician
assistant after a physician assistant's permit has expired under subsection (a) of this section without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing as a physician assistant without a license. The Board interprets §204.156 of the Act to provide the exclusive sanction that may be imposed by the board for practicing medicine after the expiration of the permit.

Source Note: The provisions of this §185.6 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective October 22, 1996, 21 TexReg 9831; amended to be effective May 5, 1997, 22 TexReg 3654; amended to be effective September 15, 1997, 22 TexReg 8998; amended to be effective December 23, 1997, 22 TexReg 12492; amended to be effective September 21, 2000, 25 TexReg 9218; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133; amended to be effective May 5, 2011, 36 TexReg 2728

§185.7. Temporary License.

(a) The board, or its designee may issue a temporary license to an applicant who:

(1) meets all the qualifications for a license under the Act but is waiting for the next scheduled meeting of the board for the license to be issued;

(2) seeks to temporarily substitute for a licensed physician assistant during the licensee's absence, if the applicant:
   (A) is licensed or registered in good standing in another state, territory, or the District of Columbia;
   (B) submits an application on a form prescribed by the board; and
   (C) pays the appropriate fee prescribed by the board;

(3) has graduated from an educational program for physician assistants or surgeon assistants accredited by the Accreditation Review Commission for the Education of Physician Assistants (ARC-PA) or by the committee's predecessor or successor entities no later than six months previous to the application for temporary licensure and is waiting for examination results from the National Commission on Certification of Physician Assistants; or

(4) has not, on a full-time basis, actively practiced as a physician assistant, as defined under §185.4(d) of this title (relating to Procedural Rules for Licensure Applicants), but meets guidelines set by the physician assistant board including, but not limited to, length of time out of active practice as a physician assistant and duration of temporary licenses.

(b) A temporary license may be valid for not more than one year from the date issued. A temporary license may be revoked at any time the board deems necessary.

(c) In order to be determined eligible for a temporary license, applicant must:

(1) be supervised by a physician who:
   (A) holds an active, unrestricted license as a physician in Texas;
   (B) has not been the subject of a disciplinary order, unless the order was administrative in nature; and
   (C) is not a relative or family member of the applicant; and

(2) present written verification from the physician who will be supervising the applicant that the physician will:
   (A) supervise the physician assistant according to rules adopted by the board; and
   (B) retain professional and legal responsibility for the care rendered by the physician assistant.

Source Note: The provisions of this §185.7 adopted to be effective January 12, 1996, 21 TexReg 109; amended to be effective September 15, 1997, 22 TexReg 8998; amended to be effective September 21, 2000, 25 TexReg 9218; amended to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective September 19, 2010, 35 TexReg 8354; amended to be effective September 28, 2014, 39 TexReg 7581

§185.8. Inactive License.

(a) A license holder may have the license holder's license placed on inactive status by applying to the board. A physician assistant with an inactive license is excused from paying renewal fees on the license and may not practice as a physician assistant in Texas.

(b) In order for a license holder to be placed on inactive status, the license holder must have a current annual registration permit and have a license in good standing.

(c) A license holder who practices as a physician assistant in Texas while on inactive status is considered to be practicing without a license.

(d) A physician assistant may return to active status by applying to the board, paying an application fee equal to an application fee for a physician assistant license, complying with the requirements for license renewal under the Act, providing current verifications from each state in which the physician assistant holds a license, demonstrating current certification by NCCPA,
and submitting professional evaluations from each employment held after the license was placed on inactive status, and complying with subsection (e) of this section.

(e) A physician assistant applicant applying to return to active status shall provide sufficient documentation to the board that the applicant has, on a full-time basis as defined in §185.4(d) of this title (relating to Procedural Rules for Licensure Applicants), actively practiced as a physician assistant or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the two years preceding receipt of an application for reactivation. Applicants who do not meet this requirement may, in the discretion of the board, be eligible for the reactivation of a license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (5) of this subsection:

1. current certification by the National Commission on the Certification of Physician Assistants;
2. completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;
3. limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;
4. remedial education; and/or
5. such other remedial or restrictive conditions or requirements which, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(f) After five years on inactive status, the license shall be canceled as if by request. The physician assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Source Note: The provisions of this §185.8 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective July 4, 2004, 29 TexReg 6091; amended to be effective June 29, 2006, 31 TexReg 5105.

§185.9. Reissuance of License Following Revocation.

(a) The applicant must complete in every detail the application for reissuance of a license following revocation including payment of the required application fee.

(b) The applicant must appear before the board to state the reasons for the request for reissuance of license.

(c) Application for reissuance of a license following revocation cannot be considered more often than annually.

(d) Reissuance of a license following revocation shall be at the discretion of the board upon a showing by the applicant that reissuance is in the best interest of the public.

(e) A person may not apply for reissuance of a license that was revoked before the first anniversary date on which the revocation became effective.

Source Note: The provisions of this §185.9 adopted to be effective November 3, 2002, 27 TexReg 10027.

§185.10. Physician Assistant Scope of Practice.
The physician assistant shall provide, within the education, training, and experience of the physician assistant, medical services that a delegated by the supervising physician. The activities listed in paragraphs (1)-(10) of this section may be performed in any place authorized by a supervising physician, including, but not limited to a clinic, hospital, ambulatory surgical center, patient home, nursing home, or other institutional setting. Medical services provided by a physician assistant may include, but are not limited to:

1. obtaining patient histories and performing physical examinations;
2. ordering and/or performing diagnostic and therapeutic procedures;
3. formulating a working diagnosis;
4. developing and implementing a treatment plan;
5. monitoring the effectiveness of therapeutic interventions;
6. assisting at surgery;
7. offering counseling and education to meet patient needs;
8. requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting where the physician assistant is authorized to prescribe pharmaceutical medications and sign prescription drug orders at a site, as provided by the Medical Practice Act, Chapter 157, and its subsequent amendments, or as otherwise authorized by this Act or board rule;
9. the signing or completion of a prescription as provided by the Medical Practice Act, Chapter 157; and
10. making appropriate referrals.

Source Note: The provisions of this §185.10 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 5, 2014, 39 TexReg 4255
§185.11. Tasks Not Permitted to be Delegated to a Physician Assistant.
Except as permitted by the Medical Practice Act, Chapter 157, the supervising physician shall not allow a physician assistant to prescribe or supply medication.

Source Note: The provisions of this §185.11 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 5, 2014, 39 TexReg 4255

§185.12. Identification Requirements.
A physician assistant licensed by the board shall keep the physician assistant's Texas license available for inspection at the physician assistant's primary place of business and shall, when engaged in professional activities, wear a name tag identifying the physician assistant as a physician assistant.

Source Note: The provisions of this §185.12 adopted to be effective November 3, 2002, 27 TexReg 10027.

§185.13. Notification of Intent to Practice and Supervise.
(a) A physician assistant licensed under the Act must, before beginning practice or upon changing practice, submit notification of the license holder's intent to begin practice. Notification under this section must include:
   (1) the name, business address, Texas physician assistant license number, and telephone number of the physician assistant; and
   (2) the name, business address, Texas medical license number, and telephone number of the supervising physician.

(b) A physician assistant must submit notification of any changes in, or additions to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition is made.

(c) For the purposes of this section, a single form prescribed by the board shall be used to provide notification of the license holder's intent to begin practice or termination of, and any changes in, or additions to, the person acting as a supervising physician.

(d) If a supervising physician will be unavailable to supervise the physician assistant as required by this section, arrangements shall be made for an alternate physician to provide that supervision. The alternate physician providing that supervision shall affirm in writing and document through a log where the physician assistant is located, that he or she is familiar with the prescriptive authority agreements, protocols, or standing delegation orders in use, as applicable, and is accountable for adequately supervising care provided pursuant to those prescriptive authority agreements, protocols, or standing delegation orders. The log shall be kept with the prescriptive authority agreements, protocols, or standing orders. The log shall contain dates of the alternate physician supervision and be signed by the alternate physician acknowledging this responsibility. The physician assistant is responsible for verifying that the alternate physician is a licensed Texas physician holding an unrestricted and active license. Alternate physicians may not collectively provide supervision for more than a 30-day period. If the primary supervising physician cannot return to supervising the physician assistant after 30 days, a new primary supervising physician must provide supervision.

Source Note: The provisions of this §185.13 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133; amended to be effective June 5, 2014, 39 TexReg 4255

(a) Supervision shall be continuous, but shall not be construed as necessarily requiring the constant physical presence of the supervising physician at a place where physician assistant services are performed while the services are performed. Telecommunication shall always be available.

(b) It is the obligation of each physician and physician assistant to ensure that:
   (1) the physician assistant's scope of practice is identified;
   (2) delegation of medical tasks is appropriate to the physician assistant's level of competence;
   (3) the methods of access to and communicating with the supervising physician is defined;
   (4) a process for evaluation of the physician assistant's performance is established; and
   (5) the physician assistant is licensed to practice and has a current annual registration permit. The physician assistant must immediately notify his or her supervising physician(s) of any change in licensure status, including, but not limited to: permit expiration, license cancellation, or entry of a disciplinary order.

(c) A physician assistant may have more than one supervising physician.

(d) Physician assistants must utilize mechanisms which provide medical authority when such mechanisms are indicated, including, but not limited to,
prescriptive authority agreements, standing delegation orders, standing medical orders, protocols, or practice guidelines.

Source Note: The provisions of this §185.14 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 5, 2014, 39 TexReg 4255.

§185.15. Supervising Physician.
(a) A physician assistant may only be supervised by a physician who:
(1) is currently licensed as a physician in this state by the medical board. The license must be unrestricted and active;
(2) has notified the board of the physician's intent to supervise a physician assistant; and
(3) has submitted a statement to the board that the physician will:
   (A) supervise the physician assistant according to rules adopted by the board; and
   (B) retain professional and legal responsibility for the care rendered by the physician assistant.
(b) A physician assistant may be supervised by an alternate supervising physician in the absence of the supervising physician consistent with this chapter, the Texas Medical Practice Act, the Act, board rules, medical board rules, and any standing orders or protocols established in accordance with these statutes and rules.

Source Note: The provisions of this §185.15 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective January 8, 2004, 29 TexReg 97; amended to be effective June 29, 2006, 31 TexReg 5105.

Billing. A physician assistant may not independently bill patients for the services provided by the physician assistant except where provided by law.

Source Note: The provisions of this §185.16 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2003, 28 TexReg 4634; amended to be effective July 4, 2004, 29 TexReg 6091; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133; amended to be effective September 19, 2010, 35 TexReg 8354; amended to be effective March 12, 2015, 40 TexReg 1085

§185.17. Grounds for Denial of Licensure and for Disciplinary Action.
The board may refuse to issue a license to any person and may, following notice of hearing and a hearing as provided for in the APA, take disciplinary action against any physician assistant who:
(1) fraudulently or deceptively obtains or attempts to obtain a license;
(2) fraudulently or deceptively uses a license;
(3) violates the Act, or any rules relating to the practice of a physician assistant;
(4) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;
(5) habitually uses drugs or intoxicating liqueurs to the extent that, in the opinion of the board, the person cannot safely perform as a physician assistant;
(6) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a physician assistant;
(7) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;
(8) represents that the person is a physician;
(9) has acted in an unprofessional or dishonorable manner which is likely to deceive, defraud, or injure any member of the public;
(10) has failed to practice as a physician assistant in an acceptable manner consistent with public health and welfare;
(11) has committed any act that is in violation of the laws of the State of Texas if the act is connected with practice as a physician assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision; proof of the commission of the act while in practice as a physician assistant or under the guise of practice as a physician assistant is sufficient for action by the board under this section;
(12) has had the person's license or other authorization to practice as a physician assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a physician assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;
(13) fails to keep complete and accurate records of purchases and disposal of drugs listed in
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§185.17. Grounds for Denial of Licensure and for Disciplinary Action
(a) The board, upon finding a physician assistant has committed any of the acts set forth in §185.17 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), may enter an order imposing one or more of the allowable actions set forth under §204.301 of the Act.
(b) Disciplinary Guidelines.
(1) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to physician assistants regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:
   (A) practice inconsistent with public health and welfare;
   (B) unprofessional and dishonorable conduct;
   (C) disciplinary actions by state boards and peer groups;
   (D) repeated and recurring meritorious health care liability claims;
   (E) aggravating and mitigating factors; and
   (F) criminal convictions.
(2) If the provisions of Chapter 190 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §185.18 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective March 12, 2015, 40 TexReg 1085

§185.19. Administrative Penalties
(a) Pursuant to §204.351 of the Act, the board by order may impose an administrative penalty, in accordance with §§§187.75 - 187.82 of this title (relating to the Imposition of Administrative Penalty), against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act.
(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
(c) The amount of the penalty shall be based on factors set forth under §204.351(c) of the Act, and Chapter 190 of this title (relating to Disciplinary Guidelines).

Source Note: The provisions of this §185.19 adopted to be effective November 3, 2002, 27 TexReg 10027;
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amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133

§185.20. Complaints.
Chapter 178 of this title (relating to Complaints) shall govern physician assistants with regard to procedures for the initiation, filing and appeals of complaints and methods of notification for filing complaints with the agency. If the provisions of Chapter 178 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §185.20 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective July 4, 2004, 29 TexReg 6091.


(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline.

(b) Patient identity. In any disciplinary investigation or proceeding regarding a physician assistant conducted under or pursuant to the Act, the board shall protect the identity of any patient whose medical records are examined and utilized in a public proceeding except for those patients who testify in the public proceeding or who submit a written release in regard to their records or identity.

(c) Permitted disclosure of investigative information. Investigative information in the possession of the board or its employees or agents which relates to licensee discipline and information contained in such files may not be disclosed except in the following circumstances:

(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia or a territory or country where the physician assistant is licensed, registered, or certified or has applied for a license or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed and the board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of licensees by providing information relevant to the criminal investigation to the investigating agency and any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation;

(3) to a health-care entity upon receipt of written request. Disclosures by the board to a health-care entity shall include only information about a complaint filed against a physician assistant that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis and current status of any complaint under active investigation; and

(4) to other persons if required during the investigation.

(d) Complaints. The board shall keep information on file about each complaint filed with the board, consistent with the Act. If a written complaint is filed with the board that the board has the authority to resolve relating to a person licensed by the board, the board, at least as frequently as quarterly and until final determination of the action to be taken relative to the complaint, shall notify in a manner consistent with the Act, the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

(e) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

Source Note: The provisions of this §185.21 adopted to be effective November 3, 2002, 27 TexReg 10027.

§185.22. Impaired Physician Assistants.

(a) Mental or physical examination requirement.

(1) The board may require a licensee/applicant to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee/applicant is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, the medical board, or the State Office of Administrative Hearings that a certain licensee/applicant is impaired;
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(B) a sworn statement from an official representative of the Texas Academy of Physician Assistants stating that the representative is willing to testify before the board that a certain licensee/applicant is impaired;

(C) evidence that a licensee/applicant left a treatment program for alcohol or chemical dependency before completion of that program;

(D) evidence that a licensee/applicant is guilty of intertemporal use of drugs or alcohol;

(E) evidence of repeated arrests of a licensee/applicant for intoxication;

(F) evidence of recurring temporary commitments of a licensee/applicant to a mental institution;

(G) medical records indicating that a licensee/applicant has an illness or condition which results in the inability to function properly in his or her practice; or

(H) actions or statements by a licensee/applicant at a hearing conducted by the Board that gives the Board reason to believe that the licensee or applicant has an impairment.

(3) Upon presentation to the Executive Director of probable cause, the Board authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination, the physician or physicians the Executive Director has approved to conduct such examinations, and the date by which the examination and the results are to be received by the Board.

(4) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the Board, through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(5) At the show cause hearing provided in for in paragraph (4) of this subsection, a panel of the Board's representatives shall determine whether the licensee/applicant shall submit to an examination or that the matter shall be closed with no examination required.

(A) At the hearing, the licensee/applicant and the licensee/applicant's attorney, if any, are entitled to present testimony and other evidence showing that the licensee/applicant should not be required to submit to the examination.

(B) If, after consideration of the evidence presented at the show cause hearing, the panel determines that the licensee/applicant shall submit to an examination, the Board's representatives shall, through its Executive Director, issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. A licensee is entitled to cross-examine an expert who offers testimony at hearing before the Board.

(C) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(D) The results of any Board-ordered mental or physical examination are confidential shall be presented to the Board under seal for it to take whatever action is deemed necessary and appropriate based on the results of the mental or physical examination. A licensee shall be provided the results of an examination and given the opportunity to provide a response at least 30 days before the Board takes action.

(6) In fulfilling its obligations under §204.3045 of the Act, the Board shall refer the licensee/applicant to the most appropriate medical specialist for evaluation. The Board may not require a licensee/applicant to submit to an examination by a physician having a specialty specified by the Board unless medically indicated. The Board may not require a licensee/applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the licensee/applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(7) The guidelines adopted under this subsection do not impair or remove the Board's power to make an independent licensing or disciplinary decision unless a temporary suspension is convened.

(b) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) shall be applied to physician assistants who are believed to be impaired and eligible for the Texas Physician Health Program. Rehabilitation orders entered into on or before January 1, 2010 shall be governed by law as it existed immediately before that date.

Source Note: The provisions of this §185.22 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective September 19, 2010, 35 TexReg 8354
§185.23. Third Party Reports to the Board.

(a) Any medical peer review committee in this state, any physician assistant licensed to practice in this state, any physician assistant student, or any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state shall report relevant information to the board related to the acts of any physician assistant in this state if, in the opinion of the medical peer review committee, physician assistant, physician assistant student, or a physician, a physician assistant poses a continuing threat to the public welfare through his practice as a physician assistant. The duty to report under this section shall not be nullified through contract.

(b) Professional Review Actions. A written report of a professional review action taken by a peer review committee or a health-care entity provided to the board must contain the results and circumstances of the professional review action. Such results and circumstances shall include:

1. The specific basis for the professional review action, whether or not such action was directly related to the care of individual patients; and
2. The specific limitations imposed upon the physician assistant's clinical privileges, upon membership in the professional society or association, and the duration of such limitations.

(c) Reporting a Physician Assistant's Continuing Threat to the Public.

1. Relevant information shall be reported to the board indicating that a physician assistant's practice poses a continuing threat to the public welfare and shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

2. A report that a physician assistant's practice constitutes a continuing threat to the public welfare shall be made to the board as soon as possible after the peer review committee or the physician involved reaches that conclusion and is able to assemble the relevant information.

(d) Reporting Professional Liability Claims.

1. Reporting responsibilities. The reporting form must be completed and forwarded to the board for each defendant physician assistant against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for a physician assistant. If a nonadmitted insurance carrier does not report or if the physician assistant has no insurance carrier, reporting shall be the responsibility of the physician assistant.

2. Separate reports required and identifying information. One separate report shall be filed for each defendant physician assistant insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

3. Time frames and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

4. Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(A) If the reporter elects to use a reporting format other than the board's form for data required in Part II, there must be enough identification data available to staff to match the closure report to the original file. The data required to accomplish this include:

(i) Name and license number of defendant physician assistant(s); and
(ii) Name of plaintiff.

(B) A court order or a copy of the settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

5. Penalty. Failure by a licensed insurer to report under this section shall be referred to the Texas Department of Insurance.

6. Definition. For the purposes of this subsection a professional liability claim or complaint shall be defined as a cause of action against a physician assistant for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

7. Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) Product liability claims (i.e. where a physician assistant invented a device which may have injured a patient but the physician assistant has had no personal physician assistant-patient relationship with the specific patient claiming injury by the device);
(B) Antitrust allegations;
(C) allegations involving improper peer review activities;
(D) civil rights violations; or
(8) Voluntary Reporting. Claims that are not required to be reported under this chapter may, however, be voluntarily reported.
(9) Reporting Form. The reporting form shall be as follows:
PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN ASSISTANT

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS PHYSICIAN ASSISTANT BOARD WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF’S COMPLAINT.

1. Name and address of insurer:
____________________________________________________________________________________
____________________________________________________________________________________

2. Defendant physician assistant:
___________________________________________________________________________
License number: _________________

3. Plaintiff’s name:
____________________________________________________________________________

4. Policy number:
____________________________________________________________________________

5. Date claim reported to insurer/self-insured physician assistant:
____________________________________________________________________________

6. Type of complaint: __________ claim only __________ lawsuit

7. Initial reserve amount after investigation:
(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with the board)

____________________________________________________________________________

Person completing this report (SIGNATURE)

____________________________________________________________________________

Person completing this report (PRINT NAME)  Phone number
PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 TAC §185.23,
INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE TEXAS PHYSICIAN
ASSISTANT BOARD WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF
A COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22
TAC §185.23.

8. Date of disposition: ______________________

9. Type of Disposition:
   _____ (1) Settlement
   _____ (2) Judgment after trial
   _____ (3) Other (please specify)
   _______________________________________

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:
    $ ____________________
    Note: If percentage of fault was not determined by the court or insurer in the case of multiple
defendants, the insurer may report the total amount paid for the claim followed by a slash and
the number of insured defendants. (Example: $100,000/3)

11. Appeal, if known: _____ Yes _____ No. If yes, which party:
    __________________________________________________________________________

Person completing this report (SIGNATURE) ____________________________________________

Person completing this report (PRINT NAME) ___________________________ Phone number
(10) Professional Liability Suits and Claims. Following receipt of a notice of claim letter or a complaint filed in court against a licensee that is reported to the board, the licensee shall furnish to the board the following information within 14 days of the date of receipt of the board's request for said information:

(A) a completed questionnaire to provide summary information concerning the suit or claim;
(B) a completed questionnaire to provide information deemed necessary in assessing the licensee's competency;
(C) information on the status of any suit or claim previously reported to either the board or the medical board.

(e) Immunity and Reporting Requirements. A person, health care entity, medical peer review committee, or other entity that without malice furnishes records, information, or assistance to the board is immune from any civil liability arising from such act.

Source Note: The provisions of this §185.23 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to physician assistants where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §185.24 adopted to be effective November 3, 2002, 27 TexReg 10027.

§185.25. Compliance.
Chapter 189 of this title (relating to Compliance) shall be applied to physician assistants who are under board orders. If the provisions of Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §185.25 adopted to be effective November 3, 2002, 27 TexReg 10027.

§185.26. Voluntary Relinquishment or Surrender of Physician Assistant License.
Pursuant to §204.315 of the Act, the Board may accept the voluntary relinquishment or surrender of a physician assistant license in a similar manner as that chapter applies to a medical license. Section 185.4 of this title (relating to Procedural Rules for Licensure Applicants) shall govern reapplication after a voluntary relinquishment or surrender.

Source Note: The provisions of this §185.26 adopted to be effective June 29, 2006, 31 TexReg 5105; amended to be effective August 9, 2009, 34 TexReg 5133.

§185.27. Duty to Report Certain Conduct to the Board.
A physician assistant shall report the following to the Board within 30 days after the event:

(1) Any change of address;
(2) Incarceration in a state or federal penitentiary;
(3) An initial conviction, final conviction, or placement on deferred adjudication, community supervision, or deferred disposition for:
   (A) a felony;
   (B) a misdemeanor that directly relates to the duties and responsibilities of a physician assistant licensed by the board;
   (C) a misdemeanor involving moral turpitude;
   (D) a misdemeanor under Chapter 22, Penal Code (relating to assaultive offenses), other than a misdemeanor punishable by fine only;
   (E) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
   (F) a misdemeanor under §25.07, Penal Code (relating to the violation of a protective order or a magistrate's order); or
   (G) a misdemeanor under §25.071, Penal Code (relating to the violation of a protective order preventing offenses caused by bias or prejudice); or
(4) An initial finding by the trier of fact of guilt of a felony under:
   (A) Chapter 481 or 483, Health and Safety Code (relating to offenses involving controlled substances and dangerous drugs);
   (B) Section 485.033, Health and Safety Code (relating to offenses involving inhalant paraphernalia); or

Source Note: The provisions of this §185.27 adopted to be effective September 19, 2010, 35 TexReg 8354
§185.28. Retired License.
The registration fee shall not apply to retired physician assistants.

(1) To become exempt from the registration fee due to retirement:

(A) the physician assistant's current license must not be under an investigation or order with the board or otherwise have a restricted license; and

(B) the physician assistant must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(2) The following restrictions shall apply to physician assistants whose licenses are on official retired status:

(A) the physician assistant must not engage in clinical activities or practice medicine in any state;

(B) the physician assistant may not prescribe or administer drugs to anyone, nor may the physician assistant possess a Drug Enforcement Agency or Texas controlled substances registration; and

(C) the physician assistant's license may not be endorsed to any other state.

(3) A physician assistant may return to active status by applying to the board, paying an application fee equal to an application fee for a physician assistant license, complying with the requirements for license renewal under the Act, demonstrating current certification by the National Commission on the Certification of Physician Assistants, and submitting professional evaluations from each employment held before the license was placed on retired status, and complying with paragraph (4) of this section.

(4) The request of a physician assistant seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(A) current certification by the National Commission on the Certification of Physician Assistants;

(B) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(D) remedial education; and/or

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(5) The request of a physician assistant seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in paragraph (4)(A) - (E) of this section.

(6) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting physician assistant at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

(7) A physician assistant applying for retired status under paragraphs (1) and (2) of this section may be approved for emeritus retired status, a subgroup of "official retired status," provided that the physician assistant has:

(A) never received a remedial plan or been the subject of disciplinary action by the Texas Physician Assistant Board;

(B) no criminal history, including pending charges, indictment, conviction and/or deferred adjudication in Texas; and

(C) never held a license, registration or certification that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state, or territory of the United States, a province of Canada, a uniformed service of the United States or other regulatory agency.
§185.29. Report of Impairment on Registration Form.

(a) A physician assistant who reports an impairment that affects his or her ability to actively practice as a physician assistant as defined by §185.4(d) of this title (relating to Procedural Rules for Licensure Applicants) shall be given written notice of the following:

(1) based on the physician assistant's impairment, he or she may request:
   (A) to be placed on retired status pursuant to §185.28 of this title (relating to Retired License);
   (B) to have the physician assistant's license converted to inactive status as defined under §185.8 of this title (relating to Inactive License) if the physician assistant's impairment is solely physical;
   (C) to voluntarily surrender the physician assistant's license pursuant to §185.26 of this title (relating to Voluntary Relinquishment or Surrender of Physician Assistant License); or
   (D) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders);

(2) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the Board's Investigation Division for possible disciplinary action.

(b) The Board shall provide written notice as described in subsection (a) of this section within 30 days of receipt of the licensee's registration form indicating the licensee's impairment.

Source Note: The provisions of this §185.29 adopted to be effective January 20, 2014, 39 TexReg 283

§185.30. Prescriptive Authority Agreements: Minimum Requirements.

Prescriptive authority agreements must, at a minimum:

(1) be in writing and signed and dated by the parties to the agreement;
(2) state the name, address, and all professional license numbers of the parties to the agreement;
(3) state the nature of the practice, practice locations, or practice settings;
(4) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;
(5) provide a general plan for addressing consultation and referral;
(6) provide a plan for addressing patient emergencies;
(7) state the general process for communication and the sharing of information between the physician and physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;
(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

   (A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of Chapter 157 of the Medical Practice Act and Chapter 193 of this title (relating to Standing Delegation Orders); and
   (B) participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and
(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

   (A) chart review, with the number of charts to be reviewed determined by the physician and physician assistant; and
(B) periodic face-to-face meetings between the physician assistant and the physician at a location determined by the physician and the physician assistant.

(10) The periodic face-to-face meetings described by paragraph (9)(B) of this section must include:
   (A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals;
   (B) discussion of patient care improvement; and
   (C) documentation of the periodic face-to-face meetings.

(11) The periodic face-to-face meetings shall occur as follows:
   (A) If during the seven years preceding the date the agreement is executed, the physician assistant was not in a practice that included the exercise of prescriptive authority with required physician supervision for at least five years:
      (i) at least monthly until the third anniversary of the date the agreement is executed; and
      (ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or
   (B) if during five of the last seven years preceding the date the agreement is executed, the physician assistant was in a practice that included the exercise of prescriptive authority with required physician supervision, but the agreement is not being entered into with the same supervising physician who delegated and supervised during the five year period:
      (i) at least monthly until the first anniversary of the date the agreement is executed; and
      (ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or
   (C) if during five of the last seven years preceding the date the agreement is executed, the physician assistant was in a practice that included the exercise of prescriptive authority with required physician supervision, and the agreement is being entered into with the same supervising physician who delegated and supervised during the five year period:
      (i) at least quarterly; and
      (ii) monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

(12) The prescriptive authority agreement may include other provisions agreed to by the physician and the physician assistant.

(13) If the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated, if any, to conduct and document the quality assurance meetings in accordance with the requirements of Chapter 157 of the Medical Practice Act and Chapter 193 of this title.

(14) The prescriptive authority agreement need not describe the exact steps that a physician assistant must take with respect to each specific condition, disease, or symptom.

(15) A physician or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(16) A party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of this section or requirements for prescriptive authority agreements set forth by Chapter 157 of the Medical Practice Act and Chapter 193 of this title.

(17) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board or the Texas Medical Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(18) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Medical Board not later than the third business day after the date of receipt of request, if any.

(19) The prescriptive authority agreement should promote the exercise of professional judgment by the physician assistant commensurate with the physician assistant's education and experience and the relationship between the physician assistant and the physician.

(20) This section shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of physician assistants.

Source Note: The provisions of this §185.31 adopted to be effective June 5, 2014, 39 TexReg 4255
§187.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners, and to govern the formal disposition of contested cases at SOAH, as required by Section 164.007(a) of the Act, that will promote just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to obtain these objectives.

(b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to SOAH.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers or authority of the board, board staff, or the substantive rights of any person.

(3) This chapter shall control the practice and procedure of all board proceedings to include SOAH proceedings.

Source Note: The provisions of this §187.1 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.

§187.2. Definitions.

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


(2) Address of record--The last mailing address of each licensee or applicant, as provided to the agency pursuant to the Act.

(3) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.


(6) Applicant--A person seeking a license from the board.

(7) Attorney of record--A person licensed to practice law in Texas who has provided staff with written notice of representation.

(8) Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding or an attorney of record.

(9) Board--The Texas Medical Board for physicians and surgical assistants, the Texas State Board of Acupuncture Examiners for acupuncturists, and the Texas Physician Assistant Board for physician assistants.

(10) Board member--One of the members of the board appointed pursuant to the Act.

(11) Board proceeding--Any proceeding before the board or at which the board is a party to an action, including a hearing before SOAH.

(12) Board representative--A board member or district review committee member who sits on a panel at an informal proceeding.

(13) Complaint--Pleading filed at SOAH by the board alleging a violation of the Act, board rules, or board order. The word "complaint" is also used in this rule in the context of complaints made to the board as provided in §153.012 of the Act.

(14) Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing to be held at SOAH.

(15) Default Order--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing.

(16) Executive director--The executive director of the agency, the authorized designee of the executive director, or the secretary of the board if and whenever the executive director and authorized designee are unavailable.

(17) Formal board proceeding--Any proceeding requiring action by the board, including a temporary suspension hearing.
§187.3. Computation of Time.

(a) Counting days. Unless otherwise required by statute, in computing time periods prescribed by this chapter or by a State Office of Administrative Hearings (SOAH) order, the period shall begin to run on the day after the act, event or default in question. The day of the act, event or default on which the designated period time begins to run is not included. The period shall conclude on the last day of the designated period, unless that day is a day the agency is not open for business, in which case the designated period runs until the end of the next day on which the agency is open for business. When these rules specify a deadline or a set number of days for filing documents or taking other actions, the computation of time shall be calendar days rather than business days, unless otherwise provided in this chapter or pursuant to a SOAH or board order. However, if the period to act is five days or less, the
§187.3. Computation of Time.

(a) Time shall be computed from the close of the day on which a period of time begins to run, and to the close of the day on which it ends. Saturdays, Sundays, and legal holidays are not counted.

(b) Dispute. Disputes regarding computation of time for periods not specified by this chapter or by a board or SOAH order will be resolved by reference to applicable law and upon consideration of agency policy documented in accordance with the Act and board rules.

(c) Extensions. Unless otherwise provided by statute or rule, the time for filing any document may be extended by agreement of the parties, order of the executive director or the Administrative Law Judge (ALJ) if SOAH has acquired jurisdiction, upon written request filed prior to the expiration of the applicable time period. This written request must show good cause for an extension of time and state that the need is not caused by the neglect, indifference or lack of diligence of the movant.

Source Note: The provisions of this §187.3 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective January 20, 2009, 34 TexReg 340.

§187.4. Agreement to be in Writing.

No stipulation or agreement between the parties, with regard to any matter involved in any board proceeding shall be enforced unless it has been reduced to writing and agreed to by the parties or their authorized representatives, or unless it has been dictated into the record by them during the course of a State Office of Administrative Hearings (SOAH) hearing, deposition, or other proceeding of record, or incorporated in a motion bearing their written approval. This section does not limit a party's ability to waive, modify or stipulate any right or privilege.

Source Note: The provisions of this §187.4 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective January 20, 2009, 34 TexReg 340.

§187.5. National Practitioner Data Bank (NPDB).

The board will report a public disciplinary board action to the NPDB according to applicable federal rules and statutes. All disciplinary actions are public as set out in the Act.

Source Note: The provisions of this §187.5 adopted to be effective November 7, 2004, 29 TexReg 10113; amended to be effective September 28, 2014, 39 TexReg 7582.
(2) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(3) If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date; and the location at which the items are sought to be produced.

(4) The party requesting a subpoena duces tecum shall describe and recite with clarity, specificity, and particularity the books, records, documents to be produced.

(c) Service and expenses.

(1) A subpoena issued at the request of the board’s staff may be served either by a board investigator or by certified mail in accordance with the Act §153.007. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the board’s staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(2) A subpoena issued at the request of any party other than the board shall be addressed to a sheriff or constable for service in accordance with the APA §2001.089, and given to the requesting party so that the requesting party may accomplish service of the subpoena.

(d) Fees and travel. A witness called at the request of the board shall be paid a compensation fee as set by agency policy and reimbursed for travel in like manner as board employees. An expert witness called at the request of the board shall be paid a compensation fee as set by agency policy and reimbursed for travel in like manner as board members.

(e) Additional reasons for granting a subpoena. Notwithstanding any other provisions of this section, the executive director may issue a subpoena if, in the opinion of the executive director, such a subpoena is necessary to preserve evidence and testimony regarding any potential violation or lack of compliance with the Act, the rules and regulations or orders of the board.

Source Note: The provisions of this §187.8 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective February 28, 2011, 36 TexReg 1278.

§187.9. Board Actions.

(a) Pursuant to the Act, §164.001, and in accordance with Chapter 190 of this title (relating to Disciplinary Guidelines), the board, upon finding that an applicant or licensee has committed a prohibited act under the Act or board rules, or has violated an order of the board, shall enter an order imposing any action authorized by law.

(b) The board may stay enforcement of any order and place the person on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of the probation or to impose any other disciplinary action authorized by law in addition to or instead of enforcing the original order.

(c) An agreed order, including a private nondisciplinary rehabilitation order, may impose actions as agreed to by the board and person subject to the order.

(d) An agreed order may include a refund, as provided by §164.206, Texas Occupations Code. A refund may only be ordered to be paid to a patient of the licensee who is the subject of disciplinary action and shall not exceed the amounts that the patient paid directly to the licensee related to medical services provided by the licensee that are the subject of the complaint involved. Refunds may be ordered to be paid by the licensee directly to a patient, with proof of payment provided to the board to show compliance with the board order. As used in this subsection, "patient" includes the legal guardian of a patient, but does not include any third-party payer.

(e) The time period of an order shall be extended for any period of time in which a person subject to an order subsequently resides or practices outside the State of Texas, for any period during which the person’s license is subsequently cancelled for nonpayment of licensure fees, or as provided in a board order. This subsection does not apply to locum tenens practice if the licensee maintains a residence in this state and fully cooperates with his compliance officer.

(f) Notwithstanding subsections (a) - (d) of this section, the board may issue and establish the terms of a nondisciplinary remedial plan to resolve an investigation of a complaint.

(1) A remedial plan may not contain a provision that:

(A) revokes, suspends, limits, or restricts a person’s license or other authorization to practice medicine; or

(B) assesses an administrative penalty against a person.

(2) A remedial plan may not be imposed to resolve a complaint:

(A) concerning:

(i) a patient death;

(ii) the commission of a felony; or
(iii) a matter in which the physician engaged in inappropriate sexual behavior or contact with a patient or became financially involved with a patient in an inappropriate manner; or

(B) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices medicine.

(3) A remedial plan may not be issued to resolve a complaint against a licensee if the licensee previously entered into a remedial plan with the board for the resolution of a different complaint relating to a violation of the Act or board rules.

(4) A fee may be assessed against a licensee participating in a remedial plan in an amount necessary to recover the costs of administering the plan as set out in Chapter 175 of this title (relating to Fees and Penalties).

(5) A remedial plan may not be entered into to resolve an investigation of a complaint, once a SOAH complaint or petition has been filed.

Source Note: The provisions of this §187.9 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective December 25, 2011, 36 TexReg 8551
§187.10. Purpose.
The purpose of informal board proceedings is to provide an applicant or licensee who is the subject of alleged violations of board rules or the Act, or who has been denied or found ineligible for licensure, an opportunity to show compliance and for informal disposition of the matter.

Source Note: The provisions of this §187.10 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective April 27, 2003, 28 TexReg 3326; amended to be effective January 25, 2006, 31 TexReg 394.

§187.11. Transfer to Legal Division.
Upon determination by board staff that there is evidence that a licensee has violated the Act, board rules, or order of the board, the matter and the ongoing investigation shall be referred to the agency's legal division for the scheduling of an ISC.

Source Note: The provisions of this §187.11 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113.

(a) An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the Executive Director in accordance with §163.4 of this title (relating to Procedural Rules for Licensure Applicants), in lieu of withdrawing the application for licensure, may be subject to a Disciplinary Licensure Investigation.

(b) "Disciplinary Licensure Investigation" means an applicant's licensure file that has been referred to the licensure committee for review.

(c) Determination by a Committee of the Board. Upon review of Disciplinary Licensure Investigation, a committee of the board may determine that the applicant is ineligible for licensure or is eligible for licensure with or without conditions or restrictions, eligible for licensure under a remedial plan, or defer its decision pending further information.

(1) An applicant subject to a Disciplinary Licensure Investigation who withdraws their request to appear before a committee of the board, shall have such withdrawal submitted to the full board for ratification.

(2) An applicant, who fails to appear before the committee of the board, shall be deemed a withdrawal, and such withdrawal shall be submitted to the full board for ratification.

(3) Licensure with Terms and Conditions.
(A) If the committee determines that the applicant should be granted a license under certain terms and conditions, based on the applicant's commission of a prohibited act or failure to demonstrate compliance with provisions under the Act or board rules, the committee, as the board's representatives, shall propose an agreed order or a remedial plan. The terms and conditions of the proposed agreed order or remedial plan shall be submitted to the board for approval.

(B) Upon an affirmative majority vote of members present, the board may approve the agreed order or remedial plan as proposed by the committee or with modifications, and direct staff to present the agreed order or remedial plan to the applicant.

(i) If the applicant agrees to the terms of the proposed agreed order or remedial plan, the applicant may be licensed upon the signing of the order or remedial plan by the applicant and the president of the board or the president's designee, and passage of the medical jurisprudence examination, if applicable.

(ii) If the applicant does not agree to the terms of the proposed agreed order or remedial plan within 20 days of receipt of the offer, the applicant shall be deemed ineligible for licensure by the board.

(C) If the board does not approve the proposed agreed order or remedial plan and by majority vote determines the applicant ineligible for licensure, the applicant shall be so informed. The board must specify their rationale for the rejection of the proposed agreed order or remedial plan that shall be referenced in the minutes of the board.

(4) Ineligibility Determination.
(A) If a committee of the board or the full board determines that an applicant is ineligible for licensure, including deemed ineligibility due to the applicant's failure to agree to the terms of the board's proposed agreed order or remedial plan, the applicant shall be notified of the committee's determination and given the option to:

(i) appeal the determination of ineligibility to the State Office of Administrative Hearings (SOAH); or

(ii) accept the determination of ineligibility.

(B) An applicant has 20 days from the date the applicant receives notice of the board's
determination of ineligibility to submit a written response to the board electing one of the two options listed in subparagraph (A)(i) - (ii) of this paragraph. Applicant's failure to respond to the board's notice of a determination of ineligibility within 20 days shall be deemed acceptance by applicant of the board's ineligibility determination.

(C) If the applicant timely notifies the board of applicant's intent to appeal the board's ineligibility determination to SOAH, a contested case before SOAH will be initiated only in accordance with §187.24 of this title (relating to Pleadings). Applicant shall comply with all other provisions relating to formal proceedings as set out in Subchapter C of this chapter (relating to Formal Board Proceedings at SOAH).

(D) An application for licensure shall not expire while the application is the subject of a contested case, however, applicants shall be required to update any information that is a part of their applications.

(E) If the applicant does not timely take action as required in subparagraphs (A) and (B) of this paragraph or, prior to the initiation of a contested case at SOAH, withdraws their intent to appeal the board's ineligibility determination to SOAH, the committee's determination of ineligibility shall be deemed acceptance by applicant of the board's ineligibility determination.

Source Note: The provisions of this §187.13 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective April 27, 2003, 28 TexReg 3326; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 20, 2005, 29 TexReg 340; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective May 13, 2012, 37 TexReg 3409; amended to be effective August 3, 2014, 39 TexReg 5749; amended to be effective July 9, 2015, 40 TexReg 4354


Pursuant to §§164.003 - 164.004 of the Act and §§2001.054 - 2001.056 of the Administrative Procedure Act (APA), the following rules shall apply to informal resolution:

(1) Any matter within the board's jurisdiction may be resolved informally by agreed order, dismissal, remedial plan or default.

(2) Prior to the imposition of any disciplinary action or remedial plan against a licensee, the licensee shall be given the opportunity to show compliance with all the requirements of the law for the retention of an unrestricted license before one or more board representatives.

(3) If a determination is made by the board representatives that there has been no violation, the board representatives may recommend that the complaint or allegations be dismissed.

(4) If a determination is made by the board representatives that a licensee has violated the Act, board rules, remedial plan or board order, the board representatives may make recommendations for resolution of the issues to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order).

(5) An opportunity for the licensee to show compliance shall not be required prior to a temporary suspension under §164.059 of the Act, or in accordance with the terms of an agreement between the board and a licensee.

(6) Any modification made by the board to any proposed agreed order or remedial plan before the initial effective date of the order must be approved by the licensee.

(7) Informal Resolution of Violations.

(A) The Quality Assurance ("QA") Committee may recommend referral to an ISC, dismissal, or an agreed settlement of any complaint.

(B) The QA Committee shall include designated board members, district review committee members, and board staff members.

(C) The QA Committee shall review all complaints referred by the investigation division to determine whether the complaint should be accepted for legal action.

(D) If the QA Committee determines that an offer of settlement should be made regarding a complaint the offer of settlement shall be presented to the licensee.

(i) If the licensee accepts the offer of settlement, the signed proposed order or remedial plan shall be presented to the board at a public meeting for approval.

(ii) If the licensee fails to timely accept the offer of settlement, or if the licensee requests that an Informal Settlement Conference (ISC) be held, the offer shall be deemed to be rejected and an ISC shall be held.

Source Note: The provisions of this §187.14 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective March 3, 2010, 35 TexReg 1735; amended to be effective February 28,
§187.15. Investigation and Collection of Information.
Failure of a licensee to comply with reasonable requests to produce records, documents, or other information requested by board staff in connection with an informal proceeding shall constitute unprofessional and dishonorable conduct.

Source Note: The provisions of this §187.15 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective January 25, 2006, 31 TexReg 394.

§187.16. Informal Show Compliance Proceedings (ISCs).
(a) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent by the Board at least 30 days prior to the date of the ISC for complaints filed before September 1, 2011. For complaints filed on or after September 1, 2011, the notice shall be sent at least 45 days prior to the date of the ISC. The notice shall include:

1. A statement that the licensee has the opportunity to attend and participate in the informal meeting;
2. A written statement of the nature of the allegations;
3. A copy of the information the board intends to use at the ISC.

If the complaint includes an allegation that the licensee has violated the standard of care, the notice shall also include a copy of the Expert Physician Reviewers' Report, prepared in accordance with §154.0561, Texas Occupations Code. In addition, the board will also provide the licensee with the rules governing the proceeding and guidelines to assist the licensee to prepare for the ISC, including requirements regarding requests to reschedule the ISC. The information required by this section may be given in separate communications at different times, provided all of the information has been provided at least 30 days prior to the date of the ISC for complaints filed before September 1, 2011. For complaints filed with the board on or after September 1, 2011, the information to the licensee shall be sent at least 45 days prior to the date of the ISC.

(b) If the information that the board intends to use at the ISC includes only excerpts of any medical record, the licensee has a right to obtain the complete medical record within 14 days after a request is mailed.

(c) A licensee may be asked to respond in writing to questions from the board staff concerning the matter. If the licensee is asked to respond to written questions, the licensee shall respond within 14 days after the notice is mailed. The licensee's response may include any additional information the licensee wants the board representatives to consider.

(d) All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, remedial plan, or board order.

(e) All informal show compliance proceedings shall be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the informal meeting after that date. For purposes of this subsection:

1. "Scheduled" means the act of the agency to reserve a date for the ISC.
2. "Good cause" shall have the meaning set forth in §179.6 of this title (relating to Time Limits).

Source Note: The provisions of this §187.16 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective January 9, 2003, 28 TexReg 72; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective December 25, 2011, 36 TexReg 8551

(a) After referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC before an ISC Panel, composed of two or more board representatives to be held after proper notice to the licensee. One board representative must be a public member. If the matter is before the Medical Board, at least one board representative must be a physician member.

(b) Requests to reschedule the ISC by a licensee must be in writing and shall be referred to the Hearings Counsel for consideration. To avoid undue disruption of the ISC schedule, the Hearings Counsel should grant a request only after conferring with the Hearings Coordinator and strictly applying the following guidelines:

1. A request by a licensee to reschedule an ISC must be in writing and may be granted only if the
licensee provides satisfactory evidence of the following requirements:

(A) A request received by the agency within five business days after the licensee received notice of the date of the ISC, must provide details showing that:

(i) the licensee has a conflicting event that had been scheduled prior to receipt of notice of the ISC;

(ii) the licensee has made reasonable efforts to reschedule such event but a conflict cannot reasonably be avoided.

(B) A request received by the agency more than five business days after the licensee received notice of the date of the ISC must provide details showing that an extraordinary event or circumstance has arisen since receipt of the notice that will prevent the licensee from attending the ISC. The request must show that the request is made within five business days after the licensee first becomes aware of the event or circumstance.

(2) A request by a licensee to reschedule an ISC based on the failure of the agency to send timely notice before the date scheduled for the ISC, as required by §164.003 of the Act, shall be granted, provided the request is received by the agency within five business days after the late notice is received by the licensee.

(c) Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee. Information must be received from the licensee at least five business days prior to the ISC for complaints filed before September 1, 2011. For complaints filed with the board on or after September 1, 2011, the information must be received at least 15 days prior to the date of the ISC.

(d) An ISC may be conducted by only one panelist if:

(1) the ISC is related to an order of the board, such as to show compliance, a probation appearance, or a request for termination or modification, or

(2) the affected licensee waives the requirement that at least two panelists conduct the ISC. In such situations, the panelist may be either a physician, physician assistant, or acupuncturist (depending on the licensee involved) or a member who represents the public.

(e) The board representatives shall allow:

(1) the board staff to present a summary of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a formal hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a formal hearing;

(3) presentation of evidence by the board staff and the licensee, which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board representatives are relevant to the proceeding;

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written statements or testimony by witnesses;

(7) questioning of the witnesses in a manner prescribed by the panel;

(8) questioning of the licensee;

(9) closing statement by the licensee;

(10) closing statement by the board's staff; and

(11) upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.

(f) The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(g) Notwithstanding subsection (f) of this section, the board representatives may allow a complainant or witness to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(h) The board representatives may refuse to consider any evidence not submitted in a timely manner without good cause. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or recommend an additional administrative penalty for the late submission.

(i) A board attorney, who has not been involved with the preparation of the case, shall be designated as the Hearings Counsel and shall be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the ISC. The Hearings Counsel shall be permitted to ask questions of participants in the ISC to clarify any statement made by the participant. The Hearings Counsel shall provide to the ISC panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the licensee have
an opportunity to present information related to the case.

(j) At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(k) The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with the Act, §164.007(c).

(l) On request by a licensee, the board shall make a recording of the ISC. The request must be submitted in writing, and received by the Board at least 15 days prior to the date of the ISC. Deliberations of the ISC panel shall be excluded from any such recording. The media format of the recording shall be determined by the board. The recording is part of the investigative file and may not be released to a third party unless authorized under the Act. The board may charge the licensee a fee to cover the cost of recording the proceeding. Licensees and their representatives may not independently record an ISC.

(m) The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(n) At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected licensee, the licensee's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations. The Hearings Counsel may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(o) The board representatives may:

1. make recommendations to dismiss the complaint or allegations. The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time;
2. make recommendations regarding an agreed order and propose resolution of the issues to the licensee to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order);
3. defer the ISC, pending further investigation;
4. direct that a formal Complaint be filed with SOAH;
5. recommend to the President of the board that a Disciplinary Panel be convened to consider the temporary suspension or restriction of the licensee's license;
6. recommend the imposition of an administrative penalty pursuant to §§187.75 - 187.82 of this chapter (relating to Procedural Rules); or
7. recommend that a remedial plan be issued to resolve the complaint pursuant to §187.9 of this chapter (relating to Board Actions).

Source Note: The provisions of this §187.18 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective March 6, 2003, 28 TexReg 1884; amended to be effective June 29, 2003, 28 TexReg 4634; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective January 22, 2009, 34 TexReg 341; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective September 30, 2012, 37 TexReg 7486; amended to be effective January 20, 2014, 39 TexReg 283

§187.19 Resolution by Agreed Order.

(a) If the board representatives determine that the licensee has violated the Act, board rules, or board order, the board representatives may recommend board action and terms and conditions for informal resolution.

(b) The recommendation of the board representatives shall be reduced to writing in an agreed order or remedial plan prepared by board staff and presented to the licensee and the authorized representative.

(c) The licensee may accept the proposed settlement by signing and returning the agreed order or remedial plan within the time period prescribed. If the licensee rejects or fails to timely accept the proposed agreement, board staff may proceed with the filing of a Complaint at SOAH.

(d) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

(e) At the discretion of board staff, a licensee may be invited to participate in negotiations. One or both of the board representatives from the informal show compliance proceeding, or a board member if no such board representative is available, may participate in the negotiations, either in person or by telephone.

(f) The board representative(s) shall be consulted and must concur with any subsequent substantive
(g) The recommendations may be adopted, modified, or rejected by the board.

(h) Board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

Source Note: The provisions of this §187.19 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective December 25, 2011, 36 TexReg 8551

§187.20. Board Action on Agreed Orders.

(a) Following the acceptance and execution by the licensee or applicant of the settlement agreement, the agreement shall be submitted to the board for approval.

(b) The following relate to the consideration of an agreed disposition by the board:

(1) Upon an affirmative majority vote of members present to approve an agreed order or remedial plan, the president of the board or of the officer presiding at such meeting shall sign and enter the agreed order or remedial plan and the action shall be referenced in the minutes of the board.

(2) If the board does not approve a proposed settlement agreement, the licensee or applicant shall be so informed and the matter shall be referred to board staff for appropriate action that may include dismissal, closure, further negotiation, further investigation, an additional informal resolution conference or a SOAH hearing. In determining the appropriate further action to be taken, the board shall consider previous attempts to resolve the matter. The board must specify their rationale for the rejection of the proposed settlement agreement that shall be referenced in the minutes of the board.

(3) The board may approve the proposed agreed order or remedial plan with specified modifications, which shall be referenced in the minutes of the board. The revised proposed agreed order or remedial plan shall be presented to the licensee for acceptance within the time period prescribed. Upon acceptance, the president of the board or the officer presiding at the meeting shall sign and enter the agreed order or remedial plan.

(c) To promote the expeditious resolution of any complaint or matter relating to the Act or of any contested case, with the approval of the executive director or a member of the Executive Committee or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement for licensees to the board for consideration and acceptance without conducting an informal show compliance proceeding.

Source Note: The provisions of this §187.20 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.


(a) Two or more members of the board or the district review committee shall conduct an ISC as the board's representatives, except as provided in Section 187.18(d), of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance). The senior board member shall serve as chair of the proceeding. In the event that the representatives consist only of district review committee members, the senior committee member shall serve as the chair of the proceeding.

(b) To the extent possible, board members and district review committee members are required to serve as representatives at informal show compliance proceedings an equal number of times during a calendar year.

Source Note: The provisions of this §187.21 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective January 25, 2006, 31 TexReg 394.
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Chapter 187, Procedural Rules

Subchapter C. Formal Board Proceedings at SOAH
§§187.22-187.33

§187.22. Purpose.
The purpose of this subchapter is to provide procedure for public adjudicative hearings at SOAH.

Source Note: The provisions of this §187.22 adopted to be effective January 6, 2002, 26 TexReg 10867.

(a) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of the board, except when board rules provide the board's interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied.

(b) The ALJ has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(c) Any person may file a motion to be admitted as a party upon showing of a justiciable interest.

(d) All documents are to be filed at SOAH after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Hearings Coordinator of the board.

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, Section 2001.058(e), a party may file an interlocutory or interim appeal to the board requesting that the board vacate or modify an order issued by an ALJ.

(g) Final argument by the parties, whether written or oral, shall proceed by allowing the party with the burden of proof to open and conclude. In disciplinary matters, board staff will make argument, the respondent/licensee will be permitted to make a reply argument, and board staff will be permitted to make rebuttal argument in that order. In licensure matters, the respondent/applicant shall make argument, the board staff shall be permitted to make reply argument, and the respondent/applicant shall be permitted rebuttal argument, in that order.

(h) Within the time line set out in SOAH rules, after the conclusion of the hearing, the ALJ shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law.

(i) After receiving the ALJ's findings of fact and conclusions of law, the board shall rule on the merits of the charges and enter an order.

Source Note: The provisions of this §187.23 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.

(a) In disciplinary matters, actions by the board as Petitioner against a licensee, the board's pleadings shall be styled "Complaint" or "Formal Complaint". Except in cases of temporary suspension, a Complaint shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the Administrative Procedure Act (APA), and §164.004(a) of the Act.

(b) Upon timely receipt, as set forth in §187.13(c)(4)(B) of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility), from a licensure applicant, of a request for an appeal before SOAH of the board's determination of ineligibility, the board shall file a request to docket and a Statement of Issues with SOAH.

(1) Applicant must timely file a petition with SOAH in order to initiate a contested case at SOAH. Such petition shall be filed by applicant no more than 30 days after receipt of the board’s Statement of Issues filed with SOAH. Applicant shall comply with all other provisions relating to formal proceedings as set out in this subchapter.

(2) An applicant who notifies the board of their intent to appeal the board's determination of ineligibility to SOAH, as required under paragraph (1) of this subsection, and subsequently fails to timely file a petition with SOAH, shall be deemed to have
withdrawn their intent to appeal the board's ineligibility determination to SOAH.

(3) Prior to initiating a contested case at SOAH, an applicant may request to withdraw their intent to appeal the board's ineligibility determination to SOAH by notifying the board in writing prior to filing a petition.

(4) If an applicant fails to timely notify the board of their intent to appeal the board's determination of ineligibility, as described in this subsection, such failure to take timely action shall be deemed a withdrawal.

(5) A withdrawal of intent to appeal the board's determination of ineligibility to SOAH or a deemed withdrawal, due to failure to timely take appropriate action, shall be deemed acceptance by applicant of the board's ineligibility determination.

(6) An application for licensure shall not expire while the application is the subject of a contested case, however, applicants shall be required to update any information that is a part of their applications.

Source Note: The provisions of this §187.24 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective November 29, 2009, 34 TexReg 8535.


(a) Notice. Before revoking or suspending any license, denying an application for a license, or reprimanding any licensee, the board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days, except as otherwise provided by board rule or the Act.

(b) Content.

(1) In accordance with §2001.052 of the APA, notice of adjudicative hearing shall include:
   (A) a statement of time, place, and nature of the hearing;
   (B) a statement of the legal authority and jurisdiction under which the hearing is to be held;
   (C) a reference to the particular sections of the statutes and rules involved;
   (D) a short and plain statement of the matters asserted; and
   (E) a disclosure in at least 12-point bold face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

(2) A copy of the original pleading filed with the board may be substituted for subsection (b)(1) of this section to the extent that it contains the required information.

(c) Service. The notice of adjudicative hearing shall be served as specified in §187.26(a) of this title (relating to Service in SOAH Proceedings).

Source Note: The provisions of this §187.25 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective November 29, 2009, 34 TexReg 8535.


(a) Service of a notice of adjudicative hearing shall be made by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. The notice of adjudicative hearing shall be delivered to the respondent at the address of record on file with the board.

(b) Service in the manner provided for subsection (a) of this section shall be prima facie evidence of proper service of notice of adjudicative hearing.

(1) Service by hand delivery shall be complete upon hand delivery to the respondent or respondent's agent at the respondent's address of record.

(2) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(3) Service by courier service shall be complete upon deposit of the paper, enclosed in a properly addressed wrapper, in a depository under the care and custody of a courier service, with payment under a contract with the board.

(c) Service of the Complaint--On the same date the Complaint is filed at SOAH, it shall be served on each party or the party's representative in compliance with SOAH Rule 1 TAC §155.103(a) - (d) (relating to Service Documents on Parties). In addition, the Complaint shall include the following in 12-point bold face type: "If you do not file a written answer to this Complaint with the State Office of Administrative Hearings within 20 days after the date of receipt, a default order may be entered against you, which may include any or all of the requested sanctions, including the revocation of your license. A copy of any answer you file with the State Office of Administrative Hearings shall also be provided to the hearings coordinator of the Texas Medical Board."
(d) Service of other documents in contested cases pending before SOAH shall be governed by the rules of SOAH.

Source Note: The provisions of this §187.26 adopted to be effective July 4, 2004, 29 TexReg 6091; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective November 29, 2009, 34 TexReg 8535; amended to be effective February 28, 2011, 36 TexReg 1278

§187.27. Written Answers in SOAH Proceedings and Default Orders.

(a) Written Answers in SOAH Proceedings. As authorized by SOAH rules, a respondent is required to file a written answer to the Complaint within 20 days after the date that service of the Complaint is complete, as provided in §187.26(c) of this title (relating to Service in SOAH Proceedings), the respondent shall file a written answer with the State Office of Administrative Hearings and with the Hearings Coordinator of the board.

(b) Default Orders.

(1) If no written answer has been filed within 20 days after the date of service, the board attorney assigned to the matter shall file a motion to remand with SOAH and respondent based on respondent’s default.

(2) If the case is remanded, the staff attorney shall present to the board a motion for default. After consideration of the Complaint and the motion for default, the board may then make a Determination of Default and issue a Default Order deeming the allegations in the Complaint as true.

(3) In the event that the respondent wishes to file an answer after a Default Order has been entered by the board the respondent must file a Motion for Rehearing to Set Aside Default Order within 20 days after the issuance of the Default Order, which shall show that:

(A) the failure to timely file a written answer was caused by fraud, accident, or wrongful act or official mistake of the board;

(B) the failure to timely file a written answer was not the result of respondent’s fault or negligence; and

(C) the respondent has a meritorious defense.

(4) The Motion for Rehearing shall be supported by affidavits and documentary evidence that present a prima facie case for a meritorious defense.

Source Note: The provisions of this §187.27 adopted to be effective July 4, 2004, 29 TexReg 6091; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective November 29, 2009, 34 TexReg 8535; amended to be effective September 19, 2010, 35 TexReg 8355; amended to be effective February 28, 2011, 36 TexReg 1278

§187.28. Discovery.

(a) Parties to SOAH proceedings shall have reasonable opportunity and methods of discovery as described in the APA, §164.005 and §164.007(d) of the Act, and SOAH rules.

(b) Testifying expert witnesses. Unless otherwise agreed in writing by the parties or ordered by the ALJ, the Board shall file a designation of testifying expert witnesses, if any, no later than 90 days before the end of the discovery period. Other parties shall file a designation of testifying expert witnesses, if any, no later than 45 days after the Board’s designation or 60 days before the end of the discovery period, whichever date is earlier. A party shall not be allowed to present a testifying expert witness who has not been timely designated, except by a pre-hearing order of the ALJ.

(1) A designation of testifying expert witnesses shall include:

(A) the name, address, and telephone number of each expert witness and, unless the party shows that the testifying expert witness is not retained by, employed by, testifying as a courtesy, or otherwise in the control of the party,

(B) a current curriculum vitae, résumé, and bibliography of each expert witness.

(2) Unless a party shows that a testifying expert witness is not retained by, employed by, testifying as a courtesy, or otherwise in the control of the party, the party shall make the testifying expert witness available for deposition reasonably promptly after the expert witness is designated.

(c) Remedies and Sanctions. Upon the failure to comply with a discovery request to the extent required by the APA, §164.005 of the Act, SOAH rules or SOAH Order, or as agreed to between the parties in a discovery agreement, the presiding ALJ should, after notice and hearing, make such orders in regard to the failure as are just, and such orders may include one or more of the following:

(1) an order granting a continuance;

(2) an order limiting or restricting the admissibility and use of evidence, to include exclusion of evidence or testimony;

(3) an order for payment by a party of the actual travel, lodging, discovery expenses; hearing and court reporter costs; but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements;
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§187.28. Evidence.
(a) Medical records. Medical records of patients shall be accompanied by an affidavit in the form approved and furnished by the board that contains the requisite elements to comply with the Texas Rules of Evidence, 902(10)(b), relating to form of affidavits.
(b) Peer review proceedings.
(1) Pursuant to Section 164.0071 of the Act, a record, report, or other information that has been submitted to the board in accordance with Chapter 160 of the Act by a medical peer review committee, professional review body or any health care entity may be disclosed by Board Staff and shall be admitted into evidence as the basis for the opinion of an expert witness called by the board. The authorization to disclose such records in a disciplinary hearing, provided in Section 160.006(a)(1) and Section 164.0071 of the Act, creates a statutory exception to the hearsay rule, as stated in Article VIII, Texas Rules of Evidence.
(2) In accordance with §160.009 of the Act, parties and witnesses can be required to produce documents and information. As provided in §160.0071(c) of the Act, however, a member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a hearing or a deposition regarding medical peer review proceedings otherwise privileged pursuant to §160.007 of the Act.
(c) Deferred adjudications. In accordance with §2001.081 of the APA and consistent with §§164.053(a)(1) and 164.053(b) of the Act, deferred adjudications are admissible as evidence that the respondent violated the law with which the respondent

Source Note: The provisions of this §187.28 adopted to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective August 3, 2014, 39 TexReg 5749

§187.29. Mediated Settlement Conferences.
(a) In an effort to expeditiously resolve disputed issues, mediation may be held through State Office of Administrative Hearings (SOAH) in compliance with §155.37 of SOAH rules.
(1) Board members and District Review Committee (DRC) members are not parties to actions pending before SOAH, and accordingly will not be ordered or expected to attend Mediated Settlement Conferences (MSCs) before SOAH. Board members and DRC members who attended the informal show compliance proceeding will be invited by board staff to attend the MSC. If the board and DRC members who attended the informal show compliance proceeding are unable to attend the MSC, then other members of the board and DRC may be invited to attend the MSC. In appropriate cases, board staff will make every effort to have a physician-member present.
(2) All proposed mediated agreed orders are not considered final until they are approved by the board.
(3) All mediated agreed orders shall be in writing and shall contain findings of fact, conclusions of law and board actions consistent with §187.9 of this title (relating to Board Actions).
(b) The costs of mediation shall be borne equally by the parties, unless proof through affidavit and other reliable records such as tax returns show that a party is incapable of paying part of the costs of mediation.

Source Note: The provisions of this §187.29 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective August 3, 2014, 39 TexReg 5749

Recording by a court reporter. Each contested hearing shall be recorded. Any recording of contested case proceedings shall be conducted in accordance with §§2001.059 - .060 of the APA and §155.43 of SOAH rules.

Source Note: The provisions of this §187.30 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective January 25, 2006, 31 TexReg 394.

§187.31. Evidence.
(a) Medical records. Medical records of patients shall be accompanied by an affidavit in the form approved and furnished by the board that contains the requisite elements to comply with the Texas Rules of Evidence, 902(10)(b), relating to form of affidavits.

(b) Peer review proceedings.
(1) Pursuant to Section 164.0071 of the Act, a record, report, or other information that has been submitted to the board in accordance with Chapter 160 of the Act by a medical peer review committee, professional review body or any health care entity may be disclosed by Board Staff and shall be admitted into evidence as the basis for the opinion of an expert witness called by the board. The authorization to disclose such records in a disciplinary hearing, provided in Section 160.006(a)(1) and Section 164.0071 of the Act, creates a statutory exception to the hearsay rule, as stated in Article VIII, Texas Rules of Evidence.
(2) In accordance with §160.009 of the Act, parties and witnesses can be required to produce documents and information. As provided in §160.0071(c) of the Act, however, a member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a hearing or a deposition regarding medical peer review proceedings otherwise privileged pursuant to §160.007 of the Act.
(c) Deferred adjudications. In accordance with §2001.081 of the APA and consistent with §§164.053(a)(1) and 164.053(b) of the Act, deferred adjudications are admissible as evidence that the respondent violated the law with which the respondent
was charged and pled to, which gave rise to the deferred adjudication.

(d) Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(1) Copies. Documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original.

(2) Statement of Standard of Care. In lieu of pre-filed testimony in contested proceedings in which the quality or standard of medical care is at issue, the ALJ may require the parties to file a Statement of Standard of Care for each expert witness who will testify in the party's case-in-chief. The Statement shall set forth the expert's opinion regarding:

(A) any standard of care that applies to the current case, and
(B) how the standard of care applies and/or was violated in the current case. The expert witness shall be subject to direct and cross-examination and the statement shall be admissible into evidence.

Source Note: The provisions of this §187.31 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective July 4, 2004, 29 TexReg 6091; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.

§187.33. Proposals for Decision.
In accordance with the APA, Section 2001.141(e), if a party submits proposed findings of fact, the ALJ shall rule on each proposed finding, including a statement as to why any proposed finding was not included in the proposal for decision.

Source Note: The provisions of this §187.33 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.
§187.35. Presentation of Proposal for Decision.
(a) Notice of oral argument. All parties shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. The ALJ who issued the proposal for decision shall be given notice of the opportunity to attend and provide a summation of the proposal for decision before the board. The ALJ is not required to attend the presentation of the proposal for decision before the board. Notice shall be sent by hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service to the parties’ addresses of record. Notice to the ALJ may be provided by facsimile, e-mail, telephone, hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service.
(b) Arguments before the Board. The order of the proceeding shall be as follows:
   (1) the ALJ may present and explain the proposal for decision;
   (2) the party adversely affected shall briefly state the party’s reasons for being so affected supported by the evidence of record;
   (3) the other party or parties shall be given the opportunity to respond;
   (4) the party with the burden of proof shall have the right to close;
   (5) board members may question any party as to any matter relevant to the proposal for decision and evidence presented at the hearing;
   (6) at the end of all arguments by the parties, the board may deliberate in closed session and shall take action on a final decision or final order in open session.
(c) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board’s routines.

Source Note: The provisions of this §187.35 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.

§187.36. Interlocutory Appeals and Certification of Questions.
(a) Interlocutory appeals and certification of questions. Interlocutory appeals to the board and certification of questions filed pursuant to §187.23 of this title (relating to General Provisions of Formal Proceedings at SOAH) shall be filed with the hearings coordinator of the board and served on the respondent or authorized representative and the ALJ. The respondent or authorized representative and the ALJ shall be given ten days from the date of filing by board staff to file a written response with the Hearings Coordinator. The staff attorney, the respondent and authorized representative, and the ALJ may appear at a meeting to make oral argument on the appeal.
(b) Abatement of proceeding. The ALJ shall abate the proceeding while a certified question or interlocutory appeal is pending.
(c) Board action. The board shall enter in the minutes of the meeting the board’s decision on the certified question or interlocutory appeal. A board decision on a certified question or interlocutory appeal is not subject to motion for rehearing.
(d) Judicial review. Nothing in this section shall be interpreted to affect a licensee’s right to seek judicial review of any disciplinary action taken by the board against the licensee as provided by §164.009 of the Act.

Source Note: The provisions of this §187.36 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394.

(a) For purposes of this section a Final Decision is defined as the findings of fact and conclusions of law issued by the ALJ after the filing of exceptions and replies to exceptions, in the form of a proposal for decision. A Final Decision shall include only findings of fact and conclusions of law, separately stated.
(b) For purposes of this section a Final Order is defined as the findings of fact and conclusions of law, separately stated, and the sanctions, if any, issued by the board.
(c) The board shall notify the licensee if it will present a Final Decision or a Final Order when providing the notice required in §187.35 of this title (relating to Presentation of Proposal for Decision).
(d) The determination to enter a Final Decision or issue a Final Order rests solely with the board. The board may only appeal a Final Decision.
(e) If a Final Decision is appealed, the determination of that appeal is conclusive to both the board and licensee as to the findings of fact and conclusions of law and only the sanction can subsequently be appealed after the issuance of a Final Order.
(f) If the board issues only a Final Order, the licensee retains the rights under the APA to appeal the findings of fact, conclusions of law, and the sanctions.
(g) Board action. A copy of the Final Decision and/or Final Order shall be delivered or mailed to any party and to the attorney of record.

(h) Recorded. All Final Decisions and Final Orders of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting.

(i) Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(j) Changes to findings of fact and conclusions of law. The board may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may, however, obtain judicial review of any findings of fact or conclusions of law as provided by the APA.

(k) In the case where the board intends to seek judicial review of a Final Decision, the board shall file a motion for rehearing as described in §187.38 of this title (relating to Motions for Rehearing).

(1) Determination and Imposition of Sanctions in a Final Order. The agency is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining physicians and surgeons, physician assistants, and acupuncturists, to ensure that sound medical principles govern the decisions of the board.

(2) Sanctions. After receiving the ALJ's proposal for decision, the board may enter it as a Final Decision and seek judicial review. Upon the appeal's resolution, the board shall determine the charges on the merits, and issue a Final Order. The board has the sole authority and discretion to determine the appropriate sanction or action to impose on a licensee. The board determination regarding appropriate sanctions shall be based on the findings of fact and conclusions of law as set out in the Proposal for Decision or Final Decision and shall be set out in a Final Order.

(l) Administrative finality. A final order or final decision is administratively final:

   (1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (i) of this section;

   (2) when no motion for rehearing has been filed within 20 days after the date the final order or board decision is entered; or

   (3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §187.38 of this title.

Source Note: The provisions of this §187.37 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective November 29, 2009, 34 TexReg 8535; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective June 5, 2014, 39 TexReg 4256

§187.38. Motions for Rehearing.

(a) To obtain judicial review the board and/or a licensee shall file a motion for rehearing.

(b) Filing times. A motion for rehearing may be filed by the board, the Respondent or both. A Motion for Rehearing must be filed with the board within 20 days after a party has been notified, either in person or by mail, of the Final Decision or Final Order of the board. For purposes of notification of the Final Decision or Final Order, the licensee is deemed to have personal notification at the time the board votes on the Final Decision or Final Order, if the Respondent or Respondent's attorney is present at the meeting when that vote occurs.

(c) Board action. Board action on the motion must be taken within 45 days after the date of rendition of the Final Decision or Final Order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the Final Decision or Final Order. The board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or another suitable means of communication. The board may by written order extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the Final Decision or Final Order. The parties may by agreement with the approval of the board provide for a modification of the times provided in this section.

Source Note: The provisions of this §187.38 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective June 5, 2014, 39 TexReg 4256

(a) Default Orders. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act by default, the board has the authority to assess, in addition to penalty imposed, costs of the administrative hearing.

(b) Trial on the Merits. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act after a trial on the merits, the board has the authority to assess in addition to the penalty imposed, the costs of the administrative hearing.

(c) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

Source Note: The provisions of this §187.39 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective March 6, 2003, 28 TexReg 1884; amended to be effective November 7, 2004, 29 TexReg 10113.

§187.42. Recusals.

(a) Permissive Recusal. At any meeting of the board or board committee, a board member may choose to be recused from participating and voting regarding any matter for any reason. The board member shall not be required to state the basis for recusal, but may choose to state the basis in general terms if such a statement will not prejudice the rights of any party to a fair proceeding before the board or committee of the board. In the event a board member discloses a basis for recusal which could potentially prejudice the rights of any party to a fair proceeding, the presiding officer of the board or committee may cure any such prejudice by an instruction to board or committee members to not consider the statement during the course of the proceeding or during deliberations or discussions related to the proceeding.

(b) Standards for Recusal.

(1) A board member should exercise sound discretion in choosing to be recused from participation and voting regarding any matter.

(2) A board member should choose to be recused if the board member:

(A) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(B) has a familial relationship within the third degree of affinity with any party or witness; or

(C) determines that he/she has knowledge of information that is not in the administrative record of a contested case and that he/she cannot set aside that knowledge and fairly and impartially consider the matter based solely on the administrative record.

(3) The fact that a board member participated in an ISC, a temporary suspension, or any other matter regarding a respondent shall not require the board member to be recused from any other matter, unless the board member determines that he or she cannot set aside knowledge of any information that is not in the administrative records and fairly and impartially consider the matter based solely on the administrative record.

(c) Motion for Disqualification by a Party.

(1) Any party may move for the disqualification of a board member stating with particularity why the board member should not sit. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

(2) The motion must be filed with the Hearings Coordinator of the Board at least five business days prior to a board meeting at which the matter is on the agenda. The Hearings Coordinator shall immediately send a copy of the Motion for Disqualification to all board members.

(3) The board member sought to be disqualified shall determine whether the motion raises valid issues and whether the board member can fairly and impartially consider the matter based solely on the administrative record, setting aside knowledge of any information that is not in the administrative record. If the board member determines that he/she can fairly and impartially consider the matter and chooses not to be recused, the board member shall inform the board of that decision and shall be allowed to participate in all discussion and voting regarding the matter. The board is not required to take a vote on the motion.

(4) Consent to Participation. Failure to timely file a Motion for Disqualification regarding any board member as provided for in this subsection shall constitute a waiver of any objection and consent to participation by the member.

(d) Upon exercising the right to be recused and announcement of the recusal in open session, any board member so recused shall be allowed to remain in the room during any portion of the related proceeding and shall be counted for purposes of determining a quorum, but shall not participate in any discussions, questioning, deliberations, or vote pertaining to the proceeding.

Source Note: The provisions of this §187.42 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective January 25, 2006, 31 TexReg 394.
§187.43. Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders.

(a) Unless the board order specifies that the order shall or will be modified or terminated upon the fulfillment of certain conditions or the occurrence of certain events, the decision to modify or terminate a board order shall be a matter for the exercise of sound discretion by the board. An agreed order entered into by Respondent may not be subsequently converted to a remedial plan. A licensee may not request modification or termination of a remedial plan.

(b) Modification or termination requests shall not be contested matters, but instead shall be matters to be ruled upon through the exercise of sound discretion by the board.

(c) If a board order sets out certain conditions or events for granting modification or termination of an order, the licensee shall have the burden of establishing that such conditions or events have taken place or been met.

(d) If by the terms of the order no specific conditions or events trigger the requirement that the petition be granted, the licensee has the burden of proof of demonstrating that one or more of the following factors should be considered for purposes of analyzing the merits of the petition and exercising sound discretion:

   (1) whether there has been a significant change in circumstances which indicates that it is in the best interest of the public and the licensee to modify or terminate the order;

   (2) whether there has been an unanticipated, unique or undue hardship on the licensee as a result of the board order which goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems). Economic hardships such as the denial of insurance coverage or an adverse action taken by a medical specialty board are not considered unanticipated, unique or undue hardships;

   (3) whether the licensee has engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate; and

   (4) whether the licensee has fulfilled the requirements of the licensee's order in a timely manner and cooperated with the board and board staff during the period of probation or restriction.

(e) Probationers must be in full compliance with all the terms and conditions of their orders in order for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in subsection (d)(2) of this section. If a probationer has been notified in writing by board staff that staff is investigating issues of noncompliance, the board may not consider the probationer's request for modification or termination until those issues are resolved.

(f) The determination of full compliance for the purpose of establishing eligibility for modification or termination requests will be based upon:

   (1) a review of the probationer's entire compliance history, with emphasis on the compliance status since the date of last modification or termination request, if any;

   (2) verification that the probationer is currently engaged in active practice;

   (3) verification that the probationer has been in compliance with the terms and conditions of the order since the date of last modification or termination request, if any; and

   (4) verification that the probationer is not the subject of any board investigation or pending board action of any kind.

(g) If a probationer is not in active practice, or is the subject of a board investigation or pending board action, the board may not consider the probationer's request for modification or termination until those issues are resolved.

(h) Unless the terms of the board order specify otherwise, petitions for modification or termination shall be in writing and filed with the director of compliance for the board. The petition will then be scheduled before an ISC Panel for consideration. If prior to the date of the meeting the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved.

(i) If the modification or termination request is recommended by a board panel to be granted, but prior to full board review or approval the probationer becomes the subject of a board investigation, the panel's recommendation will be withdrawn from the board's consideration for approval. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board's investigation and board action, if any, is resolved.

(j) Modification or termination requests may be made only once a year since the effective date of the
original order or since the effective date of any orders subsequently granting or denying modification or termination of the original order unless a board order otherwise specifies, or upon an assertion in writing under oath by a petitioner indicating that a circumstance exists as described in subsection (d)(2) of this section. Upon receipt of the petition, the Director of Compliance shall determine whether such a request is valid and meets the requirements of subsection (d)(2) of this section. A finding by the Director of Compliance does not equate to such a finding by representatives of the board.

(k) For purposes of administrative convenience, modification or termination requests may be heard by the full board or by representatives of the board. If such a request is heard by representatives of the board, the representatives shall consist of at least one board member or one district review committee member. In the event such a request is heard by board representatives, the representatives of the board shall not be authorized to bind the board, but shall only make recommendations to the board regarding an appropriate disposition. The recommendation of such representatives shall be submitted to the full board for adoption or rejection in the form of an order drafted by board staff.

Source Note: The provisions of this §187.43 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective May 2, 2010, 35 TexReg 3279; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective July 9, 2015, 40 TexReg 4355

§187.44. Probationer Show Compliance Proceedings.
Pursuant to §§164.003 - 164.004 of the Act and §§2001.054 - 2001.056 of the APA, the following rules shall apply to probationer show compliance proceedings.

(1) If a licensee is placed under an order, the licensee shall be monitored by the board to ensure compliance. In the event that a licensee fails to comply with the licensee's order, such noncompliance will be addressed at a probationer show compliance proceeding.

(2) All licensees under any order must maintain their licenses in good standing, including meeting all fee and continuing medical education requirements. Failure to keep a license in good standing shall be evidence of noncompliance with a board order and considered a violation of the Act and board rules.

(3) Unless otherwise stated, the policies and procedures as described for ISCs in §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance ("ISC")) shall apply to probationer show compliance proceedings.

(4) Prior to the Probationer Show Compliance Hearing, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee. All notice relating to the Probationer Show Compliance Proceeding shall be mailed to the licensee at least ten days prior to the date of the proceeding. Information must be received from the licensee at least five days prior to the Probationer Show Compliance Proceeding.

(5) At a probationer show compliance proceeding, the board representatives may consider facts relevant to the alleged noncompliance, and the board representatives may recommend that the licensee’s existing order be modified or extended.

(6) To the extent possible, board members and district review committee members are required to serve as representatives at probationer show compliance proceedings an equal number of times during a calendar year. In the event a board member or district review committee member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the director of enforcement for the board who shall then bring the complaint to the attention of the president of the board for a resolution.

Source Note: The provisions of this §187.44 adopted to be effective January 6, 2002, 26 TexReg 10867; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective March 18, 2013, 38 TexReg 1875.

§187.45. Probationer Appearances.
A probationer may be required to appear before board representatives to report on compliance and progress under the order.

Source Note: The provisions of this §187.45 adopted to be effective January 25, 2006, 31 TexReg 394.
§187.55. Purpose.
The purpose of a temporary suspension or restriction proceeding is to determine whether a person's license to practice medicine should be temporarily suspended or restricted in accordance with the Act, §164.059.

Source Note: The provisions of this §187.55 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective February 28, 2011, 36 TexReg 1278; amended to be effective December 25, 2011, 36 TexReg 8551

§187.56. Convening a Disciplinary Panel.
(a) The President of the board shall appoint a three-member disciplinary panel.

(b) The disciplinary panel shall be composed of three members of the board, at least one of whom must be a physician. The President of the board shall name a chair of the disciplinary panel. The Executive Director shall submit names to the President of the Board for appointment to a panel based on the prospective panel members' availability and lack of conflict of interests.

(c) In the event of the recusal of a disciplinary panel member or the inability of a panel member to attend a temporary suspension proceeding, an alternate board member may serve on the disciplinary panel upon appointment by the president or presiding officer of the board.

(d) Notwithstanding the Open Meetings Act, Chapter 551, Texas Government Code, and in accordance with §164.059(d) of the Act, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(e) A hearing before a disciplinary panel shall constitute a hearing before the board.

Source Note: The provisions of this §187.56 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 25, 2006, 31 TexReg 394; amended to be effective December 25, 2011, 36 TexReg 8551

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

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

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

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

   (1) Section 22.011(a)(2), Penal Code (sexual assault of a child);
   (2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);
   (3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or
   (4) Section 21.11, Penal Code (indecency with a child).

Source Note: The provisions of this §187.57 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 30, 2003, 28 TexReg 10494; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective May 6, 2013, 38 TexReg 2760.

§187.58. Procedures before the Disciplinary Panel.
(a) In accordance with the Act, §164.004, an ISC is not required to be held prior to a hearing on temporary suspension or restriction. Section 164.004 further exempts a temporary suspension or restriction proceeding from the requirements of §2001.054(c), Texas Government Code.

(b) To the extent practicable, in the discretion of the chair of the disciplinary panel, the sequence of events will be as follows:

   (1) Call to Order;
   (2) Roll Call;
   (3) Calling of the Case;
   (4) Recusal Statement;
   (5) Introductions/Appearances on the Record;
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(6) Opening Statements by Board Staff and Respondent;
(7) Presentation of evidence by Board Staff;
(8) Presentation of evidence on behalf of Respondent;
(9) Rebuttal by Board Staff and Respondent;
(10) Closing Arguments;
   (A) Argument by Board Staff;
   (B) Argument by Respondent;
   (C) Final Argument by Board Staff;
(11) Deliberations;
(12) Announcement of Decision;
(13) Adjournment.

(c) A board attorney shall be designated as Counsel to the Panel and shall be present during the hearing and deliberations by the panel and shall advise the panel on all legal issues that arise during the hearing including objections to evidence and other evidentiary matters. The Counsel to the Panel shall be permitted to ask questions of witnesses, the board staff, the attorney for the licensee and other participants in the hearing.

Source Note: The provisions of this §187.58 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective February 28, 2011, 36 TexReg 1278


(a) In accordance with the Administrative Procedure Act (APA), §2001.081, the determination of the disciplinary panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on 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 those rules, and not precluded by statute.

(b) Questioning of witnesses by the parties or panel members shall be under the control of the chair of the disciplinary panel with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(c) In receiving information on which to base its determination of a continuing threat to the public welfare, the disciplinary panel may accept the testimony of witnesses by telephone.

(d) Documentary evidence must be prefilled with the board 24 hours prior to the scheduled hearing. Admission of documentary evidence after the 24 hours shall be admitted only upon a showing of good cause.

(e) Documentary evidence must be submitted in electronic format in all cases where the Respondent has been provided notice that a panel member will be appearing by phone.

Source Note: The provisions of this §187.59 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective February 28, 2011, 36 TexReg 1278

§187.60. Temporary Suspension or Restriction Without Notice or Hearing.

In accordance with the Act, §164.059(c), a license may be suspended or restricted without notice or hearing, provided:

(1) the board immediately provides notice of the suspension or restriction to the license holder; and
(2) a hearing on the temporary suspension or restriction before the disciplinary panel of the board is scheduled for the earliest possible date after 10 days' notice of the hearing.

Source Note: The provisions of this §187.60 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 30, 2003, 28 TexReg 10494.

§187.61. Ancillary Proceeding.

(a) A temporary suspension or restriction proceeding is ancillary to a disciplinary proceeding concerning the licensee's alleged violation(s) of the Act.

(b) A temporary suspension or restriction order is effective immediately on the date entered and shall remain in effect until a final or further order of the board is entered in the disciplinary proceeding.

(c) A temporary suspension or restriction order based upon an arrest for certain offenses listed under §164.0595 of the Act and §187.57(d) of this title (relating to Charge of the Disciplinary Panel), remains in effect until there is a final disposition of the criminal case, including, but not limited to, conviction, plea agreement and sentence, deferred adjudication, acquittal, or dismissal of the criminal case.

(d) Upon the entry of a temporary suspension or restriction order, an ISC shall be scheduled as soon as practicable in the disciplinary proceeding in accordance with §164.004 of the Act and §2001.054(c), Texas Government Code, or, in the case of a suspension or restriction under subsection (c) of this section, as soon as practicable after there is a final disposition of the criminal case. A second ISC is not required, however, if an ISC has previously been held in the disciplinary proceeding.

(e) If the matter is not resolved by an Agreed Order through the ISC, a formal Complaint shall be filed in
the disciplinary proceeding at the State Office of Administrative Hearings in accordance with §164.005 of the Act as soon as practicable after the ISC.

Source Note: The provisions of this §187.61 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective November 7, 2004, 29 TexReg 10113; amended to be effective December 25, 2011, 36 TexReg 8551; amended to be effective July 9, 2015, 40 TexReg 4355

§187.62. Continuing Threat Constitutes A Danger to the Public.
Section 164.011(c) of the Act provides that the board's decision to suspend or restrict a license may not be enjoined if the license holder's continued practice presents a danger to the public. The board's determination that a licensee's continuation in practice would constitute a continuing threat to the public welfare shall be deemed to be a finding that the license holder's continued practice presents a danger to the public.

Source Note: The provisions of this §187.62 adopted to be effective November 3, 2002, 27 TexReg 10027; amended to be effective December 25, 2011, 36 TexReg 8551
§187.70. Purposes and Construction.
The purpose of this subchapter is to set forth a procedure for the suspension of a medical license in the case of initial conviction of certain offenses, initial findings by a trier of fact of guilt of certain drug-related felonies, or the incarceration of a physician in a state or federal penitentiary, as provided in §§164.057 - 164.058 of the Act. The board interprets this statute as providing for suspension by operation of law and that an initial conviction occurs when there has been adjudication of guilt of the offense charged, including, but not limited to, a finding of guilt by a jury or judge. Since the board's role in such circumstances is limited to whether the licensee has been initially convicted of certain offenses or is incarcerated, the board has determined that the procedures set forth in this subchapter will provide due process to the licensee and protect the public.

Source Note: The provisions of this §187.70 adopted to be effective July 3, 2007, 32 TexReg 3994; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective May 5, 2011, 36 TexReg 2728; amended to be effective July 9, 2015, 40 TexReg 4355

§187.71. Hearing before a Panel of Board Representatives.
(a) Upon receipt of information that a licensee has been initially convicted of certain offenses, found guilty by a trier of fact of certain drug-related felonies, or is incarcerated, the board shall schedule a hearing before a panel of board representatives at the earliest practicable time after providing the licensee with at least ten days notice.

(b) The panel shall be composed of at least two members of the board or District Review Committee. At least one member must be a physician and one member must be a public member. The panel may be the same panel that is scheduled for Informal Show Cause and Settlement Conferences.

(c) At the hearing, the licensee shall have the right to respond to the allegations, be represented by counsel, and present evidence or information to the panel.

(d) The panel must base its decision or recommendation on evidence or information that is admissible under §2001.081, Texas Administrative Procedure Act.

(e) If the licensee disputes the fact that the licensee has been initially convicted of an offense, found guilty by a trier of fact of a drug-related felony, or is incarcerated, but requests that the panel probate an order suspending the licensee's medical license, the licensee may present evidence or information showing that probation is authorized by §164.101 and §164.102 of the Act and that the suspension should be probated.

(f) A licensee shall be subject to further disciplinary action when a final conviction of the offense occurs pursuant to §164.051(a)(2) and §164.057(b) of the Act. A final conviction occurs when there has been an adjudication of guilt and a judgment entered.

Source Note: The provisions of this §187.71 adopted to be effective July 3, 2007, 32 TexReg 3994; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective May 5, 2011, 36 TexReg 2728

§187.72. Decision of the Panel.
(a) If the panel determines that the licensee has been initially convicted of an offense listed in §164.057(a)(1) of the Act, found guilty by a trier of fact of a drug-related felony listed in §164.057(a)(2) of the Act, or is incarcerated, the panel shall direct the Executive Director to enter an order suspending the medical license of the licensee in accordance with §164.057 of the Act. The order of the Executive Director shall be effective immediately upon entry. The panel shall either offer an agreed order probating the suspension or refer the matter to SOAH for revocation of the physicians' license.

(b) If the panel determines that the suspension should be probated, the panel may recommend the terms and conditions of an agreed order to be signed by the licensee and presented to the board for approval. The agreed order probating suspension shall supersede the order of suspension issued by the executive director only after the agreed order has been signed by the licensee and approved by the board.

Source Note: The provisions of this §187.72 adopted to be effective July 3, 2007, 32 TexReg 3994; amended to be effective January 20, 2009, 34 TexReg 340; amended to be effective May 5, 2011, 36 TexReg 2728; amended to be effective July 9, 2015, 40 TexReg 4355
§187.75. Purposes and Construction.
The purpose of this subchapter is to set forth a procedure for the imposition of an administrative penalty as provided in Chapter 165, Subchapter A (§165.001, et seq.) of the Act, for violations identified in §190.14 of this title (relating to Disciplinary Sanction Guidelines) as administrative violations, but not including aggravated administrative violations.

Source Note: The provisions of this §187.75 adopted to be effective March 16, 2008, 33 TexReg 2026.

§187.76. Notice of Intention to Impose Administrative Penalty, Response
(a) Before an administrative penalty is imposed, the board will provide a licensee who is alleged to have committed an administrative violation with a notice of the allegations regarding an administrative violation and the amount of a proposed administrative penalty.
(b) The Notice shall include, at a minimum:
    (1) information regarding the allegations, based on information then available, to allow the licensee to prepare a response;
    (2) deadlines for a response and the consequences of failing to meet such deadlines;
    (3) the consequences of paying a proposed administrative penalty, including the fact that payment will constitute a public record;
    (4) the licensee's right to submit a written response or request a personal appearance;
    (5) a description of the procedural process for consideration of a written response or request for a personal appearance;
    (6) the name and contact information for an employee who can provide further information.
(c) The licensee may respond to the notice as follows:
    (1) The licensee may pay the proposed administrative penalty;
    (2) The licensee may provide a written response to the board; or
    (3) The licensee may request a personal appearance at an informal meeting.
(d) If the licensee submits a written response within 30 days after the complaint is received by the board, board staff may determine that the complaint should not be filed and no investigation opened. Because the board is limited to 30 days for the preliminary investigation, pursuant to §157.057(b), Occupations Code, no extensions may be granted to this deadline.

Source Note: The provisions of this §187.76 adopted to be effective March 16, 2008, 33 TexReg 2026.

§187.77. Payment of the Administrative Penalty
If the licensee pays the administrative penalty, the payment shall be acknowledged on a copy of the notice, which shall constitute an agreed imposition of the administrative penalty. A report of the payments upon notice of intention to impose administrative penalties shall be made to the board at the next regular meeting for approval.

Source Note: The provisions of this §187.77 adopted to be effective March 16, 2008, 33 TexReg 2026.

§187.78. Written Response
If, at any time prior to the imposition of an administrative penalty, the licensee submits a written response without a request for a personal appearance at an informal meeting, the allegations and the written response shall be submitted to the Disciplinary Process Review Committee of the board (“DPRC”) at the next regular meeting. The action of the DPRC shall be submitted to the Board for approval.

Source Note: The provisions of this §187.78 adopted to be effective March 16, 2008, 33 TexReg 2026.

§187.79. Personal Appearance at an Informal Meeting
(a) If, within 30 days after the Notice of Intention to Impose Administrative Penalty is sent to the licensee, the licensee submits a request for personal appearance at an informal meeting, an informal meeting shall be scheduled in accordance with §164.004(a)(2) of the Act before one or more board representatives.
(b) An informal meeting under this Subchapter may consider only dismissal of the matter or the imposition of an administrative penalty. The board representatives may not consider revocation, suspension, or any other sanction. The provisions of §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance) shall apply to the informal meeting, except that there may be one or more board representatives at the informal meeting, who may be either a physician or public member of the Board or District Review Committee.
(c) The recommendation of the board representative(s) to impose the administrative penalty or to dismiss the allegations shall be referred to the
§187.80. Imposition of Administrative Penalty
(a) The board may enter an order imposing an administrative penalty in accordance with §165.004 of the Act at the next regular meeting of the board after the expiration of 30 days after Notice of Intention to Impose Administrative Penalty is sent to the licensee if:
(1) the licensee has failed to respond to the notice; or
(2) the DPRC has approved the imposition of an administrative penalty.
(b) Upon imposition of an administrative penalty, the board shall notify the licensee of the board's order. The notice shall include a statement of the right of the licensee to judicial review of the order, in accordance with §165.005 of the Act.
(c) If the licensee pursues judicial review of the order, the administrative record shall include the Notice of Intention to Impose Administrative Penalty, any written response provided by the licensee, any documents reviewed by board representatives at an informal meeting, the recommendation of the board representative(s), any documents considered by the DPRC, the minutes of the DPRC, the minutes of the board imposing an administrative penalty, and the order imposing an administrative penalty.
(d) An administrative penalty imposed by the board shall be due and payable to the board within 60 days after the licensee receives notice of the board's order.

§187.81. Reports of Imposition of Administrative Penalty
(a) An imposition of an administrative penalty shall be a public record.
(b) The imposition of an administrative penalty shall not be considered a restriction or limitation on the license, nor shall an administrative penalty be imposed under this subchapter be considered an action connected with the delivery of health care services. Further, the imposition of the administrative penalty under this subchapter shall not be reported to the National Practitioner Data Bank. The board's newsletter and any press release shall include only the number of administrative penalties imposed.
(c) The complaint, Notice of Intention to Impose an Administrative Penalty, a written response or request for personal appearance by the licensee, any information provided to and any report of a panel of board representatives or the DPRC, shall remain confidential, in accordance with §164.007(c), Occupations Code.

§187.82. Unpaid Administrative Penalties
A licensee shall not be issued a registration permit until all administrative penalties imposed by the board have been paid.

Source Note: The provisions of this §187.81 adopted to be effective March 16, 2008, 33 TexReg 2026; amended to be effective September 19, 2010, 35 TexReg 8355

Source Note: The provisions of this §187.82 adopted to be effective March 16, 2008, 33 TexReg 2026.
§187.83. Proceedings for Cease and Desist Orders

(a) Purpose. The purpose of this subchapter is to establish procedures for the handling of complaints and proceedings regarding the unlicensed practice of medicine and other violations of the Medical Practice Act, a rule adopted by the board, or another statute relating to the practice of medicine by a person who is not licensed by the board, in accordance with Occupations Code, Title 3, Subtitle B, Chapter 165, Subchapters B, C, and D.

(b) Statutory Authority. Pursuant to the authority of §165.052 and §164.002(a) of the Act, the board may enter a cease and desist order. The board delegates to the Executive Director the authority to sign on behalf of the board, a Cease and Desist Order if directed to do so by a Cease and Desist Panel after the conclusion of a full adversarial evidentiary hearing. A panel shall be composed of two board representatives.

(c) Referrals to other Governmental Entities.

(1) Complaints to the board regarding the unlicensed practice of medicine and other violations of the Medical Practice Act, a rule adopted by the board, or another statute relating to the practice of medicine by a person who is not licensed by the board or the performance of any medical procedure without the required permit, registration, or license shall be routed to one or more of the following for appropriate handling including further investigation, cease and desist proceedings, criminal prosecution, and/or injunctive relief:

(A) the Investigation Division of the Board;
(B) the Office of the Attorney General;
(C) the Texas Department of Public Safety;
(D) the United States Drug Enforcement Administration;
(E) the Texas Department of State Health Services;
(F) the local district or county attorney's office with jurisdiction;
(G) the local law enforcement agency;
(H) any state or federal licensing board or other agency which maintains jurisdiction over a person who is the subject of the complaint.

(2) In any instance in which the board may have concurrent jurisdiction with another agency over the subject of a complaint under this section, the board may pursue further investigation and appropriate action before or after routing the complaint to another agency.

(3) The routing of a complaint to another agency as provided by this section shall be in writing unless to do so is likely to jeopardize any further investigation, prosecution, or injunctive relief.

(d) Investigation of Complaints.

(1) A complaint or information that a person has committed a violation under this Chapter shall be processed in a manner similar to a complaint against a licensee (see Chapter 178 of this title (relating to Complaints)).

(2) After sufficient information and evidence has been gathered a committee of board employees designated by the Executive Director, which may include the Executive Director, shall determine whether the information and evidence gathered makes a prima facie case that a violation has occurred.

(3) If the committee determines that the information and evidence gathered indicate that a prima facie case can be made that a violation has occurred, the complaint may be scheduled for a cease and desist hearing.

(e) Cease and Desist Hearing.

(1) Notice. Upon receipt of information that an individual has practiced medicine without a license, the board shall schedule a cease and desist hearing before a panel of board representatives at the earliest practicable time after providing the individual with at least 30 days notice. The notice to the individual will provide the date, time and location of a hearing to determine whether the individual should receive a cease and desist order. The notice shall also include all the evidence upon which Board staff will rely on to make its case for issuance of a cease and desist order.

(2) Convening a panel.

(A) The president of the board shall appoint a two-member panel upon a verbal or written request by board staff.

(B) The disciplinary panel shall be composed of two members of the board, at least one of whom must be a physician.

(C) In the event of the recusal of a panel member or the inability of a panel member to attend a cease and desist proceeding, an alternate board member may serve on the panel upon appointment by the president of the board.

(D) Notwithstanding the Open Meetings Act, Chapter 551, Texas Government Code, the panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(E) A hearing before a panel shall constitute a public hearing before the board and shall be transcribed by a court reporter. The individual who is
the subject of the hearing may request a copy of the
transcription and is responsible for the costs of the
copy. Payment shall be submitted to the board within
30 days receipt of notice of costs. If the individual fails
to submit payment, the matter shall be referred to the

(3) Charge of the panel.
(A) The panel shall determine from the
evidence or information presented to it whether a
person is practicing medicine without a license.
(B) If the panel determines that the
individual has practiced medicine without a license, the
panel shall direct the Executive Director to issue a
cease and desist order, effective immediately, in
accordance with §165.052 of the Act.

(4) Procedures before the panel.
(A) In accordance with the Act, §165.051,
before a cease and desist order may be issued, the board
must provide an individual with notice and opportunity
for a hearing.
(B) To the extent practicable, the
sequence of events will be as follows:
(i) Call to Order;
(ii) Roll Call;
(iii) Calling of the Case;
(iv) Recusal Statement;
(v) Introductions/Appearances on the
Record;
(vi) Opening Statements by Board
Staff and Respondent;
(vii) Presentation of evidence by
Board Staff;
(viii) Presentation of evidence on
behalf of Respondent;
(ix) Rebuttal by Board Staff and
Respondent;
(x) Closing Arguments;
(I) Argument by Board Staff;
(II) Argument by Respondent;
(III) Final Argument by Board
Staff;
(xi) Deliberations;
(xii) Announcement of Decision;
(xiii) Adjournment.
(C) A board attorney shall be designated
as Counsel to the Panel and shall be present during the
hearing and deliberations by the panel and shall advise
the panel on all legal issues that arise during the hearing
including objections to evidence and other evidentiary
matters. The Counsel to the Panel shall be permitted to
ask questions of witnesses, the board staff, the attorney
for the licensee and other participants in the hearing.

(5) Evidence.
(A) In accordance with the Administrative
Procedure Act (APA), §2001.081, the determination of
the disciplinary panel may be based not only on
evidence admissible under the Texas Rules of
Evidence, but may be based on 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
those rules, and not precluded by statute.
(B) Questioning of witnesses shall be
permitted with due consideration being given to the
need to obtain accurate information and prevent the
harassment or undue embarrassment of witnesses.
(C) In receiving information on which to
base its determination, the panel may accept the
testimony of witnesses by telephone.
(D) Material to be presented by the
individual at the cease and desist hearing must be filed
with the board at least 10 calendar days prior to the date
of the scheduled hearing.
(E) Documentary evidence must be
submitted in electronic format in all cases where the
Respondent has been provided notice that a panel
member will be appearing by phone.
(f) If after the issuance of a cease and desist order
the individual wishes to appeal the entry of the order,
the individual may file a petition at the Travis County
District Court.

Source Note: The provisions of this §187.83 adopted to
be effective May 2, 2010, 35 TexReg 3279; amended to
be effective September 18, 2011, 36 TexReg 5844;
amended to be effective December 25, 2011, 36 TexReg
8551; amended to be effective September 30, 2012, 37
TexReg 7486

§187.84. Violation of Cease and Desist Orders
If a respondent violates a cease and desist order, the
board may:
(1) Impose an administrative penalty against
the respondent, and/or
(2) refer the matter to the attorney general to
institute action for:
(A) an injunction against violation of the
cease and desist order;
(B) any administrative penalty assessed by
the board;
(C) a civil penalty in accordance with the
§165.101 of the Act;
(D) expenses in accordance with the Act,
§165.103; and
(E) any other remedy provided by law.

Source Note: The provisions of this §187.84 adopted to
be effective May 2, 2010, 35 TexReg 3279.
§187.85. Purpose and Construction
As authorized under §1467.003 of the Texas Insurance Code, the purpose of this subchapter is to establish the process for investigation and review of a complaint filed with the Texas Medical Board that relates to the settlement of an out-of-network health benefit claim under Chapter 1467 of the Texas Insurance Code.

Source Note: The provisions of this §187.85 adopted to be effective May 2, 2010, 35 TexReg 3279.

§187.86. Scope
This subchapter applies to complaints filed in relation to mediations conducted for qualified health benefit claims under 28 TAC §21.5010 (relating to Qualified Health Benefit Claim Criteria).

Source Note: The provisions of this §187.86 adopted to be effective May 2, 2010, 35 TexReg 3279.

§187.87. Definitions
The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

1. Board--Texas Medical Board.
2. Enrollee--An individual who is eligible to receive benefits through a preferred provider benefit plan offered by an insurer under the Insurance Code, Chapter 1301 or a health benefit plan, other than an HMO plan, under the Texas Insurance Code, Chapter 1551.
3. Facility--a hospital, emergency clinic, outpatient clinic, birthing center, ambulatory surgical center, or other facility providing health care services.
4. Facility-based physician--a radiologist, an anesthesiologist, a pathologist, an emergency department physician or a neonatologist:
   A. to whom the facility has granted clinical privileges; and
   B. who provides services to patients of the facility pursuant to those clinical privileges.
5. Mediation--a process in which an impartial mediator facilitates and promotes agreement between the insurer offering a preferred provider benefit plan or the administrator and a facility-based physician or the physician's representative to settle a health benefit claim of an enrollee pursuant to Chapter 1467 of the Texas Insurance Code.
6. Mediator--an impartial person who is appointed by the chief administrative law judge at the State Office of Administrative Hearings to conduct a mediation, pursuant to Chapter 1467 of the Texas Insurance Code.
7. Out-of-network health benefit claim--A claim for payment for medical or health care services that are furnished by a physician that is not contracted as a preferred provider with a preferred provider benefit plan or contracted with an administrator.
8. Qualified health benefit claim--A health benefit claim that meets all of the criteria under 28 TAC §21.5010(a) and (b) (relating to Qualified Health Benefit Claim Criteria).

Source Note: The provisions of this §187.87 adopted to be effective May 2, 2010, 35 TexReg 3279.

§187.88. Complaint Process and Resolution
(a) A complaint relating to a mediation may be filed by a mediator with the Board against a facility-based physician for bad faith mediation. Conduct constituting bad faith mediation includes:
   1. failing to participate in a mediation;
   2. failing to provide information the mediator believes is necessary to facilitate an agreement; or
   3. failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement.

(b) If the enrollee is not satisfied with a mediated agreement, the enrollee may file a complaint with the Board against a facility-based physician for improper billing reached under Chapter 1467 of the Insurance Code.

(c) Investigations.
   1. All complaints shall be investigated pursuant to Chapter 179 of this title (relating to Investigations) and referred to an informal settlement conference if appropriate.

   2. In accordance with §311.0025 of the Health and Safety Code the Board shall not open investigations relating to complaints of a single instance of improper billing, but shall open investigations on facility-based physicians who are alleged to have engaged in improper billing in multiple instances.

   (d) Penalties.
      1. Bad Faith Mediation. Except for good cause shown, on a report of a mediator and appropriate proof of bad faith mediation, the Board shall impose an administrative penalty.
      2. Improper Billing. If the Board determines that a facility-based physician has engaged in improper billing practices, the Board shall impose sanctions consistent with §190.14 of this title (relating to Disciplinary Sanction Guidelines).
§187.89 Notice of Availability of Mandatory Mediation

(a) Notice at Time of Presentation.
   
   (1) Except in the case of an emergency and if requested by an enrollee, a facility-based physician shall, before providing a medical service or supply, provide a complete disclosure to an enrollee consistent with the notice requirements of §1467.051 of the Texas Insurance Code, that:

   (A) explains that the facility-based physician does not have a contract with the enrollee's health benefit plan;

   (B) discloses projected amounts for which the enrollee may be responsible; and

   (C) discloses the circumstances under which the enrollee would be responsible for those amounts.

   (2) Failure to provide notice under this section shall not subject a licensee to disciplinary action.

(b) Notice in Billing Statement.

   (1) A facility-based physician who bills a patient covered by a preferred provider plan or a health benefit plan under Chapter 1551 of the Insurance Code that does not have a contract with the facility-based physician shall send a billing statement to the patient with information sufficient to notify the patient of the mandatory mediation process under Chapter 1467 of the Insurance Code if the amount for which the enrollee is responsible, after copayments, deductibles, and coinsurance, including the amount unpaid by the administrator or insurer, is greater than $1,000.

   (2) The written notice shall include a reference to TDI's website about the mediation process - http://www.tdi.state.tx.us/consumer/cpmmediation.html

Source Note: The provisions of this §187.88 adopted to be effective May 2, 2010, 35 TexReg 3279; amended to be effective January 20, 2014, 39 TexReg 284

Source Note: The provisions of this §187.89 adopted to be effective May 2, 2010, 35 TexReg 3279.
§189.1. Purpose and Scope
(a) Purpose. The purposes of this chapter are:
(1) to establish requirements and responsibilities for a probationer who is under an order or remedial plan of the board; and
(2) to establish a system of monitoring a probationer's compliance with the terms and conditions of an order or remedial plan of the board.
(b) Scope.
(1) This chapter shall govern the enforcement of all orders and remedial plans of the board.
(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the board, board staff, or the substantive rights of any person.
(c) Authority. Pursuant to §164.010 of the Act, the Board is authorized to promulgate rules relating to the development of a program to monitor compliance of license holders who are subject to disciplinary action or remedial plans.

Source Note: The provisions of this §189.1 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective March 9, 2009, 34 TexReg 1591; amended to be effective September 30, 2012, 37 TexReg 7486

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

(2) Address of record--The mailing address of each probationer as provided to the board pursuant to the Act.
(3) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.
(4) Agency representative--A compliance officer, other agency staff, board member, or agent of the agency.
(6) Authorized representative--An attorney of record or any other person who has been designated in writing by a party to represent the party at a board proceeding.
(7) Board--The appointed members of the Medical Board for physicians and surgical assistants, the Physician Assistant Board for physicians assistants, and the Board of Acupuncture for acupuncturists.
(8) Board representative--A board member or district review committee member who sits on a panel at a proceeding to determine compliance with an order.
(9) Compliance manager--The agency staff person who supervises the agency compliance program.
(10) Compliance officer--An employee of the agency assigned to each probationer to investigate a probationer's compliance with the terms and conditions of an order.
(11) Group practice--Any business entity including a partnership, professional association, professional limited liability company, or other entity allowed by state law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.
(12) Institutional setting--A medical facility established by a governmental entity, non-profit organization, or educational institution that has a permanent staff, including full-time physician employees, by-laws, and an internal governing structure for the operation of the facility for the purpose of practicing medicine.
(13) Licensee--A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.
(14) Modification/termination hearing--A hearing before board representatives conducted upon the written request of a probationer for the modification of one or more terms and conditions of an order, the termination of an order prior to the prescribed termination of an order, or the reinstatement of a license following a suspension.
(15) Monitoring physician--A licensed Texas physician who meets the requirements as set out in §189.11 of this title (relating to Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings) and who reviews a probationer's medical/billing records and/or conducts onsite reviews of a probationer's practice site on a periodic basis for the purpose of monitoring and educating a probationer, and periodically reports in writing to the board on the
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probationer's medical practice and practice of medicine as stipulated by an order or remedial plan.

(16) Order--An agreed order, final order of the board, rehabilitation order, or other order approved by the board that requires an agency representative to monitor a probationer's compliance with the order's terms and conditions.

(17) Probation appearance--An appearance by a probationer at an informal board proceeding before board representatives to discuss a probationer's compliance with an order or remedial plan.

(18) Probationer--A licensee who is under an order or remedial plan.

(19) Proctor--A licensed Texas physician who meets the requirements as set out in §189.11 of this title and who physically and actually works with and oversees a probationer's practice of medicine on a daily basis and periodically reports in writing to the board on the probationer's medical practice and practice of medicine as stipulated by an order.

(20) Remedial Plan--A nondisciplinary settlement agreement entered into pursuant to §164.0015 of this Act.

(21) SOAH--The State Office of Administrative Hearings.

(22) Successful Completion--The determination that all the terms and/or conditions of an Order are considered to be fully completed and a written Notice of Termination is provided to a Probationer. The effective date of Successful Completion shall be the date on Notice of Termination of the Order.

(23) Supervising physician--A licensed Texas physician who meets the requirements as set out in §189.11 of this title and who is physically present at a probationer's practice on a daily basis in order to evaluate, educate, and provide guidance regarding the probationer's practice of medicine; and periodically reports in writing to the board on probationer's medical practice and practice of medicine as stipulated by an order or remedial plan.

(24) Toll--To extend the term of an order for any period of time that:

(A) a probationer practices exclusively outside the State of Texas;

(B) a probationer's license is cancelled for nonpayment of licensure fees;

(C) the order is stayed or enjoined by Court Order; or

(D) for any period of time longer than 60 consecutive days that a probationer does not actively practice medicine.

Source Note: The provisions of this §189.2 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective March 9, 2009, 34 TexReg 1591; amended to be effective May 2, 2010, 35 TexReg 3280; amended to be effective September 30, 2012, 37 TexReg 7486; amended to be effective January 20, 2014, 39 TexReg 284

§189.3. Responsibilities of Probationers.

(a) Comply with Terms and Conditions of Order or Remedial Plan. A probationer must comply with all terms and conditions of his or her order or remedial plan. If a probationer fails to comply with the terms and conditions of an order or remedial plan, the probationer shall be subject to agency review and action for non-compliance as set out in §189.8 of the title (relating to Procedures Concerning Non-Compliance).

(b) Document Continuing Medical Education (CME).

(1) A probationer is solely responsible for providing acceptable documentation to demonstrate compliance with CME or other educational requirements under an order or remedial plan.

(2) The following documentation will be acceptable to demonstrate compliance with CME requirements under an order or remedial plan:

(A) a certificate of completion from any formal CME course taken as defined under §166.2(a)(1) of this title (relating to Continuing Medical Education);

(B) a letter from the presenter(s) on letterhead sent directly from the author of the letter to the agency; or

(C) a report of CME activities provided directly to the agency by a third party testing entity accredited by Accreditation Council for Continuing Medical Education and approved by the American Medical Association or American Osteopathic Association.

(3) The following documentation is not acceptable to demonstrate compliance with a CME or other educational requirement:

(A) a copy of attendance form;

(B) answers from tests taken;

(C) a letter sent by a probationer from an individual stating that the probationer was at a class; or

(D) a listing of CME/ethics courses taken.

(c) Ensure Submission of Third Party Reports.

(1) A probationer is solely responsible for ensuring that all reports are timely submitted to the agency by third parties.

(2) In order to avoid a finding of non-compliance, a probationer must present evidence that the probationer made good faith efforts to ensure the timely submission of reports to the agency from third parties. Evidence may include, but is not limited to:

(A) copies of certified letter(s) with proof of mail receipt, air-bill or shipping document receipt
attached, which were sent directly to the third party requesting the report or document;

(B) a copy of a receipt of payments for services rendered by third parties; or

(C) objective evidence that the probationer has attempted to have a report submitted to the agency.

(3) If the agency does not receive reports after a probationer has made good faith efforts to ensure such documentation is submitted by an approved third party, the Executive Director of the agency has the authority to revoke approval of that third party.

(d) Content of Third Party Reports. Reports by third parties must be accurate, honest, and address all subjects that are required as set forth in a probationer's order or remedial plan.

Source Note: The provisions of this §189.3 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective May 2, 2010, 35 TexReg 3280; amended to be effective September 30, 2012, 37 TexReg 7486

§189.4. Limitations on Physician Probationer's Practice.

(a) A probationer is not authorized to supervise a physician assistant, advanced practice nurse, or surgical assistant unless expressly permitted under the probationer's order.

(b) A probationer may not delegate prescriptive authority to a physician assistant or advanced practice nurse unless expressly permitted under the probationer's order.

(c) A finding that a probationer has violated or attempted to violate subsections (a) and (b) of this section shall be considered unprofessional and dishonorable conduct likely to deceive, defraud or injure the public and is a violation of the Act.

(d) In accordance with §204.205(1), Texas Occupations Code, and §185.2(23) of this title (relating to Definitions), a probationer may not supervise or delegate prescriptive authority to a physician assistant if the probationer's license and practice of medicine are restricted by an order of the board.

Source Note: The provisions of this §189.4 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective June 5, 2014, 39 TexReg 2679; amended to be effective May 6, 2009, 34 TexReg 2679; amended to be effective May 9, 2002, 27 TexReg 3776; amended to be effective September 30, 2012, 37 TexReg 7486

§189.5. Compliance Visits and Communications.

(a) Agency representatives shall make random and unannounced visits with a probationer at a probationer's practice location, residence, or other location to investigate compliance with an order or remedial plan.

(b) Agency representatives shall determine the time, date, and location of all visits. A probationer must submit to random unannounced visits. A probationer or a probationer's authorized representative may not request to meet at specific times, dates, or locations.

(c) While agency representatives will focus on assuring the confidentiality of rehabilitation orders, agency representatives investigating a probationer's compliance with a rehabilitation order may communicate with third parties. Agency representatives shall not discuss the existence of an order, findings of fact, conclusions of law, or the terms and conditions of the order with persons to whom the order does not authorize disclosure. This does not preclude agency representatives from communicating that they are employees of the board.

Source Note: The provisions of this §189.5 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective September 30, 2012, 37 TexReg 7486

§189.6. Probation Appearances.

(a) Written notice directing a probationer to appear for a probation appearance shall be mailed no less than 10 days before the scheduled probation appearance to the probationer's address of record.

(b) A probationer shall be required to make probation appearances as stipulated in an order or remedial plan unless waived by the board.

(c) Upon recommendation of the executive director, the board may, with just cause, waive probation appearances required under the terms and conditions of an order or remedial plan. Just cause includes, but is not limited to, a probationer being in full compliance with the terms and conditions set forth in an order or remedial plan since the last anniversary date of the order or remedial plan.

Source Note: The provisions of this §189.6 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective September 30, 2012, 37 TexReg 7486

§189.7. Modification/Termination Hearings.

(a) A request for a modification/termination hearing or reinstatement hearing must be submitted in writing by the probationer. The writing must specifically detail the requested desired action. A probationer must be in full compliance with all the terms and conditions of his or her order to be eligible for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in §187.43(d)(2) of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders).
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(b) If a probationer is determined to be eligible for a hearing according to the terms of the order, §187.43 of this title, and Chapter 167 of this title (relating to Reinstatement and Reissuance) (as applicable), a date and time for the hearing shall be set and the probationer shall be notified in writing. If prior to the date of the meeting the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved.

(c) If the probationer desires to submit evidence for consideration by the board's representatives, the probationer must provide at least three copies of all evidence no less than ten calendar days prior to the hearing. The board's representatives may refuse to consider evidence not timely submitted.

(d) When considering a modification or termination request, the board's representatives must make a determination of the probationer's full compliance as defined in §187.43(f) of this title. When considering a reinstatement request, the board's representatives must make a determination of the probationer's eligibility under Chapter 167 of this title.

(e) In addition, when considering a modification, termination, or reinstatement request, the board's representatives may also consider:

- (1) evidence presented by the probationer;
- (2) the existence of prior orders; and
- (3) any information or evidence the board's representatives deem necessary to make an informed decision.

(f) If the modification or termination request is recommended by a board panel to be granted, but prior to full board review or approval the probationer becomes the subject of a board investigation, the panel's recommendation will be withdrawn from the board's consideration for approval. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board's investigation and board action, if any, is resolved.

(g) If a probationer is requesting a reinstatement hearing, the probationer must submit evidence of completion of any required stipulations prior to the hearing being set.

(h) In addition to requirements, set forth in §167.2 of this title (relating to Procedure for Requests for Reinstatement) a probationer requesting reinstatement of a license must prove that the probationer is mentally, physically, clinically, and otherwise competent to return to the practice of medicine.

(i) The decision to modify or terminate all or any part of an order is at the sole discretion of the board unless otherwise specified in the order.

(j) A probationer under a remedial plan may not request modification or termination of the remedial plan unless the plan specifically grants the probationer the right to request modification of termination of the remedial plan.

Source Note: The provisions of this §189.7 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective September 30, 2012, 37 TexReg 7486; amended to be effective July 9, 2015, 40 TexReg 4357

§189.8. Procedures Concerning Non-compliance.

(a) A finding that a probationer is in non-compliance with the terms and conditions of the probationer's order may be made by the board's representatives at the conclusion of a probation appearance or by the executive director.

(b) A finding of non-compliance shall be considered unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public and is a violation of the Act.

(c) Non-compliance includes, but is not limited to:

- (1) Failure to comply with a term or condition in an order or remedial plan;
- (2) Failure to cooperate with agency representatives;
- (3) Failure to promptly respond to communications by agency representatives;
- (4) Failure to comply with deadlines set forth in an order or remedial plan or as established by agency representatives for the purpose of enforcement of an order or remedial plan;
- (5) Failure to timely submit documents required as a term or condition of an order or remedial plan;
- (6) Failure to release documents as requested by agency representatives;
- (7) Failure and/or refusal to meet with and discuss compliance matters with agency representatives during any compliance visit;
- (8) Interference by probationer or agents of probationer that compromises and/or prevents agency representatives from fulfilling duties and responsibilities as set by an order, remedial plan, rule, or statute during a compliance visit; and
- (9) Any expression by word or deed, either directly or indirectly, to agency representatives that a reasonable person would find as harassing, insulting, disrespectful, or rude.

(d) Upon a finding of non-compliance, due process will be extended to a probationer in accordance with the Act and the probationer shall be invited to attend a
probationer show compliance proceeding as set forth in §187.44 of this title (relating to Probationer Show Compliance Proceedings).

(e) In lieu of a probationary show compliance proceeding and in order to resolve violations of an order or remedial plan, a probationer may waive his or her rights to a hearing as provided under the Act, §187.44 of this title, and the APA, and accept a settlement agreement proposed by the compliance manager with the approval of the executive director.

Source Note: The provisions of this §189.8 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective May 2, 2010, 35 TexReg 3280; amended to be effective September 30, 2012, 37 TexReg 7486.

§189.9. Grounds for Temporary Suspension or Automatic Suspension of Probationers.

(a) Certain violations of an order by a probationer are of such a nature that the continuation in practice by the probationer shall be considered a continuing threat to the public welfare. Such violation is grounds for a temporary suspension hearing as provided under Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) or for automatic suspension pursuant to terms and conditions of the probationer’s order. Such violations include, but are not limited to:

(1) failure to pass the Special Purpose Examination within the required number of attempts;
(2) failure to pass the Medical Jurisprudence Examination within the required number of attempts;
(3) testing positive for a prohibited substance;
(4) failure to timely submit to a drug and/or alcohol screen;
(5) refusal to submit to a drug and/or alcohol screen; and
(6) any attempt to circumvent or tamper with the accuracy of a drug and/or alcohol screen.

(b) Violations of certain terms of a remedial plan may constitute grounds for automatic suspension as set out in the remedial plan. Such violations include, but are not limited to:

(1) failure to pass the Special Purpose Examination within the required number of attempts; or
(2) failure to pass the Medical Jurisprudence Examination within the required number of attempts.

Source Note: The provisions of this §189.9 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective September 30, 2012, 37 TexReg 7486.

§189.10. Drug Screens.

(a) If the terms and conditions of an order provide for the screening of a prohibited substance, the probationer shall be screened by urine, blood, hair, breath, or other scientifically acceptable means to test for prohibited substances within a prescribed time period.

(b) Random testing is mandated. Agency representatives shall not make appointments or schedule times to collect screens.

(c) The probationer must submit to the screen within the prescribed time period.

(d) Probationers may not prospectively request copies of screens. The agency does not accept a standing request for copies of all drug screens. Upon receipt of written request, a copy of a screen may be forwarded only to a probationer or a probationer’s authorized representative.

(e) The selection of any drug screening panel or screening method is at the sole discretion of the board and may be changed without prior notice to the probationer.

(f) The probationer is responsible for all costs related to drug screens.

Source Note: The provisions of this §189.10 adopted to be effective May 9, 2002, 27 TexReg 3776.

§189.11. Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.

(a) Any approval of a physician or other professional to serve as a proctor, monitor, or supervisor or the approval of a group practice or institutional setting required by an order or remedial plan as applicable, shall be given by the executive director or his or her designee.

(b) Approval of a physician or other professional required by an order or remedial plan must meet all of the following criteria:

(1) board certification by a board certifying organization that meets the requirements of §164.4 of this title (relating to Board Certification);
(2) no economic relationship with probationer;
(3) no direct personal relationship with probationer;
(4) no more than three medical malpractice suits filed and/or pending against the physician or other professional within a five year period;
(5) no more than three resolved investigations by the board against the physician or other professional within a five year period; and
(6) no disciplinary history, pending investigations, or formal SOAH complaints with the board.

(c) The criteria for approval of a group practice or institutional setting required by an order may include a review of the physicians connected with the group.
practitioner or institutional setting utilizing the criteria set forth in subsection (b) of this section.

(d) The executive director or his or her designee may consider other factors in addition to those listed in subsection (b) of this section.

(e) Upon receiving information that indicates a physician or other professional acting as a probationer's proctor, monitor, or supervisor, or one or more physicians in an approved group practice or institutional setting no longer meet criteria under subsection (b) of this section, or that other factors warrant withdrawal of approval for such individuals or settings, the executive director or his or her designee may withdraw approval for such a physician, professional, group practice, or institutional setting.

(f) Upon notice of the withdrawal of approval for a group practice or institutional setting, the probationer must cease practicing medicine at the group practice or institutional setting within 10 business days.

Source Note: The provisions of this §189.11 adopted to be effective May 9, 2002, 27 TexReg 3776; amended to be effective September 30, 2012, 37 TexReg 7486; amended to be effective March 23, 2014, 39 TexReg 1932

§189.12. Suspended licenses.
A probationer whose license has been suspended by the board remains under the jurisdiction of the board and must comply with Chapter 166 of this title (relating to Physician Registration). Failure to do so may lead to cancellation of probationer's license for non-payment.

Source Note: The provisions of this §189.12 adopted to be effective May 9, 2002, 27 TexReg 3776

§189.13. Investigative Reports.
All reports created by agency representatives while investigating a probationer's compliance with an order are investigative reports as defined by the Act.

Source Note: The provisions of this §189.13 adopted to be effective May 9, 2002, 27 TexReg 3776

§189.14. Receipt of Probationer's Address of Record and Contact Information.
(a) A probationer must maintain an address of record with the agency.

(b) In addition to the requirements set out in subsection (a) of this section, a probationer must provide current up to date contact information to the agency. Such contact information shall include, all the following information applicable to the probationer:

(1) Mailing address;
(2) Home address;
(3) Work address;
(4) Home telephone number;
(5) Work telephone number;
(6) Mobile pager number;
(7) Cellular telephone number; and
(8) Electronic mail address.

(c) Any change to the contact information listed under subsection (b) of this section must be reported to the agency within ten calendar days after the effective date of the change.

Source Note: The provisions of this §189.14 adopted to be effective May 9, 2002, 27 TexReg 3776.

§189.15. Determination of Successful Completion of an Order.
(a) The determination of successful completion of an order as defined by §189.2(22) of this title (relating to Definitions) shall require that all terms and conditions of the order have been completed and verified by a board Compliance Officer.

(b) Upon determination that all the terms and conditions have been satisfied as outlined in subsection (a) of this section, and no exception to a determination of Successful Completion as listed in subsection (c) or (d) of this section exist, the Compliance Officer will issue a written Notice of Termination of the Order. The effective date of Successful Completion shall be the date on Notice of Termination of the Order.

(c) If the Probationer is subject to an investigation, ISC, and/or a SOAH contested case arising out of an alleged violation of the order, the occurrence of which allegedly happened at any time the order was in effect, there shall be no determination of Successful Completion until the investigation, ISC, or pending SOAH contested case arising from an alleged violation of the order is resolved and approved by the Board through:

(1) a dismissal;
(2) agreed order;
(3) modification of the order; or
(4) a mediated or final order, resulting from a proceeding or mediation at SOAH.

(d) If any provision(s) of the order are tolled, there shall be no determination of Successful Completion until the tolling of the order is lifted, the term of the order is extended according to the period of time that the order was tolled, the order's terms are timely completed, and the completion is verified by a board Compliance Officer. While an order is tolled, the compliance monitoring period shall be suspended, and the probationer will not be allowed to complete any provisions required by the order, unless otherwise permitted by other provisions in the order.
Source Note: The provisions of this §189.15 adopted to be effective January 20, 2014, 39 TexReg 284
§190.1. Purpose.
(a) Purpose. This chapter is promulgated to:
   (1) promote consistency in the exercise of sound discretion by board members in licensure and disciplinary matters;
   (2) provide guidance for board members for the resolution of potentially contested matters; and
   (3) provide guidance as to the types of conduct that constitute violations of the Medical Practice Act (the "Act") or board rules.
   (b) Authority. Pursuant to §§164.001 - 164.103, the Board may adopt rules relating to its disciplinary authority to take action against a licensee.

Source Note: The provisions of this §190.1 adopted to be effective November 30, 2003, 28 TexReg 10496; amended to be effective January 20, 2009, 34 TexReg 342.

§190.2. Board's Role.
The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Medical Practice Act. A sanction should be consistent with sanctions imposed in other similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law. This chapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

Source Note: The provisions of this §190.2 adopted to be effective November 30, 2003, 28 TexReg 10496; amended to be effective November 29, 2009, 34 TexReg 8536.
§190.8. Violation Guidelines.
When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) A proper relationship, at a minimum requires:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing. An online or telephonic evaluation by questionnaire is inadequate;

(II) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(IV) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of subclauses (I) through (IV) of this clause, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Service) and 42 CFR 418.22.

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for:

(I) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(II) a physician to prescribe dangerous drugs and/or vaccines for a patient's close contacts if the physician diagnoses the patient with one or more of the following infectious diseases listed in items (-a-) - (-g-) of this subclause. For the purpose of this clause, a "close contact" is defined as: any person who provided care for the patient while the patient was symptomatic; or a member of the patient's household.

The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(-a-) Chicken Pox;
(-b-) Influenza;
(-c-) Invasive Haemophilus influenzae Type B;
(-d-) Meningococcal disease;
(-e-) Pertussis;
(-f-) Scabies; or
(-g-) Shingles.
(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conductions to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant,
witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act.

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice of the physician;

(III) involves a patient or former patient;
(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the Board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

Source Note: The provisions of this §190.8 adopted to be effective November 30, 2003, 28 TexReg 10496; amended to be effective July 4, 2004, 29 TexReg 6092; amended to be effective January 25, 2006, 31 TexReg 396; amended to be effective July 3, 2007, 32 TexReg 3994; amended to be effective June 24, 2009, 34 TexReg 4124; amended to be effective October 3, 2010, 35 TexReg 8754; amended to be effective June 28, 2011, 36 TexReg 3921; amended to be effective December 18, 2011, 36 TexReg 8378; amended to be effective July 4, 2012, 37 TexReg 4929; amended to be effective December 23, 2012, 37 TexReg 9774; amended to be effective August 3, 2014, 39 TexReg 5750; amended to be effective December 7, 2014, 39 TexReg 9345
These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined in paragraph (9) of this section provide a range from "Low Sanction" to "High Sanction" based upon any aggravating or mitigating factors that are found to apply in a particular case. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The minimum sanctions outlined in paragraph (9) of this section are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3) The sanctions outlined in paragraph (9) of this section are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation."

(4) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to $5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) Any panel action that falls outside the guideline range shall be reviewed and voted on individually by the board at a regular meeting.

(8) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule.

(9) The following standard sanctions shall apply to violations of the Act:
<table>
<thead>
<tr>
<th>Violation Description</th>
<th>Statutory/Rule Citation</th>
<th>Low Sanction</th>
<th>High Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abusive or Disruptive Behavior</td>
<td>§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(K), (P)</td>
<td>Remedial Plan: Anger management and communications CME, JP exam, medical ethics</td>
<td>Agreed Order with IME or Public Referral to PHP; CME in medical ethics, anger management, communications with colleagues, JP exam. For multiple orders or egregious actions--interfering with patient care: public reprimand, suspension with terms and conditions</td>
</tr>
<tr>
<td>Aiding in unlicensed practice</td>
<td>§164.052(a)(17) (directly or indirectly aids or abets unlicensed practice)</td>
<td>Remedial Plan: Directed CME in supervision or delegation if applicable: 8 hours CME in medical ethics, 8 hours CME in risk management; must pass JP within 1 year</td>
<td>Agreed Order: Public reprimand, all sanctions in low category, plus $2,000 admin penalty</td>
</tr>
<tr>
<td>Bad faith mediation by a licensee in relation to an out-of-network health benefit claim</td>
<td>§1467.101 and 1467.102 of the Texas Insurance Code (bad faith in out-of-network claim dispute resolution)--“except for good cause shown, the regulatory agency shall impose an administrative penalty”</td>
<td>Good cause shown: Remedial Plan: 8 hours of medical ethics; otherwise, admin penalty is statutorily required</td>
<td>Agreed Order: Public reprimand; $5,000 admin penalty, &quot;except for good cause shown&quot; per §1467.102; plus all sanctions in low category</td>
</tr>
<tr>
<td>Boundary Violation: Engaging in sexual contact with a patient or engaging in sexually inappropriate behavior or comments directed towards a patient</td>
<td>§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(E)-(F)</td>
<td>RP is statutorily prohibited Verbal remarks, or inappropriate behavior, but not involving touching: Agreed Order: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; CME in ethics; chaperone</td>
<td>Cases involving physical contact: Agreed Order: Low sanctions plus IME, Replace chaperone with may not treat patient of the affected gender; or suspension or revocation</td>
</tr>
<tr>
<td>Boundary Violation: Becoming financially or personally involved with a patient in an inappropriate manner</td>
<td>§164.052(a)(5)(unprofessional conduct likely to injure public); Rule §190.8(2)(G)</td>
<td>RP is statutorily prohibited Single incident: Agreed Order: CME in ethics, JP exam; if financial involvement,</td>
<td>More than one incident (more than one patient, or occasion): Agreed Order: Low Sanctions plus: Public reprimand; Vanderbilt or PACE boundaries course; JP</td>
</tr>
<tr>
<td>Breach of Confidentiality</td>
<td>§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(N)</td>
<td>Remedial Plan: 8 hours risk management CME to include HIPAA, $500 administration fee</td>
<td>Agreed Order: Public reprimand, CME in ethics/risk management and in HIPAA requirements; $3,000 per occurrence; JP exam</td>
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<tr>
<td>Cease and desist order--issuance of: See &quot;Unlicensed practice of medicine&quot;</td>
<td>§164.002 (Board’s general authority to dispose of &quot;any complaint or matter&quot; unless precluded by another statute) §165.052 (power to issue cease and desist orders against unlicensed persons)</td>
<td>Administrative penalty $2,000 - $5,000 per offense</td>
<td>Referral to Attorney General for civil penalty and costs or criminal prosecution. §165.101 (civil) and §165.152 (criminal)</td>
</tr>
<tr>
<td>Cease and desist order (existing), violation of</td>
<td>§165.052(b) (violation of (c) and (d) is grounds for imposing admin penalty)</td>
<td></td>
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</tr>
<tr>
<td>Change in practice or mailing address, failure to notify the board of</td>
<td>§164.051(a)(3) Rule §166.1(d) (notify Board within 30 days of change of mailing or practice address or professional name on file)</td>
<td>Remedial Plan: 4 hours of ethics/risk management and $500 administration fee</td>
<td>Agreed Order: Public Reprimand; must pass JP within 1 year; $5,000 admin penalty</td>
</tr>
<tr>
<td>CME - Failure to obtain or document CME</td>
<td>§164.051(a)(3) (forbids breaking or attempting to break a Board rule); Rule §166.2 (48 credits each 24 months + other requirements and accreditation of CME req’ts)</td>
<td>Remedial Plan: All missing hours of CME and 4 hours of ethics/risk management and $500 administration fee</td>
<td>Agreed Order: Suspension, probated with terms, or revocation</td>
</tr>
<tr>
<td>Crime: Abortion - performing a criminal abortion. Health and Safety Code §170.002 and Chapter 171 (§170.002 prohibits third-trimester abortions, with exceptions; Chapter 171 requires physicians to make available certain materials to abortion patients and restricts</td>
<td>§164.052(a)(16) (prohibits performing, procuring, aiding, or abetting in procuring a criminal abortion); §164.055 (requires &quot;appropriate disciplinary action&quot; against a physician who violates Health and Safety Code §170.002 or Chapter 171)</td>
<td>Agreed Order: Public Reprimand; must pass JP within 1 year; $5,000 admin penalty</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Crime: Arrest for offense under Penal Code §§21.02; 21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§164.0595 (Temporary suspension or restriction of license for certain arrests)</td>
</tr>
<tr>
<td>Agreed Order: Restriction of license, chaperone; may not treat pediatric patients</td>
</tr>
<tr>
<td>Agreed Order: Suspension of license, no probation</td>
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</tbody>
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<tr>
<th>Crime: Deferred adjudication community supervision for offense under Penal Code §§21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§164.057(c) (mandates revocation upon proof of deferred adjudication community supervision)</td>
</tr>
<tr>
<td>Revocation is statutorily required</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Crime: Felony conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td>§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(1)(A) of the Medical Practice Act (requires suspension on initial conviction for a felony)</td>
</tr>
<tr>
<td>Initial conviction: Statutorily required suspension with or without notice per Rule §190.8(6)(A)(iv) and §164.057(a)(1)(A)</td>
</tr>
<tr>
<td>Revocation is statutorily required on final conviction - §164.057(b)</td>
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</tbody>
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<thead>
<tr>
<th>Crime: Felony deferred adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td>§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(2)(A) of the Medical Practice Act (authorizes sanctions for initial convictions and deferred adjudications for felonies)</td>
</tr>
<tr>
<td>Agreed Order: Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME</td>
</tr>
<tr>
<td>Revocation is statutorily required on final conviction - §164.057(b)</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Crime: Misdemeanor conviction or deferred adjudication of crime involving moral turpitude</th>
</tr>
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<tbody>
<tr>
<td>§205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(B) of the Medical Practice Act (authorizes sanctions for either conviction or deferred adjudication; Rule §190.8(6)(B)(v) defines moral turpitude)</td>
</tr>
<tr>
<td>If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require: (-a-) Suspension of license, which may be probated after 90 days; (-b-) compliance with all restrictions,</td>
</tr>
<tr>
<td>If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Crime: Misdemeanor conviction not involving moral turpitude that is connected with the physician's practice of medicine</th>
<th>§164.053(a)(1) and (b) (authorizes sanctions without conviction): Rule §190.8(8)(B)(v) defines moral turpitude</th>
<th>Agreed Order: Anger management or other appropriate course; JP exam; admin penalty; CME in communication with appropriate group (patients, colleagues)</th>
<th>Suspension with terms and conditions OR Revocation for repeat or egregious offenses or when patient care is affected or threatened</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime: Misdemeanor deferred adjudication or conviction not involving moral turpitude that is not connected with physician's practice of medicine and not an offense under Chapter 22 or 25 of the Penal Code</td>
<td>§164.052(a)(5), as defined by Rule §190.8(2)(R)(iv), (vi), (vii), (ix), (x), (xi), and (xii) (authorizes sanctions based upon unprofessional conduct that would include commission of violations of federal and state law, whether or not there is a complaint, indictment, or conviction)</td>
<td>Agreed Order: Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME</td>
<td>Suspension with terms and conditions OR Revocation for repeat or egregious offenses</td>
</tr>
<tr>
<td>Crime: Misdemeanor initial conviction under Penal Code Chapter 22 (assaultive offenses – see also: arrest or deferred adjudication for assaulitve offenses against children) of crime punishable by more than a fine: OR Penal Code §25.07 (violation of court order re: family violence); OR §25.071 (violation of court order re: crime of bias or prejudice); OR one requiring registration as a sex offender under Code of Crim. Proc. Chapter 62</td>
<td>§164.057(a)(1),(B),(C), (D), and (E) (when misdemeanor conviction requires suspension)</td>
<td>Suspension is statutorily required per §164.057(a)(1)(B)</td>
<td>Revocation is statutorily required on final conviction - §164.057(b)</td>
</tr>
<tr>
<td>Death certificate, failure to sign electronically</td>
<td>§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that &quot;is connected with the physician's practice of medicine&quot;); Health and Safety Code Chapter 193 (requires electronic filing of death certificates)</td>
<td>Remedial Plan: 4 hours of ethics/risk management and $500 administration fee</td>
<td>Agreed Order: CME - 8 hours of risk management, 4 - 8 hours medical ethics; $2,000 admin penalty; JP exam</td>
</tr>
<tr>
<td>Delegation of professional medical responsibility or acts to person if the physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts</td>
<td>§164.053(a)(9) (describes the violation as unprofessional conduct, allows sanctions)</td>
<td>Remedial Plan: 12 hours CME in supervision and delegation, 8 hours in risk management, 8 hours in medical ethics; JP exam</td>
<td>Agreed Order: Low sanctions plus no delegation or supervision authority; administrative penalty of $2,000 per violation</td>
</tr>
<tr>
<td>Discipline by peers, may be either an administrative violation or SOC</td>
<td>§164.051(a)(7) (describes offense: includes being subjected to disciplinary action taken by peers in a local, regional, state, or national professional medical ass'n or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other action IF the board finds the action was based on unprofessional conduct or professional incompetence that was likely to harm the public and &quot;was appropriate and reasonably supported by evidence submitted to the board.&quot; Expert panel report provides such evidence)</td>
<td>Agreed Order: See the applicable sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible.</td>
<td>Agreed Order: Public reprimand; comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible; and administrative penalty of $3,000 per violation, plus directed CME and, if SOC case, a chart monitor. If not SOC: IME; anger management; CME in communications</td>
</tr>
<tr>
<td>Disciplined by another state or military may be either an administrative violation or a patient care violation</td>
<td>§164.051(a)(9) (describes the violation, requires that acts for which discipline imposed be the same or similar to acts in §164.052 or acts that are the same or similar to acts described in 164.051(a), for example rule violations, SOC violations, and all forms of impairment) Issue is only whether there was an order--no relitigation of</td>
<td>If no standard of care concerns, Remedial Plan with appropriate CME and $500 administration fee; OR reciprocal Agreed Order as appropriate.</td>
<td>If out-of-state order is revocation, revocation is statutorily required.</td>
</tr>
<tr>
<td>Violation</td>
<td>Rule Reference</td>
<td>Remedy Plan/Order</td>
<td></td>
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<tr>
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<tr>
<td>Drug logs - Failure to maintain (see also, violation of state or federal law connected with practice)</td>
<td>§164.053(a)(2) (describes offense and refers to Chapter 481 Health and Safety Code and 21 USC §801 et seq.)</td>
<td>Remedial Plan: 8 hours of ethics/risk management and $500 administration fee. Agreed Order: Public reprimand; 8 hours of ethics/risk management and $2,000 admin penalty; JP exam.</td>
<td></td>
</tr>
<tr>
<td>Employing a revoked/cancelled/or suspended physician (see also aiding and abetting the unlicensed practice)</td>
<td>§164.052(a)(14) (describes offense: &quot;directly or indirectly employs . . .&quot;); §164.052(a)(15) (forbids associating in the practice of medicine with such a person)</td>
<td>Agreed Order: Public reprimand; $3,000 admin penalty; take and pass JP exam. Agreed Order: Public reprimand; $5,000 admin penalty; JP exam; no delegation authority.</td>
<td></td>
</tr>
<tr>
<td>Failing to adequately supervise subordinates and improper delegation</td>
<td>§164.053(a)(8); §164.053(a)(9) - These sections describe the respective violations and define them as unprofessional conduct</td>
<td>Remedial Plan: 12 hours CME in supervision and delegation; consider ordering Rsp to furnish ED copies of delegation orders of develop and furnish delegation orders to ED; $500 admin fee. Agreed Order: Low category sanctions plus: monitoring of practice; no delegation or supervision authority; administrative penalty of $2,000 per violation; JP exam.</td>
<td></td>
</tr>
<tr>
<td>Fails to keep proper medical records</td>
<td>§164.051(a)(3) (authorizes sanctioning rule violations); §164.051(a)(6) (authorizes sanctioning failure to practice acceptably consistent with public welfare); Rule §165.1 describes contents of an adequate medical record</td>
<td>Remedial Plan: CME in appropriate area; $500 administration fee. Agreed Order: 8 or more hours of medical record-keeping, require in-person attendance if practical; chart monitor 8 – 12 cycles; $2,000 admin penalty; JP exam; PACE course in medical record-keeping if prior order for inadequate record-keeping.</td>
<td></td>
</tr>
<tr>
<td>Failure to Communicate with patient or other providers</td>
<td>§164.052(a)(5) (prohibits conduct that is &quot;likely to deceive or defraud the public&quot; and unprofessional conduct as defined by §164.053)</td>
<td>Single incident: Remedial Plan–8 hours risk management CME to include patient communications, $500 administration fee. Multiple instances: Agreed Order: Public reprimand, risk management and communications CME, fine, counseling, IME.</td>
<td></td>
</tr>
<tr>
<td>Failure to display a &quot;Notice Concerning Complaints&quot; sign</td>
<td>Rule §178.3(a)(1) (requires display of sign)</td>
<td>Remedial Plan: 4 hours of ethics/risk management and $500 administration fee. Agreed Order: 8 hours of ethics/risk management, $1,000 admin penalty; JP exam.</td>
<td></td>
</tr>
<tr>
<td>Failure to report dangerous behavior to governmental body</td>
<td>§164.052(a)(5) (prohibits conduct that is &quot;likely to deceive or defraud the public&quot; and unprofessional conduct as defined by §164.053)</td>
<td>Single incident: Agreed Order: Admin penalty; CME in medical ethics; JP exam</td>
<td>Multiple or egregious: Agreed Order: Low category sanctions plus public reprimand and $5,000 admin penalty</td>
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<tr>
<td>Failure to Pay/CS Gov't Code; Family Code Chapter 232 (authorizes suspending licenses of any kind granted by the state to persons who do not pay support payments)</td>
<td>Suspension until such time as the licensee is no longer in default</td>
<td>Suspension until such time as the licensee is no longer in default - statutorily required</td>
<td></td>
</tr>
<tr>
<td>Failure to Pay Student Loan §56.003 of the Texas Occupations Code</td>
<td>Agreed Order: public reprimand; within a certain time frame, provide proof of entering into an agreement with the loan servicing agent and/or default has been cured. Auto-suspend if violate order</td>
<td>Suspension until such time as the licensee is no longer in default</td>
<td></td>
</tr>
<tr>
<td>Failure to report suspected abuse of a patient by a third party, when the report of that abuse is required by law</td>
<td>§164.052(a)(5) (prohibits conduct that is &quot;likely to deceive or defraud the public&quot; and unprofessional conduct as defined by §164.053); Rule §190.8(2)(O)</td>
<td>Remedial Plan; CME-8 hrs risk management; JP Exam</td>
<td>Agreed Order: Low sanctions plus public reprimand; administrative penalty $3,000 per violation</td>
</tr>
<tr>
<td>Fees, failure to provide explanation of</td>
<td>§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §101.351 (establishes requirement and excludes application of §101.351 to physicians who post a billing practice sign in their waiting room)</td>
<td>Remedial Plan: 8 hours of ethics/risk management/billing practices and $500 administration fee</td>
<td>Agreed Order: 8 - 16 hours of CME in ethics, risk management, billing practices, and CPT coding, $2,000 admin penalty</td>
</tr>
<tr>
<td>Fraud on a diploma/in an exam</td>
<td>§164.052(a)(2); §164.052(a)(3) (describes offense as presenting an illegally or fraudulently obtained credential and cheating on exams)</td>
<td>Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and §500 administration fee</td>
<td>If misrepresentation makes the licensee ineligible, then revocation.</td>
</tr>
<tr>
<td>Fraudulent, improper billing practices - requires that Respondent knows the service was not</td>
<td>§101.203 (prohibits overbilling via ref to Health and Safety Code §311.0025); §164.053(a)(7) (prohibits violation of Health and</td>
<td>Agreed order: Including, but not limited to: monitoring of billing practices; directed CME;</td>
<td>Agreed Order: Public reprimand, monitoring of practice, including billing practices; directed CME;</td>
</tr>
<tr>
<td>Provided or knows was improper, unreasonable, or medically or clinically unnecessary. Should not sanction for an unknowing and isolated episode.</td>
<td>Safety Code §311.0025</td>
<td>Restitution; and administrative penalty of $1,000, but not to exceed the amount of improper billing</td>
<td>Restitution; and administrative penalty of $3,000 per violation</td>
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<tr>
<td>Health care liability claim, failure to report</td>
<td>§160.052(b) (requires reporting health care liability claims to Board) Rule §176.2 and §176.9 (prescribes form for such reporting)</td>
<td>Remedial Plan: 4 hours of ethics/risk management and $500 administration fee</td>
<td>Agreed Order: 8 hours of ethics/risk management; $2,000 admin penalty; JP exam</td>
</tr>
<tr>
<td>Impairment (no history and no aggravating factors such as SOC, boundary violation, or felony)</td>
<td>§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)</td>
<td>Refer to PHP--Public referral via agreed order required if case involves discharge from PHP, otherwise private referral is OK if appropriate</td>
<td>Voluntary surrender or temporary suspension</td>
</tr>
<tr>
<td>Impairment (with history or SOC violation or boundary violation or felony)</td>
<td>§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)</td>
<td>Agreed Order: IME with report to ED or to panel at re-convened ISC, restrict practice or voluntary suspension pending report; if impairment is found at ISC, suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine OR Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing; restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing OR revocation.</td>
<td>Agreed Order: Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine OR Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing; restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing OR revocation.</td>
</tr>
<tr>
<td>Intimidation of Complainant</td>
<td>§164.052(a)(5) (prohibits unprofessional conduct as)</td>
<td>Single Incident: Public</td>
<td>Multiple/Egregious: Suspension and/or...</td>
</tr>
<tr>
<td><strong>Medical Records:</strong> failure to release/overcharging for</td>
<td>Defined by §164.053 or that is &quot;likely to deceive or defraud the public&quot;)</td>
<td>Reprimand and fine</td>
<td>Revocation; significant admin penalty; CME in ethics; JP exam</td>
</tr>
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</tr>
<tr>
<td>Medical Records: failure to release/overcharging for</td>
<td>§159.006 of the Act (information furnished by licensee); §164.051(a)(3) (prohibits rule violations); Rule §165.2 (requires release to proper person as described therein unless release would harm the patient and prescribes allowable charges)</td>
<td>Remedial Plan: 4 hours of ethics/risk management and $500 administration fee</td>
<td>Agreed Order: 8 hours of ethics/risk management, $2,000 admin penalty; JP exam. Also, §159.006 (Board may appoint temp or permanent custodian of patient records held by a physician)</td>
</tr>
<tr>
<td>Misleading advertising</td>
<td>§164.051(a)(3); §164.052(6) (prohibits false advertising); Rule §164.3, §164.</td>
<td>Remedial Plan: 8 hours of ethics/risk management, correct the advertisement and $500 administration fee</td>
<td>Agreed Order: 16 hours of ethics/risk management in person, correct the advertisement, $5,000 admin penalty, JP exam</td>
</tr>
<tr>
<td>Operating an unlicensed pharmacy</td>
<td>§158.001(b) (requires physicians to comply with Occupations Code Chapter 558 to operate a retail pharmacy)</td>
<td>Agreed Order: Must pass JP within 1 year, $2,000 penalty, CME - medical ethics</td>
<td>Agreed Order: JP exam; cease operating pharmacy; CME - ethics and risk management</td>
</tr>
<tr>
<td>Overbilling: See fraudulent, improper billing</td>
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<td></td>
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<tr>
<td>Peer review action: See Discipline by peers</td>
<td></td>
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</tr>
<tr>
<td>Physician-patient relationship, Improper termination of</td>
<td>Rule §190.8(1)(J) (requires reasonable notice to patient of termination)</td>
<td>Single incident: Remedial Plan: 8 hours CME - 4 risk management and 4 ethics, $500 administration fee</td>
<td>Multiple instances: Public reprimand, risk management, fine, CME in physician-patient communications</td>
</tr>
<tr>
<td>Pill mills, unregistered pain clinics, overprescribing - See Delegation, Supervision, Prescribing</td>
<td></td>
<td></td>
<td>Revocation</td>
</tr>
<tr>
<td>Prescribing controlled substances to</td>
<td>§164.051(a)(6); Rule §190.8(1)(L), (M)</td>
<td>Agreed Order CME 8 hours medical</td>
<td>Agreed Order Low sanctions plus public</td>
</tr>
<tr>
<td>Action</td>
<td>Section/Rule</td>
<td>Remedial Plan</td>
<td>Agreed Order</td>
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</tr>
<tr>
<td>Prescribing dangerous drugs to oneself, family members, or others in which there is a close personal relationship without taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records</td>
<td>§164.051(a)(6); Rule §190.8(1)(L), (M)</td>
<td>Remedial Plan: CME - 8 hours medical recordkeeping or, 8 hours risk management; JP Exam</td>
<td>Agreed Order: Low sanctions plus chart monitoring, directed CME; restrictions on prescribing to self, family, and others in which there is a close personal relationship and administrative penalty of $3,000 per violation</td>
</tr>
<tr>
<td>Prescribing, writes false or fictitious prescriptions OR prescribes or dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs OR writes prescriptions for or dispenses to a person who the physician should Have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs OR inconsistent with public welfare</td>
<td>§164.053(a)(3)-(6) (defines the violations under unprofessional conduct)</td>
<td>Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance not prescribed by Respondent, drug screens required by</td>
<td>Agreed Order Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of $3,000 per violation.</td>
</tr>
<tr>
<td>Description</td>
<td>Legal Basis</td>
<td>Remedial Plan</td>
<td>Agreed Order</td>
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<tr>
<td>-----------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, one patient, no prior board history</td>
<td>§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)</td>
<td>Remedial Plan: CME in appropriate area; $500 administration fee per year.</td>
<td>Agreed Order: CME in appropriate area; chart monitor for 8 cycles; administrative penalty of $3,000 per violation</td>
</tr>
<tr>
<td>Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, more than one patient</td>
<td>§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)</td>
<td>Agreed Order: Proficiency testing; CME in appropriate area; chart monitor 12 cycles; administrative penalty $3,000 per violation</td>
<td>Agreed Order: Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; and administrative penalty of $5,000 per violation. If there are aggravating factors, revocation should be considered.</td>
</tr>
<tr>
<td>Referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee’s ownership interest in the entity to the patient</td>
<td>§164.052(a)(5) (prohibits conduct that is “likely to deceive or defraud the public” and unprofessional conduct as defined by §164.053); Rule §190.8(2)(H)</td>
<td>Remedial Plan: CME 8 hrs ethics, 8 hrs risk management; within 30 days of order’s entry, provide proof of implement of form used to disclose ownership to interest</td>
<td>Agreed Order: Low sanctions plus public reprimand; JP Exam; administrative penalty $3,000 per violation</td>
</tr>
<tr>
<td>Refusal to respond to board subpoena or request for information or action</td>
<td>§160.009 of the Act and Rule §179.4 (relating to Request for Information and Records from Physicians); §164.052(a)(5), as further defined by Board Rule 190.8(2)(B) (prohibits unprofessional conduct as defined by §164.053 or that is “likely to deceive or defraud the public”)</td>
<td>If records eventually received, Remedial Plan of 8 hours of ethics/risk management and $500 administration fee</td>
<td>If records never received and intentionally withheld, Agreed Order: public reprimand; JP exam; admin penalty; CME in medical ethics</td>
</tr>
<tr>
<td>Reporting false or misleading information on an initial application for licensure or for licensure renewal</td>
<td>§164.052(a)(1) (forbids submission of false or misleading statements of documents in an application for a license)</td>
<td>Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and $500 administration</td>
<td>If misrepresentation makes the licensee ineligible, then revocation.</td>
</tr>
<tr>
<td>Reporting false or misleading information to the Board (non-licensing matter)</td>
<td>§164.052(a)(5), as further defined by Rule §190.8(2)(C)</td>
<td>Remedial Plan - 8 hours of ethics/risk management and $500 administration fee</td>
<td>Agreed Order: 8 hours of ethics/risk management JP Exam administrative penalty of $3,000</td>
</tr>
<tr>
<td>Self-Prescribing: See &quot;Prescribing to self.&quot;</td>
<td></td>
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</tr>
<tr>
<td>Solicitation of patients/Drumming</td>
<td>§165.155 (provides a Class A misdemeanor penalty)</td>
<td>Agreed Order (if no conviction): 8 hours of ethics/risk management and $500 administration fee</td>
<td>Egregious: Agreed Order: Public reprimand, chart sign off, $5,000 fine, JP exam, CME in medical ethics OR referral to county attorney for prosecution as Class A misdemeanor under §165.155(e)</td>
</tr>
<tr>
<td>Standard of Care - one patient, no prior SOC or care-related violations</td>
<td>§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)</td>
<td>Remedial Plan*: CME in appropriate area; $500 administration fee per year. *No RP if case concerns a patient death</td>
<td>Agreed Order: Proficiency testing; directed CME; chart monitor for 8 cycles; administrative penalty of $3,000 per violation</td>
</tr>
<tr>
<td>Standard of care - one patient, one prior SOC or care-related violation</td>
<td>§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)</td>
<td>Agreed Order: Chart monitor for 8 cycles; directed CME, administrative penalty of $3,000 per violation</td>
<td>Agreed Order: Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); public reprimand; and administrative penalty of $5,000 per violation.</td>
</tr>
<tr>
<td>Standard of care - one patient, more than one prior SOC or care-related violations</td>
<td>§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring</td>
<td>Agreed Order: Limiting the practice of the person or excluding one or more specified</td>
<td>Agreed Order: K-STAR or PACE or equivalent proficiency testing; directed CME; chart</td>
</tr>
<tr>
<td>Standard of care - more than one patient, no prior SOC or care-related violation</td>
<td>$164.051(a)(6)$ (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); $164.051(a)(8)$ (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines &quot;recurring&quot; as 3 or more claims awarded or settled for $50,000 in a 5-year period)</td>
<td>Agreed Order: Chart Monitor for 8 cycles; CME in appropriate area; administrative penalty of $3,000 per violation</td>
<td>Agreed Order: Proficiency testing; directed CME; chart monitor 12 cycles; public reprimand; and administrative penalty of $5,000 per violation</td>
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</tr>
<tr>
<td>Supervision of midlevels, failure to perform: See &quot;Failing to adequately supervise subordinates and improper delegation.&quot;</td>
<td></td>
<td></td>
<td>Suspension and revocation</td>
</tr>
<tr>
<td>Unlicensed practice of medicine</td>
<td>§165.052(a) (see definition of &quot;practice of medicine&quot; at §151.002(a)(13))</td>
<td>Cease and Desist Order and referral to District Attorney or Attorney General</td>
<td>Cease and Desist Order; referral to Attorney General's office for injunction or civil penalties</td>
</tr>
<tr>
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</tr>
<tr>
<td>Unsound Mind - adjudicated (See also &quot;Impairment&quot;)</td>
<td>§164.051(a)(5) (enables Board to take action if a licensee or applicant &quot;is found by a court to be of unsound mind&quot;)</td>
<td>Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine; IME and return to ISC panel with results</td>
<td>Temporary suspension prior to seeking revocation; show cause hearing under §164.056</td>
</tr>
<tr>
<td>Violation of Board Order</td>
<td>§164.052(a)(5) (enables sanctioning of unprofessional or dishonorable conduct as defined by §164.053 or conduct that injures the public)</td>
<td>Administrative in nature- Agreed Order: Administrative Penalty of $1,000; Substantive in nature-extension of order and increase the terms of the original order</td>
<td>Agreed Order: Low sanctions plus: public reprimand; admin penalty of $3,000 - $5,000</td>
</tr>
<tr>
<td>Violation of state or federal law connected with physician's practice</td>
<td>§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that &quot;is connected with the physician's practice of medicine&quot;)</td>
<td>If criminal law, see above under &quot;Crime.&quot; If civil law, Agreed Order: must pass JP exam and 8 hours of risk management/ethics (remedial plan or agreed order)</td>
<td>Agreed Order: public reprimand; restriction of license; surrender of controlled substance privileges; plus low sanctions</td>
</tr>
</tbody>
</table>

Source Note: The provisions of this §190.14 adopted to be effective November 30, 2003, 28 TexReg 10496; amended to be effective January 25, 2006, 31 TexReg 396; amended to be effective January 20, 2009, 34 TexReg 342; amended to be effective November 29, 2009, 34 TexReg 8536; amended to be effective May 2, 2010, 35 TexReg 3280; amended to be effective December 18, 2011, 36 TexReg 8378; amended to be effective December 23, 2012, 37 TexReg; amended to be effective July 9, 2013, 38 TexReg 4319; amended to be effective August 3, 2014, 39 TexReg 5750; amended to be effective December 15, 2015, 40 TexReg 8898

§190.15. Aggravating and Mitigating Factors.
(a) Aggravation. In any disciplinary action, the following may be considered as aggravating factors that warrant more severe or restrictive action by the board. Board staff shall have the burden to present evidence regarding any aggravating factors that may apply in the particular case. A final order shall include a finding of fact on each applicable aggravating factor.
   (1) harm to one or more patients;
   (2) the severity of patient harm;
   (3) one or more violations that involve more than one patient;
(4) economic harm to any individual or entity and the severity of such harm;
(5) increased potential for harm to the public;
(6) attempted concealment of the act constituting a violation;
(7) intentional, premeditated, knowing, or grossly negligent act constituting a violation;
(8) prior similar violations;
(9) previous disciplinary action by the board, any government agency, peer review organization, or health care entity;
(10) violation of a board order;
(11) other relevant circumstances increasing the seriousness of the misconduct.

(b) Mitigation. In any disciplinary action, the following may be considered as mitigating factors that warrant less severe or restrictive action by the board. The licensee shall have the burden to present evidence regarding any mitigating factors that may apply in the particular case. The presence of mitigating factors does not constitute a requirement of dismissal of a violation of the Act. A final order shall include a finding of fact on each applicable mitigating factor.
(1) self-reported and voluntary admissions of violation(s);
(2) implementation of remedial measures to correct or mitigate harm from the violation(s);
(3) acknowledgment of wrongdoing and willingness to cooperate with the board, as evidenced by acceptance of an Agreed Order;
(4) rehabilitative potential;
(5) prior community service and present value to the community;
(6) participation in a continuing medical education course described in §166.2(a)(6) of this title (relating to Continuing Medical Education) completed not more than two years before the start of the investigation, if the physician is being investigated by the board regarding the physician's selection of clinical care for the treatment of tick-borne diseases;
(7) other relevant circumstances reducing the seriousness of the misconduct; and
(8) other relevant circumstances lessening responsibility for the misconduct.

Source Note: The provisions of this §190.15 adopted to be effective November 30, 2003, 28 TexReg 10496; amended to be effective May 13, 2012, 37 TexReg 3411.
§190.16. Administrative Penalties.

(a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

   (1) the seriousness of the violation, including:

       (A) whether it is an administrative violation, an aggravated administrative violation, or a patient care violation;

       (B) the nature, circumstances, extent, and gravity of any prohibited act; and

       (C) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

   (2) the economic harm to property or the environment caused by the violation;

   (3) the history of previous violations;

   (4) the amount necessary to deter a future violation; and

   (5) efforts to correct the violation.

Source Note: The provisions of this §190.16 adopted to be effective September 12, 2004, 29 TexReg 8512; amended to be effective January 25, 2006, 31 TexReg 396.
§191.1. Purpose.
The purpose of this chapter is to establish district review committees as required by the Medical Practice Act, Tex. Occ.Code Ann. 163.001-.005.

Source Note: The provisions of this §191.1 adopted to be effective December 1, 1988, 13 TexReg 5825; amended to be effective March 6, 2003, 28 TexReg 1884.

§191.2. Districts.
The State of Texas shall be divided into four districts for the purpose of establishing district review committees.

(1) District 1 shall consist of the following counties: Brazoria, Galveston, and Harris.


Source Note: The provisions of this §191.2 adopted to be effective December 1, 1988, 13 TexReg 5825.

§191.3. Committee Meetings.
(a) Meetings of the committee may be called by the executive director or president of the board. When the committee or committee members wish to call a meeting, they shall first secure authorization for the meeting from the executive director or the president.

(b) Any meeting called under any of the above methods shall be promptly brought to the attention of the board secretary or executive director in order to comply with all statutory requirements of public notice of a committee meeting.

(c) The committee meetings and all committee business shall be conducted in accordance with Robert's Rules of Order Newly Revised, the Medical Practice Act Tex. Occ. Code Ann. Title 3 Subtitle B, the Administrative Procedure Act Tex. Gov't Code Ann. Chapter 2001, and the Texas Open Meetings Act Tex. Gov't Code Ann. Chapter 551 as and where each may be applicable and consistent with the statutorily confidential nature of the board's investigative files and a patient's right to privacy.

(d) The board shall serve as the official custodian of records of each district review committee.

Source Note: The provisions of this §191.3 adopted to be effective December 1, 1988, 13 TexReg 5825; amended to be effective March 6, 2003, 28 TexReg 1884.

§191.4. Activities and Scope of Authority.
(a) Each district review committee member will endeavor to be reasonably available to act as a resource person for board investigators in the event an
investigator needs assistance from the committee member.

(b) Upon the written request of the board, the executive director, or the secretary-treasurer of the board and upon a committee member's availability and willingness to do so, committee members may on occasion be requested to serve as a public information representative of the board. Information delivered at these events by representatives of the board shall be factual, consistent with expressed board policy, and shall not be personal opinions or viewpoints. No committee or member of a committee, including its chairman, shall make or cause to be published any public statement representing such to be the official position or policy of the board unless such position or policy has been adopted or expressed by the board, nor make nor cause to be published any statement or policy statement regarding the committee's findings, recommendations, opinions, or conclusions.

(c) After appropriate orientation and training by the board and the disciplinary process review committee, district review committee members may on occasion be requested by the executive director to participate in informal settlement conferences, probationary panels, mediation, or perform other duties as may be assigned to committees or committee members. Pursuant to Chapter 187 of this title, (relating to Procedural Rules), the committee member shall make recommendations for each investigative file. A physician committee member who participates in an informal settlement conference on a complaint relating to medical competency must have the qualifications of an expert panel provided under §182.5(2) of this title (relating to Expert Panels). A DRC member is not required to meet the selection criteria of expert physician reviewers as set out in §182.8 of this title (relating to Expert Physician Reviewers) that requires an expert physician reviewer be in the same specialty as a physician who is the subject of a complaint.

Source Note: The provisions of this §191.4 adopted to be effective December 1, 1988, 13 TexReg 5825; amended to be effective March 6, 2003, 28 TexReg 1884.

§191.5. Per Diem and Expenses.
Each district review committee member shall not incur or cause to be incurred any travel expenses, per diem expenses, or other expenses for which the board may be responsible for payment or reimbursement unless such expenses are approved in advance by the executive director.

Source Note: The provisions of this §191.5 adopted to be effective December 1, 1988, 13 TexReg 5825; amended to be effective March 6, 2003, 28 TexReg 1884.
§192.1. Definitions. 
The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.
(2) AED--Automatic External Defibrillator.
(3) AHA--American Heart Association.
(4) Analgesics--Dangerous or scheduled drugs that alleviate pain, but not including non-opioid based drugs such as acetaminophen or non-steroidal anti-inflammatory drugs (NSAIDs).
(5) Anesthesia--Use of local anesthetics (in amounts that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care), analgesics, anxiolytics, and/or hypnotics to create a loss of feeling or sensation by interrupting or depressing nerve function.
(6) Anesthesia Services--The use of anesthesia for the performance of Level II - IV services.
(7) Anxiolytics--Dangerous or scheduled drugs used to provide sedation and/or to treat episodes of anxiety.
(8) ASHI--American Safety and Health Institute.
(9) ASA--American Society of Anesthesiologists.
(10) BLS--Basic Life Support, as defined by the AHA.
(11) Certified registered nurse anesthetist (CRNA)--A person licensed by the Texas Board of Nursing (TBN) as a registered professional nurse, authorized by the TBN as an advanced practice nurse in the role of nurse anesthetist, and certified by a national certifying body recognized by the TBN.
(12) Dangerous drugs--Medications defined by the Texas Dangerous Drug Act, Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription, but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."
(13) Hypnotics--Dangerous or scheduled drugs used to induce unconsciousness. This includes inhaled anesthetics and nonvolatile anesthetic agents such as Barbiturates, Benzodiazepines, Opioids, Etomidate, Propofol, and Ketamine.
(14) Level I services--Delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory.
(15) Level II services--
   (A) The administration of tumescent anesthesia;
   (B) The delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician; or
   (C) Except as provided by §192.2(b)(9) of this title (relating to Provision of Anesthesia Services in Outpatient Settings), the administration of local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit.
(16) Level III services--Delivery of analgesics or anxiolytics other than by mouth, including intravenously, intramuscularly, or rectally.
(17) Level IV services--Delivery of general anesthetics, including regional anesthetics and monitored anesthesia care; spinal, epidural, or caudal blocks for the purposes of providing anesthesia or monitored anesthesia care.
(18) Local Anesthetics--Dangerous drugs administered topically or by injection, which interrupt nerve conduction, temporarily creating a loss of sensation to an affected area and that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care.
(19) Monitored anesthesia care--Includes all aspects of anesthesia care by an anesthesiologist or member of the anesthesia care team including the administration of sedatives, analgesics, hypnotics and other anesthesia agents or medications necessary to ensure patient safety and comfort. May include situations [Situations] where a patient undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.
(20) Outpatient setting—Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of the following:
   (A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal
organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting where the facility itself is accredited by either the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers, the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(21) Board--The Texas Medical Board.

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

(23) Peripheral nerve block--The injection of local anesthetics into an area of the body directly adjacent to a peripheral nerve, for the purpose of blocking the response to pain in the distribution of sensation of that nerve.

(24) Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefore, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

(25) Scheduled Drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code. This Act establishes five categories, or schedules of drugs, based on risk of abuse and addiction. (Schedule I includes drugs that carry an extremely high risk of abuse and addiction and have no legitimate medical use. Schedule V includes drugs that have the lowest abuse/addiction risk.)

(26) Tumescent Anesthesia--A specialized type of subcutaneous infiltration of a dilute mixture of local anesthetic and epinephrine known as tumescent solution.

Source Note: The provisions of this §192.1 adopted to be effective May 21, 2000, 25 TexReg 4350; amended to be effective June 29, 2006, 31 TexReg 5107; amended to be effective November 30, 2009, 34 TexReg 8539; amended to be effective May 2, 2010, 35 TexReg 3281; amended to be effective May 15, 2012, 37 TexReg 3583; amended effective May 18, 2018, 38 TexReg 1875

§192.2. Provision of Anesthesia Services in Outpatient Settings.

(a) The purpose of this chapter is to identify the roles and responsibilities of physicians providing, or overseeing by proper delegation, anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.

(b) The rules promulgated under this title do not apply to:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used in a total dosage amount that does not exceed 50 percent of the recommended maximum safe dosage per outpatient visit;

(2) any setting physically located outside the State of Texas;

(3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;

(4) a licensed ambulatory surgical center;

(5) 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;

(6) a facility maintained or operated by a state or governmental entity;

(7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies;

(8) an outpatient setting where the facility itself is accredited as an office-based surgery facility or treatment room by:

(A) The Joint Commission relating to ambulatory surgical centers;

(B) the American Association for Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care; and

(9) the performance of Mohs micrographic surgery.

(c) Standards for Anesthesia Services. The following standards are required for outpatient settings providing anesthesia services that are administered within two hours before an outpatient procedure. If personnel and equipment meet the requirements of a higher level, lower level anesthesia services may also be provided.

(1) Level I services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in BLS; and
(B) the following age-appropriate equipment must be present:
   (i) bag mask valve; and
   (ii) oxygen.

(2) Level II services:
   (A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;
   (i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS; and
   (ii) a licensed health care provider, who may be one of the two required personnel, must attend the patient, until the patient is ready for discharge; and
   (B) a crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to, the following age-appropriate equipment:
   (i) bag mask valve and appropriate airway maintenance devices;
   (ii) oxygen;
   (iii) AED or other defibrillator;
   (iv) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;
   (v) IV equipment;
   (vi) pulse oximeter;
   (vii) EKG Monitor;
   (viii) benzodiazepines for intravenous or intramuscular administration; and lipid emulsion if, except as provided by subsection (b)(9) of this section 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, or if administering tumescent anesthesia, for treating local anesthetic systemic toxicity; and
   (ix) specific reversal agents, Flumazenil and Naloxone, if benzodiazepines or narcotics are used for sedation.

(3) Level III services:
   (A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;
   (i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS;
   (ii) a licensed health care provider, which may be either of the two required personnel, must attend the patient, until the patient is ready for discharge; and
   (iii) a person, who may be either of the two required personnel, must be responsible for monitoring the patient during the procedure; and
   (B) except for lipid emulsion, the same drugs and equipment required for Level II;
   (C) establishment of a working intravenous feed;
   (D) the presence of appropriate antagonists (i.e. Naloxone and Flumazenil); and
   (E) adherence to ASA Standards for Postanesthesia Care.

(4) Level IV services: Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for which anesthesia services are provided in outpatient settings at Level IV are not required to stock lipid emulsion. Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for which anesthesia services are provided in outpatient settings at Level IV 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) - (H) of this paragraph:
   (A) Basic Standards for Preanesthesia Care;
   (B) Standards for Basic Anesthetic Monitoring;
   (C) Standards for Postanesthesia Care;
   (D) Position on Monitored Anesthesia Care;
   (E) The ASA Physical Status Classification System;
   (F) Guidelines for Nonoperating Room Anesthetizing Locations;
   (G) Guidelines for Ambulatory Anesthesia and Surgery; and
   (H) Guidelines for Office-Based Anesthesia.

(d) A physician delegating the provision of anesthesia or anesthesia-related services to a certified registered nurse anesthetist shall be in compliance with ASA standards and guidelines when the certified registered nurse anesthetist provides a service specified in the ASA standards and guidelines to be provided by an anesthesiologist.

(e) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia
or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

(f) The anesthesiologist or physician providing anesthesia or anesthesia-related services in an outpatient setting shall perform a pre-anesthetic evaluation, counsel the patient, and prepare the patient for anesthesia per current ASA standards. If the physician has delegated the provision of anesthesia or anesthesia-related services to a CRNA, the CRNA may perform those services within the scope of practice of the CRNA. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consultations shall be obtained per indications and assessment findings. Pre-anesthetic diagnostic testing and specialist consultation should be obtained as indicated by the pre-anesthetic evaluation by the anesthesiologist or suggested by the nurse anesthetist's pre-anesthetic assessment as reviewed by the surgeon. If responsibility for a patient's care is to be shared with other physicians or non-physician anesthetist providers, this arrangement should be explained to the patient.

(g) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O2 analyzer and end-tidal CO2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current ASA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current ASA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored. There should be in each location, sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. A two-way communication source not dependent on electrical current shall be available. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.

(h) All anesthesia-related equipment and monitors shall be maintained to current operating room standards. All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations. Service/maintenance checks shall be performed by appropriately qualified biomedical personnel. Prior to the administration of anesthesia, all equipment/monitors shall be checked using the current FDA recommendations as a guideline. Records of equipment checks shall be maintained in a separate, dedicated log which must be made available upon request. Documentation of any criteria deemed to be substandard shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy. All documentation relating to equipment shall be maintained for seven years or for a period of time as determined by the board.

(i) Each location must have emergency supplies immediately available as required by subsection (c) of this section. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. If "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia, required equipment must include a defibrillator, difficult airway equipment, as well as the medication and equipment necessary for the treatment of malignant hyperthermia. Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log.
and made available upon request. Records of emergency supply checks shall be maintained for seven years or for a period of time as determined by the board.

(j) The operating surgeon shall verify that the appropriate policies or procedures are in place. Policies, procedure, or protocols shall be evaluated and reviewed at least annually. Operating surgeons are responsible for verifying the level of advanced life support services the local, county-based emergency medical service (EMS) providers are licensed to provide. Operating surgeons who do not practice in counties with 9-1-1 service entities supported by EMS providers licensed at the advanced life support (ALS) level must enter into agreements with a local licensed EMS provider or accredited hospital-based EMS for purposes of transfer of patients to the hospital in case of an emergency. The EMS agreements must include terms delineating requirements and responsibilities for advanced life support services, including, but not limited to advanced airway management, and at a minimum must provide that the EMS provider or hospital-based EMS bring staff and equipment necessary for advanced airway management equal to or exceeding that which is in place at the surgeon's office. The EMS agreements shall be evaluated and re-signed at least annually. Regardless of the level of advanced life support services furnished by EMS providers, the operating surgeon is responsible for having appropriate advanced life support measures available in the office, sufficient to rescue and stabilize the patient until EMS arrives. Policies, procedure, and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request. Policies or procedures must include, but are not limited to the following listed in paragraphs (1) - (2) of this subsection:

(1) Management of outpatient anesthesia. At a minimum, these must include written policies, procedures, or protocols that address:
(A) patient selection criteria;
(B) patients/providers with latex allergy;
(C) pediatric drug dosage calculations, where applicable;
(D) ACLS (advanced cardiac life support) or PALS (pediatric advanced life support) algorithms;
(E) infection control;
(F) documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and
(G) discharge criteria.

(2) Management of life-threatening emergencies. At a minimum, these must include, but not be limited to:
(A) cardiopulmonary emergencies, which must include at a minimum a specific plan for securing a patient's airway pending EMS transfer to the hospital;
(B) fire;
(C) bomb threat;
(D) chemical threat; and
(E) natural disasters.

(k) An anesthesia provider must perform a preinduction assessment of each patient having anesthesia services. The assessment must include, at a minimum:

(1) an airway evaluation; and
(2) an ASA physical status classification.

(l) All equipment and anesthesia-related services must remain available at the office-based anesthesia site until the patient is discharged.

(m) Physicians or surgeons must notify the board in writing within 15 days if a procedure performed in any of the settings under this chapter resulted in:

(1) an unanticipated and unplanned transport of the patient to a hospital for observation or treatment for a period in excess of 24 hours;
(2) an intraoperative death;
(3) a death occurring within the first 24 hours of the postoperative time period.

Source Note: The provisions of this §192.2 adopted to be effective May 21, 2000, 25 TexReg 4350; amended to be effective November 30, 2003, 28 TexReg 10498; amended to be effective June 29, 2006, 31 TexReg 5107; amended to be effective January 20, 2009, 34 TexReg 342; amended to be effective May 2, 2010, 35 TexReg 3281; amended to be effective May 15, 2012, 37 TexReg 3583; amended to be effective March 18, 2013, 38 TexReg 1875; amended to be effective January 23, 2014, 39 TexReg 290; amended to be effective March 16, 2015, 40 TexReg 1380.

§192.3. Compliance with Office-Based Anesthesia Rules.

(a) A physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient setting shall comply with the rules adopted under this title.

(b) The board may require a physician to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the physician's provision of anesthesia services in an outpatient setting in accordance with the Medical Practice Act, Title 3 Subtitle C §§162.101-.107 of the Texas Occupations Code, or rules of the board.

(c) Any physician who violates these rules shall be subject to disciplinary action and/or termination of the registration issued by the board as authorized by the Medical Practice Act or rules of the board.
§192.4. Registration.

(a) Each physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient setting, excluding level I services, shall register with the board on a form prescribed by the board and pay a fee to the board in an amount established by the board.

(b) The board shall coordinate the registration required under this section with the registration required under the Medical Practice Act, Texas Occupations Code Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

Source Note: The provisions of this §192.4 adopted to be effective May 21, 2000, 25 TexReg 4350; amended to be effective November 19, 2000, 25 TexReg 11284; amended to be effective November 30, 2003, 28 TexReg 10498; amended to be effective September 12, 2004, 29 TexReg 8512; amended to be effective June 29, 2006, 31 TexReg 5107; amended to be effective March 16, 2015, 40 TexReg 3281.

§192.5. Inspections.

(a) The board may conduct inspections to enforce these rules, including inspections of an operating surgeon's office site, a mobile anesthesia provider's practice and procedures related to storage, transport, and setup of necessary equipment, and of documents of such physicians' practices. The board may contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of a physician's office.

Source Note: The provisions of this §192.5 adopted to be effective May 21, 2000, 25 TexReg 4350; amended to be effective June 29, 2006, 31 TexReg 5107; amended to be effective November 30, 2009, 34 TexReg 8539; amended to be effective May 2, 2010, 35 TexReg 3281.
§193.1. Purpose.
   (a) The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. Texas Occupations Code Annotated, §§164.001, 164.052, and 164.053 empower the Texas Medical Board to cancel, revoke or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules adopted and that the practice of medicine is, under Texas Occupations Code Annotated §151.002(13), defined as follows: A person shall be considered to be practicing medicine within the Medical Practice Act ("the Act"): (1) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or (2) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.
   (b) Likewise, nothing in this chapter shall be construed as to prohibit a physician from instructing a technician, assistant, or nurse to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter should be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of those persons with whom the delegating physician has established a physician-patient relationship. Nothing in this chapter shall enlarge or extend the applicable statutory law relating to the practice of medicine, or other rules and regulations previously promulgated by the board.

Source Note: The provisions of this §193.1 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.2. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.
   (1) Advanced practice nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, a nurse midwife, nurse anesthetist, and clinical nurse specialist, and advanced practice nurse, as defined by Texas Occupations Code Annotated, §301.152.
   (2) Authorizing physician--A physician or physicians licensed by the board who execute a standing delegation order or prescriptive authority agreement.
   (3) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups I, 1-A, or 2 through 4 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.
   (4) 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, Schedules I-V or Penalty Groups I-IV of 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".
   (5) Device--Means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner, as defined by §551.003 of the Occupations Code.
(6) Facility based practice site--A hospital, as defined by §157.051(6) of the Act and this chapter, or a licensed long-term care facility. A facility-based practice does not include a freestanding clinic, center or other medical practice associated with or owned or operated by, a hospital or licensed long-term care facility.

(7) Health professional shortage area (HPSA)-
    (A) an urban or rural area of this state that:
        (i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;
        (ii) the secretary of health and human services determines has a health professional shortage; and
        (iii) is not reasonably accessible to an adequately served area;
    (B) a population group that the secretary of health and human services determines has a health professional shortage; or
    (C) a public or nonprofit private medical facility or other facility that the secretary of health and human services determines has a health professional shortage, as described by 42 U.S.C. §254e(a)(1).

(8) Hospital--A facility that:
    (A) is:
        (i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or
        (ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and
    (B) has an organized medical staff.

(9) 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.

(10) Nonprescription drug--A non-narcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state and Federal Law, as defined by §551.003(25) of the Occupations Code.

(11) Physician Assistant--A person who is licensed as a physician assistant by the Texas Physician Assistant Board.

(12) Physician group practice--An entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:
    (A) owned and operated by two or more physicians; or
    (B) a freestanding clinic, center, or office of a nonprofit health organization certified by the board under §162.001(b) of the Act (relating to Regulation by Board of Certain Nonprofit Health Corporations), that complies with the requirements of Chapter 162 of the Act.

(13) Physician's orders--The instructions of a physician for the care of an individual patient.

(14) Practice serving a medically underserved population--Refers to the following:
    (A) a practice in a health professional shortage area;
    (B) a clinic designated as a rural health clinic under 42 U.S.C. §1395x(aa);
    (C) a public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;
    (D) a clinic designated as a federally qualified health center under 42 U.S.C. §1396d(l)(2)(B);
    (E) a county, state, or federal correctional facility;
    (F) a practice:
        (i) that either:
            (I) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or
            (II) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and
        (ii) for which the Department of State Health Services publishes notice of the department's determination in the Texas Register and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or
    (G) a practice at which a physician was delegating prescriptive authority to an advanced practice registered nurse or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically underserved population.

(15) 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.

(16) Prescription drug--Means:
(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(17) Prescriptive authority agreement--An agreement entered into by a physician and an advanced practice registered nurse or physician assistant through which the physician delegates to the advanced practice registered nurse or physician assistant the act of prescribing or ordering a drug or device. Prescriptive authority agreements are required for the delegation of the act of prescribing or ordering a drug or device in all practice settings, with the exception of a facility-based practice, pursuant to §157.054 of the Act.

(18) 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. The term protocols is separate and distinct from prescriptive authority agreements as defined under the Act and this chapter. However, prescriptive authority agreements may reference or include the terms of a protocol(s). The protocols must be agreed upon and signed by the physician, the physician assistant and/or advanced practice registered nurse, reviewed and signed at least annually, maintained on site, and must contain a list of the types or categories of dangerous drugs and controlled substances available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring or contain a list of the types or categories of dangerous drugs and controlled substances that may not be prescribed. Protocols shall be defined to promote the exercise of professional judgment by the advanced practice registered nurse and physician assistant commensurate with their education and experience. The protocols used by a reasonable and prudent physician exercising sound medical judgment need not describe the exact steps that an advanced practice registered nurse or a physician assistant must take with respect to each specific condition, disease, or symptom.

(19) Standing delegation order--Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. As used in this chapter, standing delegation orders are separate and distinct from prescriptive authority agreements as defined in this chapter. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at a minimum, should:

(A) include a written description of the method used in developing and approving them and any revision thereof;

(B) be in writing, dated, and signed by the physician;

(C) specify which acts require a particular level of training or licensure and under what circumstances they are to be performed;

(D) state specific requirements which are to be followed by persons acting under same in performing particular functions;

(E) specify any experience, training, and/or education requirements for those persons who shall perform such orders;

(F) establish a method for initial and continuing evaluation of the competence of those authorized to perform same;

(G) provide for a method of maintaining a written record of those persons authorized to perform same;

(H) specify the scope of supervision required for performance of same, for example, immediate supervision of a physician;
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(I) set forth any specialized circumstances under which a person performing same is to immediately communicate with the patient's physician concerning the patient's condition;

(I) state limitations on setting, if any, in which the plan is to be performed;

(K) specify patient record-keeping requirements which shall, at a minimum, provide for accurate and detailed information regarding each patient visit; personnel involved in treatment and evaluation on each visit; drugs, or medications administered, prescribed or provided; and such other information which is routinely noted on patient charts and files by physicians in their offices; and

(L) provide for a method of periodic review, which shall be at least annually, of such plan including the effective date of initiation and the date of termination of the plan after which date the physician shall issue a new plan.

(20) Standing medical orders--Orders, regulations or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both. These orders, regulations or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient or delegation pursuant to a prescriptive authority agreement.

(21) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the Board along with all required documentation and fees, if any.

Source Note: The provisions of this §193.3 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.4. Scope of Standing Delegation Orders.

Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered by physician assistants or advanced practice registered nurses, as authorized by §§157.051 - 157.060 of the Act, or §§193.6 - 193.14 of this title (relating to Delegation of Prescribing and Ordering Drugs and Devices; Prescriptive Authority Agreements Generally; Prescriptive Authority Agreements: Minimum Requirements; Delegation of Prescriber Authority at a Facility-Based Practice Site; Registration of Delegation and Prescriptive Authority Agreements; Prescription Forms; Prescriptive Authority Agreement Inspections; Delegation to Certified Registered Nurse Anesthetists; and Delegation Related to Obstetrical Services). When care is delivered under other circumstances, standing delegation orders may include authority to undertake the following as listed in paragraphs (1) - (8) of this section:

(1) the taking of personal and medical history;

(2) the performance of appropriate physical examination and the recording of physical findings;

(3) the ordering of tests appropriate to the services provided under such orders, such as tuberculin
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tests, skin tests, VD tests, VDRL tests, gram stains, pap
smears, and serological tests;
(4) the administration or providing of drugs
ordered by direct personal or voice communication by
the authorizing physician who shall assume
responsibility for the patient's welfare, providing such
administration or provision of drugs shall be in
compliance with other state or federal laws and
providing further that pre-signed prescriptions shall be
utilized by the authorizing physician only under the
following conditions shown in subparagraphs (A) - (D)
of this paragraph.

(A) The prescription shall be prepared in
full compliance with the Texas Health and Safety Code,
§483.001(13) except for the inclusion of the name of
the patient and the date of issuance.
(B) The prescription shall be for one of
the following classes or types of drugs:
(i) oral contraceptives;
(ii) diaphragms and contraceptive
creams and jellies;
(iii) topical anti-infectives for vaginal
use;
(iv) oral anti-parasitic drugs for
treatment of pinworms;
(v) topical anti-parasitic drugs; or
(vi) antibiotic drugs for treatment of
venereal disease.
(C) The prescriptions may not be issued
for any controlled substance.
(D) The providing of the drugs shall be in
compliance with the Texas Pharmacy Act and rules
adopted by the Texas State Board of Pharmacy.

(5) the administration of immunization
vaccines providing the recipient is free of any condition
for which the immunization is contraindicated;
(6) the providing of information regarding
hygiene and the administration or providing of
medications for health problems resulting from a lack
of hygiene, including the institution of treatment for
conditions such as scabies, ringworm, pinworm, head
lice, diaper rash and other minor skin disorders,
provided the administration or providing of drugs
adheres to paragraph (4) of this section;
(7) the provision of services and the
administration of therapy by public health departments
as officially prescribed by the Department of State
Health Services for the prevention or treatment of
specific communicable diseases or health conditions for
which the Department of State Health Services is
responsible for control under state law;
(8) the issuance of a nonprescription drug for
the symptomatic relief of minor illnesses provided that
such medications are packaged and labeled in
compliance with state and federal laws and regulations.

Source Note: The provisions of this §193.4 adopted to
be effective November 7, 2013, 38 TexReg 7711.

§193.5. Physician Liability for Delegated Acts and
Enforcement.
(a) A physician shall not be liable for the act or acts
of a physician assistant or advanced practice registered
nurse solely on the basis of having signed an order, a
standing medical order, a standing delegation order, a
prescriptive authority agreement, or other order or
protocol, authorizing a physician assistant or advanced
practice registered nurse to administer, provide,
Prescribe or order a drug or device, unless the physician
has reason to believe the physician assistant or
advanced practice registered nurse lacked the
competency to perform the act or acts.
(b) Notwithstanding subsection (a) of this section,
delegating physicians remain responsible to the Board
and to their patients for acts performed under the
physician's delegated authority.

(c) Any physician authorizing standing delegation
orders or standing medical orders which authorize the
exercise of independent medical judgment or treatment
shall be subject to having his or her license to practice
medicine in the State of Texas revoked or suspended
under §§164.001, 164.052, and 164.053 of the Act.

Source Note: The provisions of this §193.5 adopted to
be effective November 7, 2013, 38 TexReg 7711.

§193.6. Delegation of Prescribing and Ordering
Drugs and Devices.
(a) Pursuant to §157.0511 of the Act, a physician's
authority to delegate the prescribing or ordering of a
drug or device is limited to:
(1) nonprescription drugs;
(2) dangerous drugs; and
(3) controlled substances to the extent
provided in subsections (b) and (c) of this section.

(b) A physician may delegate the prescribing or
ordering of a controlled substance only if:
(1) the prescription is for a controlled
substance listed in Schedule III, IV, or V as established
by the commissioner of the Department of State Health
Services under Chapter 481 of the Texas Health and
Safety Code;
(2) the prescription, including a refill of the
prescription, is for a period not to exceed 90 days;
(3) with regard to the refill of a prescription,
the refill is authorized after consultation with the
delegating physician and the consultation is noted in the
patient's chart; and
(4) with regard to a prescription for a child less
than two years of age, the prescription is made after
consultation with the delegating physician and the consultation is noted in the patient's chart.

(c) A physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only:

(1) in a hospital facility-based practice under §157.054 of the Act, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who:

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or

(B) is receiving services in the emergency department of the hospital; or

(2) as part of the plan of care for the treatment of a patient who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

Source Note: The provisions of this §193.6 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.7. Prescriptive Authority Agreements: Generally.
(a) A physician may delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.

(b) A physician and an advanced practice registered nurse or physician assistant are eligible to enter into or be parties to a prescriptive authority agreement only if:

(1) if applicable, the Texas Board of Nursing has approved the advanced practice registered nurse's authority to prescribe or order a drug or device as authorized under this chapter;

(2) the advanced practice registered nurse or physician assistant:

(A) holds an active license to practice in this state as an advanced practice registered nurse or physician assistant, as applicable, and is in good standing in this state; and

(B) is not currently prohibited by the Texas Board of Nursing or the Texas Physician Assistant Board, as applicable, from executing a prescriptive authority agreement.

(c) Before executing the prescriptive authority agreement, the physician and the advanced practice registered nurse or physician assistant disclose to the other prospective party to the agreement any prior disciplinary action by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, as applicable.

(d) Except as provided by subsection (e) of this section, the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement may not exceed seven advanced practice registered nurses and physician assistants or the full-time equivalent of seven advanced practice registered nurses and physician assistants.

(e) Subsection (d) of this section does not apply to a prescriptive authority agreement if the prescriptive authority is being exercised in:

(1) a practice serving a medically underserved population; or

(2) a facility-based practice in a hospital under §157.054, subject to the limitations in §157.054(b-1) of the Act and §193.9(c)(5) of this title (relating to Delegation of Prescriptive Authority at a Facility-Based Practice Site).

Source Note: The provisions of this §193.7 adopted to be effective November 7, 2013, 38 TexReg 7711.

Prescriptive authority agreement must, at a minimum:
(1) be in writing and signed and dated by the parties to the agreement;

(2) state the name, address, and all professional license numbers of the parties to the agreement;

(3) state the nature of the practice, practice locations, or practice settings;

(4) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;

(5) provide a general plan for addressing consultation and referral;

(6) provide a plan for addressing patient emergencies;

(7) state the general process for communication and the sharing of information between the physician and the advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;

(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

(A) provide appropriate supervision on a temporary basis in accordance with the requirements
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established by the prescriptive authority agreement and the requirements of this subchapter; and

(B) participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) chart review, with the number of charts to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and

(B) periodic face-to-face meetings between the advanced practice registered nurse or physician assistant and the physician at a location determined by the physician and the advanced practice registered nurse or physician assistant.

(10) The periodic face-to-face meetings described by paragraph (9)(B) of this section must include:

(A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals;

(B) discussion of patient care improvement; and

(C) documentation of the periodic face-to-face meetings.

(11) The periodic face-to-face meetings shall occur as follows:

(A) If during the seven years preceding the date the agreement is executed, the advanced practice registered nurse or physician assistant was not in a practice that included the exercise of prescriptive authority with required physician supervision for at least five years:

(i) at least monthly until the third anniversary of the date the agreement is executed; and

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(B) if during five of the last seven years preceding the date the agreement is executed, the advanced practice registered nurse or physician assistant was in a practice that included the exercise of prescriptive authority with required physician supervision, and the agreement is being entered into with the same supervising physician who delegated and supervised during the five year period:

(i) at least quarterly; and

(ii) monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

(12) The prescriptive authority agreement may include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

(13) If the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated under paragraph (8) of this section, if any, to conduct and document the quality assurance meetings in accordance with the requirements of this chapter.

(14) The prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

(15) A physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(16) A party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of this section or §157.0513 of the Occupations Code.

(17) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(18) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Physician Assistant Board not
later than the third business day after the date of receipt of request, if any.

(19) The prescriptive authority agreement should promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and the physician.

(20) This section shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered nurses and physician assistants.

Source Note: The provisions of this §193.8 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.9. Delegation of Prescriptive Authority at a Facility-Based Practice Site.

(a) Acts that may be delegated. One or more physicians licensed by the board shall be authorized to delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, prescribing or ordering of a drug or device if each of the physicians is: the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice registered nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice registered nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the prescribing or ordering of a drug or device at the facility in which the physician assistant or advanced practice registered nurse practices.

(b) The limitations on the number of advanced practice registered nurses or physician assistants to whom a physician may delegate under §193.7(d) of this title (relating to Prescriptive Authority Agreements Generally) do not apply to a physician whose practice is facility-based under this chapter, subject to the limitations in subsection (c)(4) of this section.

(c) Limitations on authority to delegate. A physician's authority to delegate under this subsection is limited as follows:

(1) the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(2) the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, a department chair, or a physician who consents to delegate under §157.054(a)(4) of the Act;

(3) the delegation does not permit the prescribing or ordering of a drug or device for the care or treatment of the patients of any other physician without the prior consent of that physician;

(4) delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the prescribing or ordering of a drug or device to no more than seven advanced practice registered nurses or physician assistants or their full-time equivalents; and

(5) under this section, a facility-based physician may not delegate at more than one hospital or more than two long-term care facilities pursuant to §157.054 of the Act; however, facility-based physicians are not prohibited from delegating the prescribing or ordering or drugs or devices under §157.0512 of the Act or §193.7 and §193.8 of this title (relating to Prescriptive Authority Agreements Generally and Prescriptive Authority Agreements: Minimum Requirements), at other practice locations, including hospital or long-term care facilities, provided that the delegation at those locations complies with all requirements under §157.0512 of the Act.

(6) Physician supervision. Physician supervision of the prescribing or ordering of a drug or device shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice registered nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

Source Note: The provisions of this §193.9 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.10. Registration of Delegation and Prescriptive Authority Agreements.

(a) The Board shall maintain and exchange information with the Texas Board of Nursing, and the Texas Physician Assistant Board, regarding the names locations and license numbers, of each physician, advanced practice registered nurse, or physician assistant who has entered into a prescriptive authority agreement.

(1) The Board shall immediately notify the Texas Physician Assistant Board and the Texas Board of Nursing when a license holder of the Board who has
registered a prescriptive authority agreement(s) becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation. Such notifications shall be made subject to, and without waiving any confidentiality provisions related to board investigations provided for under the Act and this Title.

(2) The Board shall maintain and share with the other boards a list of board license holders who have been subject to disciplinary action involving the delegation and supervision of prescriptive authority.

(b) Physicians who enter into prescriptive authority agreements with physician assistants or advanced practice registered nurses must register with the Board, within 30 days of signing the prescriptive authority agreement the following information:

(1) The name and license number of the physician assistant or advanced practice registered nurse to whom the delegation has been made;

(2) The date on which the prescriptive authority agreement was executed;

(3) The address(es) at which the advanced practice registered nurse practice registered nurse or physician assistant will be prescribing under the prescriptive authority agreement; and

(4) whether the prescriptive authority being exercised under the prescriptive authority agreement is being exercised in a practice servicing a medically underserved population.

(c) The board shall maintain and make available to the public, a searchable online lists of a of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements, and identify the physician, advanced practice registered nurse, or physician assistant, with whom each physicians, advanced practice registered nurse, or physician assistant has entered into a prescriptive authority agreement.

(d) A physician terminating a prescriptive authority agreement shall notify the board in writing within 30 days of such termination.

Source Note: The provisions of this §193.10 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.12. Prescriptive Authority Agreement

Inspections. If the board receives a notice under §157.0513(a)(2) of the Act, the board or an authorized board representative may enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. To the extent reasonably possible, the board and the board's authorized representative shall conduct any inspection or audit under this section in a manner that minimizes disruption to the delivery of patient care. The board may use information obtained during the inspection for any purpose allowed under the law, including licensure and enforcement.

Source Note: The provisions of this §193.12 adopted to be effective November 7, 2013, 38 TexReg 7711.


(a) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(b) A physician who delegates to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the certified registered anesthetist to administer an anesthetic or an anesthesia-related service is not required to register the name and license number of the certified registered nurse anesthetist with the board.

(c) This section shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

Source Note: The provisions of this §193.13 adopted to be effective November 7, 2013, 38 TexReg 7711.


(a) A physician may delegate to a physician assistant offering obstetrical services and certified by

Source Note: The provisions of this §193.11 adopted to be effective November 7, 2013, 38 TexReg 7711.
the board as specializing in obstetrics or an advanced practice registered nurse recognized by the Texas Board of Nursing as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use of a prescription sticker or the use or issuance of an official prescription form relating to the prescription of Schedule II controlled substance as described under §481.075 of the Health and Safety Code.

(b) The delegation of authority to administer or provide controlled substances under this section must be under a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol which shall require adequate and documented availability for access to medical care.

(c) The physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(d) The authority of a physician to delegate under this section is limited to:

(1) seven nurse midwives or physician assistants or their full-time equivalents; and

(2) the designated facility at which the nurse midwife or physician assistant provides care.

(e) The administering or providing of controlled substances under this section shall comply with other applicable laws.

(f) In this section, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(g) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physician; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

Source Note: The provisions of this §193.14 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.15. Delegated Drug Therapy Management

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of drug therapy management pursuant to §157.001 of the Act (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified physician or pharmacist acting under adequate supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Drug therapy management. Drug therapy management is the performance of specific acts by pharmacists as authorized by a physician through 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 or the physician initiated record of deviation from a standing protocol. Drug therapy management may include the following listed in paragraphs (1) - (6) of this subsection:

(1) collecting and reviewing patient drug use histories;

(2) ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration;

(3) ordering drug therapy related laboratory tests;

(4) implementing or modifying drug therapy, including the authority to sign a prescription drug order for dangerous drugs as provided in §157.101(b-1) of the Act, following diagnosis, initial patient assessment, and ordering of drug therapy by a physician, as detailed in the protocol, provided that the pharmacist:

(A) practices in a hospital, hospital-based clinic or an academic health care institution that has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy;

(B) provides the name, address, and telephone number of the pharmacist and of the delegating physician on each prescription signed by the pharmacist; and

(C) the pharmacist provides a copy of the protocol to the Texas State Board of Pharmacy;

(5) generically equivalent drug selection if the physician's signature does not clearly indicate that the prescription must be dispensed as written; or

(6) any other drug therapy related act delegated by a physician.

(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviation from the protocol and review of the written protocol and any patient-specific deviations

Source Note: The provisions of this §193.15 adopted to be effective November 7, 2013, 38 TexReg 7711.
from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informed the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician's order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A) - (E) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(B) a statement identifying the individual pharmacist authorized to dispense drugs and to engage in drug therapy management as delegated by the physician;

(C) a statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make which shall include:

(i) a statement of the ailments or diseases, drugs, and type of drug therapy management authorized; and

(ii) a specific statement of the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority;

(D) a statement of the activities the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time of each intervention and may be performed on the patient medication record, patient medical chart, or in a separate log book; and

(E) a statement that describes appropriate mechanisms and time schedule for the pharmacist to report to the physician monitoring the pharmacist's exercise of delegated drug therapy management and the results of the drug therapy management.

(2) A standard protocol may be used, or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code Chapter 551.

Source Note: The provisions of this §193.15 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.16, Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of the administration of immunizations or vaccinations under written protocol pursuant to the §157.001 of the Act (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the administration of immunizations and vaccinations authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Delegated Administration of Immunizations and Vaccinations under Written Protocol. Administration of Immunizations and Vaccinations does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician initiated protocol.
(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the physician’s order, standing medical order, standing delegation order, or other order or written protocol and periodically reviews the order or protocol and the services provided to the patient under the order or protocol on a schedule defined in the written protocol;

(2) has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist;

(3) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician’s order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A) - (F) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of immunizations or vaccinations;

(B) a statement identifying the individual pharmacist authorized to administer immunizations or vaccinations as delegated by the physician;

(C) a statement identifying the location(s) at which the pharmacist may administer immunizations or vaccinations which may not include where the patient resides, except for a licensed nursing home or hospital;

(D) a statement identifying the immunizations or vaccinations that may be administered by the pharmacist;

(E) a statement identifying the activities the pharmacist shall follow in the course of administering immunizations or vaccinations including procedures to follow in the case of reactions following administration; and

(F) a statement that describes the content of, and the appropriate mechanisms for the pharmacist to report the administration of immunizations or vaccinations to the physician issuing the written protocol within 24 hours of administering the immunization or vaccination.

(2) A standard protocol may be used, or the physician may develop an immunization or vaccination protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of the administration of immunizations or vaccinations to the patient by a pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code §§554.001 - 554.004.

Source Note: The provisions of this §193.16 adopted to be effective November 7, 2013, 38 TexReg 7711

§193.17. Nonsurgical Medical Cosmetic Procedures.

(a) Purpose. The purpose of this section is to establish the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure (hereafter referred to as “Procedure”). These procedures can result in complications and the performance of these procedures is the practice of medicine. This rule shall not be interpreted to allow individuals to perform procedures without either a physician or midlevel practitioner being onsite, or a physician being available for emergency consultation or appointment in the event of an adverse outcome.

(b) Definitions.

(1) Midlevel practitioner--A physician assistant or advanced practice registered nurse.

(2) 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.
(3) Procedure--A nonsurgical medical cosmetic procedure, 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.

(c) Applicability. This section does not apply to:

(1) surgery as defined under Texas Occupations Code, §151.002(a)(14);
(2) the practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;
(3) the use of nonprescription devices;
(4) intravenous therapy;
(5) procedures performed at a physician's practice by the physician or midlevel practitioners acting under the physician's supervision; or
(6) laser hair removal procedures performed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M.

(d) Physician Responsibilities.

(1) A physician must be appropriately trained, including hands-on training, in a procedure prior to performing the procedure or delegating the performance of a procedure. The physician must keep a record of his or her training in the office and have it available for review upon request by a patient or a representative of the board.

(2) Prior to authorizing a procedure, a physician, or a midlevel practitioner acting under the delegation of a physician, must:

(A) take a history;
(B) perform an appropriate physical examination;
(C) make an appropriate diagnosis;
(D) recommend appropriate treatment;
(E) develop a detailed and written treatment plan;
(F) obtain the patient's informed consent;
(G) provide instructions for emergency and follow-up care;
(H) prepare and maintain an appropriate medical record;
(I) have signed and dated written protocols as described in paragraph (7) of this subsection that are detailed to a level of specificity that the person performing the procedure may readily follow; and
(J) have signed and dated written standing orders.

(K) The performance of the items listed in subparagraphs (A) - (J) of this paragraph must be documented in the patient's medical record.

(3) After a patient has been evaluated and diagnosed, as described in paragraph (2) of this subsection, qualified unlicensed personnel may perform a procedure only if:

(A) a physician or midlevel practitioner is onsite during the procedure; or
(B) a delegating physician is available for emergency consultation in the event of an adverse outcome, and if the physician considers it necessary, be able to conduct an emergency appointment with the patient.

(4) Regardless of who performs the procedure, the physician is ultimately responsible for the safety of the patient and all aspects of the procedure.

(5) Regardless of who performs the procedure, the physician is responsible for ensuring that each procedure is documented in the patient's medical record. A procedure performed by unlicensed personnel must be timely co-signed by a supervising physician.

(6) The physician must ensure that the facility at which procedures are performed, there is a quality assurance program pertaining to procedures that includes the following:

(A) a mechanism to identify complications and adverse effects of treatment and to determine their cause;
(B) a mechanism to review the adherence to written protocols by all health care personnel;
(C) a mechanism to monitor the quality of treatments;
(D) a mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols; and
(E) ongoing training to maintain and improve the quality of treatment and performance of procedures by health care personnel.

(7) A physician may delegate procedures only at a facility at which the physician has either:

(A) approved in writing the facility's written protocols pertaining to the procedures; or
(B) developed his own protocols for the procedures as described in paragraph (2)(I) of this subsection.

(8) The physician must ensure that a person performing a procedure has appropriate training in, at a minimum:

(A) techniques for each procedure;
(B) cosmetic or cutaneous medicine;
(C) indications and contraindications for each procedure;
(D) pre-procedural and post-procedural care;
(E) recognition and acute management of potential complications that may result from the procedure; and
(F) infectious disease control involved with each treatment.
(9) The physician has a written office protocol for the person performing the Procedure to follow in performing Procedure delegated. A written office protocol must include, at a minimum, the following:
(A) the identity of the physician responsible for the delegation of the Procedure;
(B) selection criteria to screen patients by the physician or midlevel practitioner for the appropriateness of treatment;
(C) a description of appropriate care and follow-up for common complications, serious injury, or emergencies;
(D) a statement of the activities, decision criteria, and plan the physician, or midlevel practitioner, shall follow when performing or delegating the performance of a Procedure, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician or midlevel practitioner concerning specific decisions made; and
(E) a description of what information must be documented by the person performing the Procedure.

(10) The physician ensures that each person performs each Procedure in accordance with the written office protocol.

(11) Each patient signs a consent form prior to treatment that lists potential side effects and complications, and the identity and titles of the individual who will perform the Procedure.

(12) Each person performing a Procedure must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

(13) Any time a Procedure is performed, at least one person trained in basic life support must be onsite.

Source Note: The provisions of this §193.17 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.18. Pronouncement of Death.

(a) Purpose. These rules are promulgated under the authority of the Medical Practice Act, §157.001, to allow physicians to receive information from Texas licensed vocational nurses through electronic communication for the purpose of making a pronouncement of death. Electronic communication includes, but is not limited to telephone, facsimile transmission, or electronic mail.

(b) Do not resuscitate order. A do not resuscitate (DNR) order must be kept in the patient's file.

(c) Required information. In order to make a pronouncement of death through electronic communication, a physician must receive, at a minimum, the following information regarding the condition of the patient:
(1) absence of palpable pulse for a minimum of 60 seconds;
(2) absence of discernible blood pressure for a minimum of 60 seconds;
(3) absence of evidence of respiration for a minimum of 60 seconds;
(4) absence of evidence of heartbeat for a minimum of 60 seconds; and
(5) other information as the physician may require.

(d) Follow-up by physician. If a physician makes a pronouncement of death based on information received pursuant to subsection (c) of this section, the physician retains responsibility for all acts related to this pronouncement.

Source Note: The provisions of this §193.18 adopted to be effective November 7, 2013, 38 TexReg 7711.


(a) Purpose. The purpose of this section is to implement the mandate of the 76th Legislature as it relates to the Optometry Act, Texas Occupations Code Chapter 351, regarding the minimum standards for the collaborative management of glaucoma.

(b) Minimum requirements. At a minimum, the treating ophthalmologist should follow the guidelines outlined in paragraphs (1) - (10) of this subsection.

(1) The ophthalmologist will confirm the diagnosis within 30 days of the diagnosis of glaucoma made by the optometrist. While the ophthalmologist may, in his or her discretion, require that the patient visit the ophthalmologist for a face-to-face visit, such a face-to-face visit is not mandated. The ophthalmologist may, at the ophthalmologist's discretion, rely upon the results of diagnostic tests performed originally by the optometrist, unless reaffirmation is needed.

(2) The ophthalmologist must communicate in written form the confirmation of the diagnosis within 30 days, as well as the refinement of the treatment plan as recommended by the optometrist.

(3) A proper medical record must be generated for each patient by the ophthalmologist and shall include all correspondence and testing results. The medical record must also include a written note made in the record by the ophthalmologist or a copy of the written informed consent demonstrating that the patient understands that he or she is participating in a co-management of primary open angle glaucoma.

(4) The necessity for follow-up visits will be at the discretion of the ophthalmologist based on the communication of the patient's progress by the optometrist.

Source Note: The provisions of this §193.19 adopted to be effective November 7, 2013, 38 TexReg 7711.
(5) The ophthalmologist must report any irregular behavior of the optometrist to the Texas Medical Board for referral to the Texas Optometry Board.

(6) The ophthalmologist must enter into the patient's written medical records that the ophthalmologist has elected to enter into a co-management agreement with an optometrist.

(7) It is at the discretion of the ophthalmologist to complete a clinical skills assessment with each optometrist in which a co-management arrangement exists. The ophthalmologist will, however, receive written confirmation and documentation that the co-managing optometrist has completed all of the requirements of the Optometric Health Care Advisory Committee to obtain the designation of "optometric glaucoma specialist."

(8) A physician may charge a reasonable consultation fee for a consultation given when a patient is referred with a diagnosis of primary open angle glaucoma.

(9) When a physician examines a patient involved in a co-management consultation with a therapeutic optometrist for treatment of primary open angle glaucoma, the physician shall forward to the therapeutic optometrist, not later than the 30th day following the examination, a written report on the results of the examination. A physician who, for a medically appropriate reason, does not return a patient to the therapeutic optometrist, shall state in the physician's report to the therapeutic optometrist the specific medical reason for failing to return the patient.

(10) In order to enter into a co-management agreement with an optometrist, there must be an agreement between the two professionals that, following each visit, specified information, previously agreed upon by both the ophthalmologist and the optometrist, about the patient examined will be forwarded to the other practitioner.

Source Note: The provisions of this §193.19 adopted to be effective November 7, 2013, 38 TexReg 7711.

§193.20. Immunization of Persons Over 65 by Physician’s Offices.

(a) A physician responsible for the management of a physician's office that provides ongoing primary or principal medical care to persons over 65 years of age ("elderly persons") shall offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides that it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(b) The physician's office must offer:

(1) the influenza vaccine in October and November, and if the vaccine is available, December; and

(2) the pneumococcal vaccine year-round.

(c) The physician must adopt a protocol providing that any person administering a vaccine in the physician's office must:

(1) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(2) administer the vaccine under the protocol after an assessment has been made for contraindications; and

(3) permanently document the vaccination in the elderly person's medical records.

Source Note: The provisions of this §193.20 adopted to be effective November 7, 2013, 38 TexReg 7711.
§194.1. Purpose.
The purpose of these rules is to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Occupations Code Ch. 601 ("the Act") applicable to non-certified radiologic technicians or non-certified technicians.

Source Note: The provisions of this §194.1 adopted to be effective December 23, 1997, 22 TexReg 12493; amended to be effective January 8, 2004, 29 TexReg 98.

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

(1) Board--The Texas Medical Board.
(2) Non-certified technician (NCT) or registrant--A person who is registered with the board and either:
   (A) is listed on the current registry with the Texas Department of State Health Services and meets one of the following qualifications listed in clauses (i) and (ii) of this subparagraph;
      (i) has completed a mandatory training program under 25 Texas Administrative Code, §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or
      (ii) if the person is licensed as a physician assistant in the State of Texas, has completed a mandatory training program under 25 Texas Administrative Code, §140.518 or has met the alternate training requirements under 25 Texas Administrative Code, §140.522 (relating to Alternate Training Requirements); or
   (B) performs radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services within the previous year under 25 Texas Administrative Code, §140.520 (relating to Hardship Exemptions).
(3) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic purposes.

Source Note: The provisions of this §194.2 adopted to be effective December 23, 1997, 22 TexReg 12493; amended to be effective November 19, 2000, 25 TexReg 11284; amended to be effective January 8, 2004, 29 TexReg 98; amended to be effective September 20, 2007, 32 TexReg 6316; amended to be effective November 29, 2009, 34 TexReg 8541.

§194.3. Registration.
(a) Any person in the State of Texas performing radiologic procedures, as defined in §194.5 of this title (relating to Non-Certified Technician's Scope of Practice), under the supervision of a current and active licensed Texas physician, must be registered with the Texas Medical Board. The physician must also be registered with the board to supervise the non-certified technician.

(b) This section does not apply to registered nurses or to persons certified by the Department of State Health Services under the Medical Radiologic Technologist Certification Act.

(c) An applicant shall apply for registration with the board on a form provided by the board and shall pay the appropriate fee established by the board. Each physician, who supervises a non-certified technician, shall apply on a separate application form.

(d) Applicants shall be 18 years of age or older and either:
   (1) provide proof of the applicant's registry with the Texas Department of State Health Services and meet one of the following qualifications listed in subparagraphs (A) and (B) of this paragraph:
      (A) receive training and instruction as required in 25 Texas Administrative Code, §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or
      (B) if licensed as a physician assistant, receive training and instruction as required in 25 Texas Administrative Code, §140.518 or meet the alternate training requirements in 25 Texas Administrative Code, §140.522 (relating to Alternate Training Requirements); or
   (2) perform radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services within the previous year under 25 Texas Administrative Code, §140.520 (relating to Hardship Exemptions). A person who operates a bone densitometry unit(s) which utilizes x-radiation who is in compliance with 25 Texas Administrative Code §140.521 (relating to Bone Densitometry Training), however, is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.
§194.4. Annual Renewal.
(a) Registrants shall renew the registration annually by:
   (1) submitting a completed registration application;
   (2) paying a fee, as specified by the board under Chapter 175 (relating to fees, penalties, and forms); and
   (3) providing proof of the registrant’s renewal of status on the Texas Department of State Health Services registry or that the registrant is working under a physician hardship exemption, if applicable.
(b) If the registrant fails to comply with subsection (a) of this section on or before the expiration date of the registration, the following penalties as shown in paragraphs (1) and (2) of this subsection will be imposed:
   (1) one to 90 days late—penalty fee set under Section 175.3(4) (related to penalties for non-certified radiologic technicians);
   (2) over 90 days late the registrant may not renew his or her registration, and the registration will be considered expired, unless an investigation is pending. The registrant must submit a new application and comply with the requirements and procedures for obtaining a permit.
(c) The board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on or before January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration is payable.
(d) Registrants shall inform the board in writing of address changes within two weeks.

§194.5. Non-Certified Technician’s Scope of Practice.
(a) A registrant may only perform the following radiologic procedures, as listed in paragraphs (1) and (2) of this subsection unless otherwise expressly permitted by statute or rule:
   (1) bone densitometry utilizing a dual energy x-ray densitometer; or
   (2) chest, spine, extremities, abdomen, skull studies or other radiologic procedures utilizing standard film or film screen combinations and an x-ray tube that is stationary at the time of exposure; however, a registrant may not perform a procedure which has been identified as dangerous or hazardous by the Texas Department of State Health Services in 25 TAC §140.516 (Dangerous or Hazardous Procedures).
(b) A registrant, other than a physician assistant, shall perform all radiologic procedures under the direct supervision or instruction of a physician in the State of Texas.
(c) A supervising physician may not order, instruct, or direct a registrant to perform a radiologic procedure other than in compliance with applicable statutes and rules.
(d) All registrants must comply with the safety rules of the Texas Department of State Health Services relating to the control of radiation as set forth in 25 TAC Chapter 289 (relating to Texas Regulations for the Control of Radiation).

§194.6. Suspension, Revocation or Nonrenewal of Registration.
(a) The board may refuse to issue a registration to an applicant and may, following notice of hearing and a hearing as provided for in the Administrative Procedure Act, take disciplinary action against any non-certified technician who:
   (1) violates the Medical Practice Act, the rules of the Texas Medical Board, an order of the board previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the board;
   (2) violates the Medical Radiologic Technologist Certification Act or the rules promulgated by the Texas Department of State Health Services;
   (3) violates the rules of the Texas Department of State Health Services for control of radiation;
   (4) obtains, attempts to obtain, or uses a registration by bribery or fraud;
§194.6. Registration Requirements.

(5) engages in unprofessional conduct, including, but not limited to, conviction of a crime, commission of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care, and commission of an act of moral turpitude;

(6) develops or has an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as a result of:
   (A) an illness;
   (B) drug or alcohol dependency; or
   (C) another physical or mental condition;

(7) fails to practice as a non-certified technician in an acceptable manner consistent with public health and welfare;

(8) has disciplinary action taken against a certification, permit, or registration in another state, territory, or country or by another regulatory agency;

(9) engages in acts requiring registration under these rules without a current registration from the board or;

(10) is removed, suspended, or has had disciplinary action taken against the registrant.

(b) The board may suspend, revoke, or refuse to renew the registration of a non-certified technician, upon a finding that a non-certified technician has committed any offense listed in this section.

Source Note: The provisions of this §194.6 adopted to be effective December 23, 1997, 22 TexReg 12493; amended to be effective January 8, 2004, 29 TexReg 98; amended to be effective September 20, 2007, 32 TexReg 6316.

§194.7. Disciplinary Guidelines.

(a) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to registrants regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of registration or disciplinary action taken against a registrant:

   (1) practice inconsistent with public health and welfare;
   (2) unprofessional and dishonorable conduct; and
   (3) aggravating and mitigating factors.

(b) If the provisions of Chapter 190 conflict with the rules under this chapter or the Medical Radiological Technologist Act, the provisions of this chapter and the Act shall control.

Source Note: The provisions of this §194.7 adopted to be effective January 8, 2004, 29 TexReg 98.

§194.8. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to registrants where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §194.8 adopted to be effective January 8, 2004, 29 TexReg 98.

§194.9. Compliance.

Chapter 189 of this title (relating to Compliance Program) shall be applied to registrants who are under board orders. If the provisions of Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

Source Note: The provisions of this §194.9 adopted to be effective January 8, 2004, 29 TexReg 98.

§194.11. Construction.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Medical Practice Act, the provisions of the Medical Practice Act shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Act shall remain in effect.

Source Note: The provisions of this §194.11 adopted to be effective December 23, 1997, 22 TexReg 12493.
Chapter 195. Pain Management Clinics
   §§195.1-195.4

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

(1) Board—The Texas Medical Board.
(2) Pain management clinic—A publicly or privately owned facility for which a majority of patients are issued, on a monthly basis, a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.
(3) Physician—A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefor, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

Source Note: The provisions of this §195.1 adopted to be effective May 2, 2010, 35 TexReg 3281.

§195.2. Certification of Pain Management Clinics.
   (a) Application for Certification.
       (1) Certification requirement. Effective September 1, 2010, a pain management clinic may not operate in Texas without obtaining a certificate from the board. A physician who owns or operates a pain management clinic shall submit an application on a form prescribed by the board. If a clinic has more than one physician owner, then only the medical director must file an application with the board. Certificates issued pursuant to this subsection are not transferable or assignable. If there is more than one physician owner of the clinic, only the primary physician owner shall be required to register with the board.
       (2) Determination of Eligibility by the Executive Director. The executive director shall review applications for certification and may determine whether an applicant is eligible for certification or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a certificate by the executive director pursuant to §168.001 - 168.202 of the Act or this chapter, the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.
       (3) Ineligibility Determination.
   (A) If the board, upon recommendation by a committee of the board, determines that an applicant is ineligible for certification, the applicant shall be notified of the board's determination and given the option of appealing the determination to State Office of Administrative Hearings (SOAH). An applicant has 20 days from the date the applicant receives notice of the committee's determination to appeal to SOAH.
   (B) If the applicant timely requests a SOAH hearing, the applicant must file a petition with SOAH appealing the determination and shall comply with all other provisions relating to formal proceedings as set out in Chapter 187, Subchapter C of this title (relating to Formal Board Proceedings at SOAH). If an applicant subsequently withdraws the appeal, the matter shall be referred to the full board to render a final determination on the application.
   (C) If the applicant does not timely request an appeal to SOAH, the board's determination shall be shall become administratively final at the next scheduled board meeting.
   (D) A determination of ineligibility by the board shall be in writing and made available to the public.
   (4) Withdrawal. Applicants for certificates may withdraw their applications at any time, unless:
      (A) the executive director has made a determination of ineligibility;
      (B) the executive director has referred an application to a committee of the board for a determination of eligibility and the committee has determined that the applicant is not exempt from the requirements of §195.4 of this title (relating to Operation of Pain Management Clinics) or is ineligible for a certificate; or
      (C) the applicant is under investigation by the board for inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.
   (5) Disciplinary Action.
      (A) Violation of this chapter or a board rule regarding a pain management clinic's eligibility, operation, or involvement in dispensing, administering, or prescribing medications in a nontherapeutic manner is grounds for disciplinary action by the Board against a certified pain management clinic or owner or operator of a pain management clinic. Such disciplinary action may include the temporary suspension or restriction under §164.059, of the Act of a pain management clinic certificate, owner or operator's license, or both.
(B) A temporary suspension or restriction hearing for a licensee or certified pain management clinic shall be held pursuant to the procedures of Chapter 187, Subchapter F of this title (relating to Temporary Suspension Proceedings). Evidence of continuing threat to public health and welfare shall include evidence that a pain management clinic or owner or operator of a pain management clinic is in violation of this chapter regarding the clinic's eligibility, operation, or involvement in dispensing, administering, or prescribing medications in a nontherapeutic manner.

   (6) Confidentiality of Records. All records in the possession of or received or gathered by the board relating to an application for or investigation of a pain clinic shall be considered confidential under §164.007 of the Texas Occupations Code and not subject to release under the Public Information Act, Chapter 552 of the Texas Government Code.

   (7) Expiration. An application that has been filed with the board in excess of one year will be considered expired. Any further request for certification will require submission of a new application. An extension to an application may be granted under certain circumstances, including:

   (A) Delay by board staff in processing an application;

   (B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

   (C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

   (D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

   (E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events.

   (b) Eligibility for Certification.

   (1) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

   (A) have been denied, by any jurisdiction, a license issued by the Drug Enforcement Agency or a state public safety agency under which the person may prescribe, dispense, administer, supply, or sell a controlled substance; or

   (B) have held a license issued by the Drug Enforcement Agency or a state public safety agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

   (C) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

   (2) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

   (A) an offense that constitutes a felony; or

   (B) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Texas Occupations Code §551.003(11).

   (3) As a requirement for eligibility, a physician applying for a pain management certificate must meet the active practice of medicine definition as defined under §163.11 of this title (relating to Active Practice of Medicine).

   (c) Expiration of Certificate.

   (1) Certificates shall be valid for two years.

   (2) Certificate holders shall have a 180-day grace period from the expiration date to renew the certificate, however, the owner or operator of the clinic may not continue to operate the clinic while the permit is expired.

   (d) Certificate Renewal.

   (1) Certificates must be timely renewed. If a certificate is not renewed before the expiration of the grace period, the certificate will be automatically cancelled and the owner or operator of the clinic must reapply for original certification.

   (2) A certificate may not be cancelled for nonrenewal or by request, while a clinic is under investigation with the board.

   (e) The board shall coordinate the certification required under this section with the registration required under the Medical Practice Act, Texas Occupations Code, Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

   (f) A person who owns or operates a pain management clinic is engaged in the practice of medicine.
(g) Pending Investigations. If an applicant for a certificate is under investigation by the board for a violation under the Act, board rules or other law relating to the prescribing, dispensing, administering, supplying, or selling of a controlled substance the board may not make a decision on the application until there is a final disposition on the matter under investigation by the board.

(h) Cancellation of a Certificate.

(1) Voluntary Cancellation. A certificate may be cancelled by request of the certificate holder, unless the certificate holder, pain management clinic covered by the certificate; or the medical director of such pain management clinic is subject of a complaint, investigation, or disciplinary action by the Board. Requests to cancel a certificate must be submitted to the Board in writing.

(2) Mandatory Cancellation. A certificate shall be cancelled if the certificate holder:

(A) fails to renew the certificate before the expiration of the grace period for renewal; or

(B) no longer meets eligibility for certification as set forth under this chapter.

(3) Notice of Cancellation Required. Upon completing the cancellation of a certificate, the Board will issue a notice letter to the certificate holder. Upon receipt of the Board's notice of cancellation letter, the certificate holder must inform all staff employed or contracted by the clinic of the cancellation of the certificate.

(i) Voluntary Surrender of a Certificate Associated with Disciplinary Action.

(1) A certificate may be voluntarily surrendered by the certificate holder while the certificate holder, pain management clinic covered by the certificate, or the medical director of such pain management clinic is subject of a complaint, investigation, or disciplinary action by the Board.

(2) A surrender entered by the Board under this section shall be in lieu of a hearing or further investigation of alleged violations of the Act and its subsequent amendments related to the application for and/or issuance of the certificate only. A surrender entered by the Board under this section shall be considered a surrender associated with disciplinary action against the certificate holder and take the form of a public order.

(3) Notwithstanding the Board's entry of a surrender under this section, the Board retains the discretion to continue any complaint, investigation, or disciplinary action against the holder of the certificate surrendered, medical director of the pain management clinic covered by the certificate surrendered, or other board licensees for alleged violations of the Act and its subsequent amendments, including, but not limited to the prescribing practices, supervision, and medical record keeping at the pain management clinic covered by the certificate surrendered.

Source Note: The provisions of this §195.2 adopted to be effective May 2, 2010, 35 TexReg 3281; amended to be effective June 28, 2011, 36 TexReg 3922; amended to be effective December 4, 2011, 36 TexReg 8033; amended to be effective May 15, 2012, 37 TexReg 3586; amended to be effective March 18, 2013, 38 TexReg 1876; amended to be effective January 23, 2014, 39 TexReg 297; amended to be effective September 28, 2014, 39 TexReg 7582

§195.3. Inspections.

(a) The board may conduct inspections to enforce these rules, including inspections of a pain management clinic and of documents of a physician's practice. The board may contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of a physician's office.

(d) The board shall conduct inspections of pain management clinics if the board suspects that the ownership or physician supervision is not in compliance with board rules.

Source Note: The provisions of this §195.3 adopted to be effective May 2, 2010, 35 TexReg 3281.


(a) Purpose. The purpose of these rules is to identify the roles and responsibilities of physicians who own pain management clinics and to provide the minimum acceptable standards for such clinics.

(b) Exemptions. The rules promulgated under this title do not apply to the following settings:

(1) a medical or dental school or an outpatient clinic associated with a medical or dental school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a hospice established under 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) or defined by 42 CFR §418.3;

(4) a facility maintained or operated by this state;
(5) a clinic maintained or operated by the United States;

(6) a nonprofit health organization certified by the board under Chapter 177 of this title (relating to Certification of Non-Profit Health Organizations);

(7) a clinic owned or operated by a physician who treats patients within the physician’s area of specialty who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or

(8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse’s area of specialty and personally uses other forms of treatment with the issuance of a prescription for a majority of the patients.

(c) Ownership. A pain management clinic may not operate in Texas unless the clinic is owned and operated by a medical director who is a physician who practices in Texas and has an unrestricted medical license and hold a certificate as described in §195.2 of this title (relating to Certification of Pain Management Clinics). A clinic may be owned by more than one physician licensed in Texas, but a non-physician may not hold any ownership interest.

(d) Operation of Clinic. The medical director of a pain management clinic must operate the clinic in compliance with Drug Prevention and Control Act, 21 U.S.C.A. 801 et. seq. and the Texas Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code, relating to the prescribing and dispensing of controlled substances.

(e) Personnel Requirements. The medical director of a pain management clinic must, on an annual basis, ensure that all personnel are properly licensed, if applicable, trained to include 10 hours of continuing medical education related to pain management, and qualified for employment consistent with §195.2(b)(1) of this title.

(f) Standards to Ensure Quality of Patient Care. The medical director of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic’s total number of operating hours;

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic;

(3) establish protocols consistent with Chapter 170 of this title (relating to Pain Management); and

(4) establish quality assurance procedures to include at a minimum:

(A) a practice quality plan that requires the medical director to complete as part of the 48 credits of CME completed every 24 months as a prerequisite for registration of the physician’s permit, at least 10 hours of CME in the area of pain management from formal courses that are:

(i) designated for AMA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education; or

(ii) designated for AOA Category 1-

A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(B) documentation of the background, training, and certifications for all clinical staff;

(C) a written drug screening policy and compliance plan for patients receiving chronic opioids;

(D) performance of periodic quality measures of medical and procedural outcomes and complications that may include questionnaires or surveys for activities of daily living scores, pain scores, and standardized scales.

(g) Patient Billing Procedures.

(1) The medical director of a pain management clinic must ensure that adequate billing records are maintained for all patients and made available to the board, upon request. Billing records shall include the amount paid, method of payment, and description of services.

(2) Billing records shall be maintained for seven years from the date of last treatment of the patient.

Source Note: The provisions of this §195.4 adopted to be effective May 2, 2010, 35 TexReg 3281; amended to be effective June 28, 2011, 36 TexReg 3922; amended to be effective December 4, 2011, 36 TexReg 8033; amended to be effective January 23, 2014, 39 TexReg 298.
Chapter 196. Voluntary Relinquishment or Surrender of A Medical License

§196.1. Relinquishment of License.
   (a) Relinquishment by licensee.
      (1) A licensee may at any time voluntarily relinquish or request cancellation of his or her license to practice medicine in Texas for any reason, without compulsion.
      (2) Requests to relinquish or cancel a license must be submitted to the Board in writing.
   (b) Acceptance by the board. The board shall accept all voluntary relinquishment requests except when a licensee is under investigation or subject to disciplinary action by the board.

Source Note: The provisions of this §196.1 adopted to be effective June 1, 1988, 13 TexReg 2317; amended to be effective November 23, 1988, 13 TexReg 5680; amended to be effective August 15, 1994, 19 TexReg 5952; amended to be effective April 27, 2003, 28 TexReg 3326; amended to be effective November 30, 2003, 28 TexReg 10502; amended to be effective December 30, 2007, 32 TexReg 9630; amended to be effective May 6, 2013, 38 TexReg 2760; amended to be effective January 20, 2014, 39 TexReg 298

§196.2. Surrender Associated with Disciplinary Action.
   (a) When a licensee has surrendered his or her Texas medical license in lieu of a hearing or further investigation of alleged violations of the Medical Practice Act ("the Act"), Title 3 Subtitle B Tex. Occ. Code, and its subsequent amendments, such a surrender shall be considered surrender associated with a disciplinary action.
   (b) If the surrender of a Texas medical license was associated with disciplinary action, the Texas medical license shall not be returned to the licensee if the board's order on the merits of the disciplinary action is inconsistent with the return of that license. In addition to requirements set out in §196.4 of this chapter (relating to Relicensure after Relinquishment or Surrender of License), a licensee who reapsplies for licensure must demonstrate that the licensee's return to the practice is in the best interest of the public as defined under §167.4 of this title (relating to Best Interests of the Public).
   (c) If a licensee agrees to permanently surrender his or her license in lieu of further investigation or hearing, the licensee forfeits all rights to apply for any type of licensure with the board.

Source Note: The provisions of this §196.2 adopted to be effective June 1, 1988, 13 TexReg 2317; amended to be effective August 15, 1994, 19 TexReg 5952; amended to be effective April 27, 2003, 28 TexReg 3326; amended to be effective November 30, 2003, 28 TexReg 10502; amended to be effective December 30, 2007, 32 TexReg 9630; amended to be effective May 6, 2013, 38 TexReg 2760; amended to be effective January 20, 2014, 39 TexReg 298

§196.4. Relicensure after Relinquishment or Surrender of License.
   In addition to other requirements established under this chapter and §164.151 of the Act, whenever a licensee relinquishes or surrenders his or her Texas medical license and reapsplies for licensure, the licensee must establish competence to resume practice, payment of applicable fees, compliance with current licensure eligibility provisions as provided under Chapter 163 of this title (relating to licensure) and completion of training, courses, examinations, or seminars as directed by the board.

Source Note: The provisions of this §196.4 adopted to be effective June 1, 1988, 13 TexReg 2317; amended to be effective August 15, 1994, 19 TexReg 5952; amended to be effective April 27, 2003, 28 TexReg 3326; amended to be effective July 3, 2007, 32 TexReg 3997.

§196.5. Competence to Resume Practice.
   (a) Unless otherwise specified in an order of the board the board shall determine whether or not a licensee is competent to resume practice based on evidence of the licensee's competence or lack thereof as adduced through the procedures provided for in Chapter 187 of this title (relating to Procedural Rules).
   (b) Competence to resume practice may be shown by the licensee providing probative credible evidence to indicate that he or she is fit to resume the practice of medicine. Likewise, any controverting evidence may be introduced to show the licensee's lack of competence or fitness.

Source Note: The provisions of this §196.5 adopted to be effective June 1, 1988, 13 TexReg 2317; amended to be effective August 15, 1994, 19 TexReg 5952; amended to be effective April 27, 2003, 28 TexReg 3326.
§197.1. Purpose.
(a) The purpose of this chapter is to facilitate the most appropriate utilization of the skills of physicians who delegate health care tasks to qualified emergency medical services (EMS) personnel. Such delegation shall be consistent with the patient's health and welfare and shall be undertaken pursuant to supervisory guidelines, which take into account the skill, training, and experience of both physicians and EMS personnel.
(b) This chapter addresses:
1. the qualifications, responsibilities, and authority of physicians who provide medical direction and/or supervision of prehospital care by EMS personnel;
2. the qualifications, authority, and responsibilities of physicians who serve as medical directors (off-line);
3. the relationship of EMS providers to the off-line medical director;
4. components of on-line medical direction (direct medical control), including the qualifications and responsibilities of physicians who provide on-line medical direction and the relationship of prehospital providers to those physicians; and
5. the responsibility of EMS personnel to private and intervenor physicians.
(c) This chapter is not intended, and shall not be construed to restrict a physician from delegating administrative and technical or clinical tasks not involving the exercise of independent medical judgment to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. Likewise, nothing in this chapter shall be construed to prohibit a physician from instructing a technician, assistant, or other employee, who is not among the classes of EMS personnel, as defined in §197.2 of this title (relating to Definitions), to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee.
(d) Nothing in this chapter shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. A physician who, after agreeing to supervise EMS personnel, fails to do so adequately and properly, may be subject to disciplinary action pursuant to the Medical Practice Act.
(e) Implementation of this chapter will enhance the ability of EMS systems to assure adequate medical direction of all advanced prehospital providers and many basic level providers, as well as compliance by personnel and facilities with minimum criteria to implement medical direction of prehospital services. A medical director shall not be held responsible for noncompliance with this chapter if the EMS administration fails to provide the necessary administrative support to permit compliance with the provisions of this chapter.

Source Note: The provisions of this §197.1 adopted to be effective January 2, 1991, 15 TexReg 7368; amended to be effective September 20, 2007, 32 TexReg 6316.

§197.2. Definitions.
The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
1. Advanced life support--Emergency prehospital care that involves invasive medical interventions including, but not limited to, the delivery or assisted delivery of medications, defibrillation, and advanced airway management. The provision of advanced life support shall be under the medical direction and/or supervision and control of a licensed physician.
2. Basic life support--Emergency prehospital care that involves noninvasive medical interventions. The provision of basic life support may be under the medical direction and/or supervision and control of a licensed physician.
3. Board--The Texas Medical Board.
4. Delegated practice--Permission given by a physician licensed by the board, either in person or by treatment protocols or standing orders to a specific prehospital provider to provide medical care.
5. Direct medical control--Immediate and concurrent clinical direction either on-scene or via electronic communication from a physician licensed by the board and designated by the EMS medical director. If an EMS system does not have an EMS Medical Director, then such designation should be by a physician advisor, or in his or her absence, the director of the EMS system.
6. Emergency medical services personnel--Those individuals certified or licensed by the Texas Department of State Health Services (DHS) to provide emergency medical care.
7. Emergency medical services (EMS) provider--As defined under 25 TAC §157.2(30) (relating to Definitions), a provider that uses, operates
or maintains EMS vehicles and EMS personnel to provide EMS.

(8) Emergency medical services system--All components needed to provide a continuum of prehospital medical care including, but not limited to, a medical director, transport vehicles, trained personnel, access and dispatch, communications, and receiving medical facilities.

(9) Intervenor physician--A physician licensed by the board, who, without having established a prior physician/patient relationship with the emergency patient, accepts responsibility for the prehospital care, and who shall provide proof of a current medical license when requested.

(10) Medical director--A physician licensed by the board who is responsible for all aspects of the operation of an EMS system concerning provision of medical care. This physician may also be referred to as the off-line medical director.

(11) Prehospital providers--All DSHS certified or licensed personnel providing medical care in an out-of-hospital environment.

(12) Protocols--Written instructions providing prehospital personnel with a standardized approach to commonly encountered problems in the out-of-hospital setting, typically in regard to patient care. Protocols may include standing orders to be implemented prior to, or in lieu of, establishing communication with direct medical control.

(13) Standing delegation orders--Instructions or orders provided by the EMS medical director to EMS personnel, directing them to perform certain medical care in the absence of any communication with direct medical control.

Source Note: The provisions of this §197.2 adopted to be effective February 28, 1999, 24 TexReg 1157; amended to be effective January 9, 2003, 28 TexReg 73; amended to be effective September 20, 2007, 32 TexReg 6316; amended to be effective January 2, 2013, 37 TexReg 10213

§197.3. Off-line Medical Director.

(a) An off-line medical director shall be:

1. a physician licensed to practice in Texas and shall be registered as an EMS medical director with the Texas Department of State Health Services;

2. familiar with the design and operation of EMS systems;

3. experienced in prehospital emergency care and emergency management of ill and injured patients;

4. actively involved in:

(A) the training and/or continuing education of EMS personnel, under his or her direct supervision, at their respective levels of certification;

(B) the medical audit, review, and critique of the performance of EMS personnel under his or her direct supervision;

(C) the administrative and legislative environments affecting regional and/or state prehospital EMS organizations;

(D) knowledgeable about local multi-casualty plans;

(E) familiar with dispatch and communications operations of prehospital emergency units; and

(F) knowledgeable about laws and regulations affecting local, regional, and state EMS operations.

(b) The off-line medical director shall be required to:

1. approve the level of prehospital care which may be rendered locally by each of the EMS personnel employed by and/or volunteering with the EMS under the medical director's supervision, regardless of the level of state certification or licensure, before the certificant or licensee is permitted to provide such care to the public;

2. establish and monitor compliance with field performance guidelines for EMS personnel;

3. establish and monitor compliance with training guidelines which meet or exceed the minimum standards set forth in the Texas Department of State Health Services EMS certification regulations;

4. develop, implement, and revise protocols and/or standing delegation orders, if appropriate, governing prehospital care and medical aspects of patient triage, transport, transfer, dispatch, extrication, rescue, and radio-telephone-telemetry communication by the EMS;

5. direct an effective system audit and quality assurance program;

6. determine standards and objectives for all medically related aspects of operation of the EMS including the inspection, evaluation, and approval of the system's performance specifications;

7. function as the primary liaison between the EMS administration and the local medical community, ascertaining and being responsive to the needs of each; and

8. develop a letter or agreement or contract between the medical director(s) and the EMS administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Services Act, the Health and Safety Code, Chapter 773, the rules
(9) take or recommend appropriate remedial or corrective measures for EMS personnel, in conjunction with local EMS administration, which may include, but are not limited to, counseling, retraining, testing, probation, and/or field preceptorship;

(10) suspend a certified EMS individual from medical care duties for due cause pending review and evaluation;

(11) establish the circumstances under which a patient might not be transported;

(12) establish the circumstances under which a patient may be transported against his or her will in accordance with state law, including approval of appropriate procedures, forms, and a review process;

(13) establish criteria for selection of a patient's destination;

(14) develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards;

(15) only approve care or activity that was provided at the time the medical director was employed, contracted or volunteering as a medical director;

(16) notify the board at time of license registration under §166.1 of this title (relating to Physician Registration) of the physician's position as medical director and the names of all EMS providers for whom that physician holds the position of off-line medical director;

(17) complete the following educational requirements:

(A) within two years, either before or after initial notification to the board of holding the position as off-line medical director:

(i) 12 hours of formal continuing medical education (CME) as defined under §166.2 of this title (relating to Continuing Medical Education) in the area of EMS medical direction;

(ii) board certification in Emergency Medical Services by the American Board of Medical Specialties or a Certificate of Added Qualification in EMS by the American Osteopathic Association Bureau of Osteopathic Specialists; or

(iii) a DSHS approved EMS medical director course; and

(B) every two years after meeting the requirements of subparagraph (A) of this paragraph, one hour of formal CME in the area of EMS medical direction.

c) A physician may not hold the position of off-line medical director:

(1) for more than 20 EMS providers unless the physician obtains a waiver under subsection (d) of this section; or

(2) for any EMS provider if the physician has been suspended or revoked for cause by any governmental agency or the physician has been excluded from Medicare, Medicaid, or CHIP.

(d) The board may grant a waiver to allow a physician to serve as an off-line medical director for more than 20 EMS providers, if the physician provides evidence that:

(1) the Department of State Health Services has reviewed the waiver request and has determined that the waiver in the best interest of the public;

(2) the physician is in compliance with this chapter, by submitting documentation of protocols and standing orders upon request; and

(3) appropriate safeguards exist for patient care and adequate supervision of all EMS personnel under the physician's supervision.

Source Note: The provisions of this §197.3 adopted to be effective February 28, 1999, 24 TexReg 1157; amended to be effective January 9, 2003, 28 TexReg 73; amended to be effective September 20, 2007, 32 TexReg 6316; amended to be effective January 2, 2013, 37 TexReg 10213; amended to be effective May 6, 2013, 38 TexReg 2760.

§197.4. On-Line Medical Direction.

(a) The EMS medical director shall assign the prehospital provider under his or her direction to a specific on-line communication resource by a predetermined policy.

(b) Specific local protocols shall define the circumstances under which on-line medical direction is required.

(c) A physician providing or delegating on-line medical direction ("on-line physician") shall be appropriately trained in the use of prehospital protocols.

(d) A physician providing or delegating on-line medical direction shall have personal expertise in the emergency care of ill and injured patients.

(e) A physician providing or delegating on-line medical direction for particular patients assumes responsibility for the appropriateness of prehospital care provided under his or her direction by EMS personnel.

Source Note: The provisions of this §197.4 adopted to be effective February 28, 1999, 24 TexReg 1157;
§197.5. Authority for Control of Medical Services at the Scene of a Medical Emergency.

(a) Control at the scene of a medical emergency shall be the responsibility of the individual in attendance who is most appropriately trained and knowledgeable in providing pre-hospital emergency stabilization and transport.

(b) The pre-hospital provider on the scene is responsible for the management of the patient(s) and acts as the agent of the physician providing medical direction.

(c) If the patient's personal physician is present and assumes responsibility for the patient's care, the pre-hospital provider should defer to the orders of said physician unless those orders conflict with established protocols. The patient's personal physician shall document in his or her orders in a manner acceptable to the EMS system. The physician providing on-line medical direction shall be notified of the participation of the patient's personal physician.

(d) If the medical orders of the patient's personal physician conflict with system protocols, the personal physician shall be placed in communication with the on-line physician. If the personal physician and the on-line medical director cannot agree on treatment, the personal physician must either continue to provide direct patient care and accompany the patient to the hospital or must defer all remaining care to the on-line medical director.

(e) The system's medical director or on-line medical control shall assume responsibility for directing the activities of pre-hospital providers at any time the patient's personal physician is not in attendance.

(f) If an intervenor physician is present at the scene and has been satisfactorily identified as a licensed physician and has expressed his or her willingness to assume responsibility for care of the patient, the on-line physician should be contacted. Once the on-line physician is contacted, he or she is ultimately responsible for the care of the patient unless or until the on-line physician allows the intervenor physician to assume responsibility for the patient.

(g) The on-line physician has the option of managing the case exclusively, working with the intervenor physician, or allowing the intervenor physician to assume complete responsibility for the patient.

(h) If there is any disagreement between the intervenor physician and the on-line physician, the pre-hospital provider shall be responsible to the on-line physician and shall place the intervenor physician in contact with the on-line physician.

(i) If the intervenor physician is authorized to assume responsibility, all orders to the pre-hospital provider by the intervenor physician shall also be repeated to medical control for recordkeeping purposes.

(j) The intervenor physician must document his or her intervention in a manner acceptable to the local EMS.

(k) The decision of the intervenor physician not to accompany the patient to the hospital shall be made with the approval of the on-line physician.

(l) Nothing in this section implies that the pre-hospital provider can be required to deviate from standard protocols.

Source Note: The provisions of this §197.5 adopted to be effective February 28, 1999, 24 TexReg 1157.

§197.6. Authority To Conduct Research and/or Educational Studies.

(a) The medical director has the authority to design research projects and educational studies. Such studies should be approved by:

(1) EMS administrative officials; and

(2) an independent review panel if the project/study may have a differential impact on patient care.

(b) The results of the study should be made available through publications to the EMS community.

Source Note: The provisions of this §197.6 adopted to be effective January 2, 1991, 15 TexReg 7368; amended to be effective January 20, 2014, 39 TexReg 298
§198.1 Purpose
The purpose of this chapter is to recognize that physicians should be allowed a reasonable and responsible degree of latitude in the kinds of therapies they offer their patients. The Board has determined that use of investigational agents constitutes the practice of medicine and is, thus, subject to all applicable statutory and regulatory provisions of the Medical Practice Act and Board Rules unless otherwise specifically stated.

Source Note: The provisions of this §198.1 adopted to be effective July 8, 2012, 37 TexReg 4929

§198.2 Definitions.
The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Investigational Agents--Investigational agents include, but are not limited to medications, biological products, devices, diagnostic products and treatment regimens not approved or licensed by the Food and Drug Administration (FDA) for use in humans. These investigational agents may be for the purposes of prevention, treatment, diagnosis or for relieving symptoms of a disease. An investigational agent shall not include:

(1) medications, biological products, devices, diagnostic products and treatment regimens approved by the FDA, but used for off-label purposes;
(2) medications, biological products, devices, diagnostic products and treatment regimens that are already approved for use by an existing Institutional Review Board (IRB);
(3) products processed or manufactured as human cell, tissue or cellular-or-tissue-based product ("HCT/P") pursuant to Sections 351 and 361 of the Public Health Service Act ("PHSA") (42 U.S.C. 264); nor
(4) a drug, device or biologic pursuant to the federal Food Drug and Cosmetic Act (FDCA).

Source Note: The provisions of this §198.2 adopted to be effective July 8, 2012, 37 TexReg 4929

§198.3 Practice Guidelines for the Use of Investigational Agents
(a) Administering or providing investigational agents constitutes the practice of medicine and, therefore, must be performed under the direction of a licensed physician who is responsible for compliance with the Medical Practice Act, Texas Occupations Code, Title 3, Subtitle B and applicable Board Rules. Use of stem cells in humans shall be considered investigational unless they are used in the conduct of an FDA-approved protocol or until such time as they are approved by the FDA. Physicians using investigational agents are obligated to maintain their ethical and professional responsibilities, including maintaining a distinction between their roles as physician-investigators and treating physicians, as required by applicable federal law.

(b) Prior to administering or providing of investigational agents, physicians must have their proposed use either included in an FDA/NIH approved protocol/study or approved by an IRB. The IRB must:

(1) be affiliated with an academic setting or a Texas licensed hospital;
(2) be accredited by the Association for the Accreditation of Human Research Protection Programs, Inc. (AAHRPP);
(3) be registered by the U.S. Department of Health and Human Services Office for Human Research Protection, pursuant to 21 CFR Part 56; or
(4) have received national accreditation by an organization acceptable to the TMB.

(c) Physicians engaged in administering or providing investigational agents must obtain written assurances from the individual or facility from which they obtained the agents that these agents were manufactured, labeled, and distributed in a manner consistent with the Texas Food, Drug, and Cosmetic Act and the federal Food, Drug, and Cosmetic Act.

(d) Physicians engaged in administering or providing of investigational agents shall be expected to conform to the following standards:

(1) The administration or provision of investigational agents should be part of a systematic program competently designed, under accepted standards of scientific research, to evaluate the efficacy and safety of the investigational agents, which shall include:

(A) oversight by a principal investigator whose specific responsibility is to ensure that subjects are enrolled through appropriate inclusion and exclusion criteria;
(B) written documentation regarding the objectives of the study that is made available to subjects, including information regarding the distinction between the goals of the clinical research study and the goals, risks and benefits of treatment, and
(C) written disclosure to patients if the clinical research study involves the use of placebos, including an explanation of the placebos.

(2) It is the physician's responsibility to ensure that the name and complete contact information of the individuals to whom investigational agents are administered or provided as well as data regarding efficacy and safety of the investigational agents is available for review by TMB within 14 days of request by the TMB and to ensure that subjects are aware of the TMB's ability to obtain such information.

(3) In accordance with the Declaration of Helsinki, the Belmont Report, and CFR Part 46, physicians who engage in administering or providing investigational agents should demonstrate the highest concern and caution for the welfare, safety, and comfort of the patient to whom investigational agents are administered and provided.

(4) Physicians engaged in administering or providing investigational agents must have patients sign informed consent forms that are compliant with applicable state and federal regulations, which indicate that investigational agents are or may be used in these patients. These consent forms shall:

(A) be approved by the IRB; and
(B) if applicable, state whether medications, biological products, devices, diagnostic products or treatment regimens are not commercially available and, therefore, are also an investigational agent subject to clinical investigation standards as discussed in §200.3(7) of this title (relating to Practice Guidelines for the Provision of Complementary and Alternative Medicine).

(e) The TMB will use the guidelines as provided herein to determine whether a physician's conduct violates the Medical Practice Act, §§164.051 - 164.053 in regard to using investigational agents.

(1) Patient Assessment. Prior to the enrollment of patients into a clinical research study that involves the administration of an investigational agent, the attending physician or physician enrolling the patient in the research study shall undertake an assessment of the patient. Such assessment shall be documented in the patient's medical record and the clinical research study record and be based on performance and review of an appropriate medical history and physical examination of the patient;

(2) Treatment Plan. A treatment plan tailored for the individual needs of the patient shall be compiled by the attending physician and should include criteria by which treatment progress or success can be evaluated with stated objectives. Such a documented treatment plan shall consider pertinent medical history, previous medical records and physical examination, as well as the need for further diagnostic further testing, consultations, referrals, or the use of other treatment modalities.

(3) Adequate Medical Records. A physician using investigational agents shall keep accurate and complete medical records to include:

(A) any diagnostic, therapeutic and laboratory results;
(B) the results of evaluations, consultations and referrals;
(C) treatments employed and their progress toward the stated objectives, expected outcomes, and goals of the treatment and clinical research study;
(D) the date, type, dosage, and quantity prescribed of any drug, supplement, or remedy used in the treatment plan;
(E) all patient instructions and agreements regarding the investigational agents and the clinical research study;
(F) periodic reviews of the condition of the patient;
(G) documentation of any communications with the patient's concurrent healthcare providers informing them of treatment plans; and

(H) a copy of the executed consent form.

(f) 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 using investigational agents, unless it can be demonstrated that such use does not comply with this section.

Source Note: The provisions of this §198.3 adopted to be effective July 8, 2012, 37 TexReg 4929
§199.1. Public Information Committee.
(a) The board shall maintain the Public Information Committee as a standing and permanent committee of the board.
(b) As set forth in Chapter 161 of this title (relating to General Provisions), the responsibilities and authority of the Public Information Committee include those duties and powers set forth below and in this chapter, as well as such other responsibilities and authority which the board from time to time may delegate:
   (1) develop informational brochures for distribution to the public;
   (2) review and make recommendations to the board in regard to press releases, newsletters, and other publications;
   (3) exhibit display booths at conventions;
   (4) study and make recommendations to the board regarding all aspects of public information or public relations;
   (5) make recommendations to the board regarding matters brought to the attention of the Public Information Committee; and
   (6) maintain a website that includes information required by statute and that is easily accessible to the public.

Source Note: The provisions of this §199.1 adopted to be effective May 16, 1994, 19 TexReg 3368; amended to be effective January 7, 2001, 25 TexReg 12977; amended to be effective December 30, 2007, 32 TexReg 9631.

§199.2. Requests to Speak.
(a) To provide the public with a reasonable opportunity to appear before the board and to speak regarding issues under the board's jurisdiction except as otherwise designated by these rules, written requests to speak may be submitted to the attention of the Public Information/Profile Committee at the board's current mailing address. Such request should be received no later than 10 business days prior to the board meeting at which the requestor wishes to speak.
(b) A requester will be notified in writing of the date and time for an opportunity to appear and speak before the Public Information/Profile Committee. The time allotted for any particular speaker will be determined in the discretion of the chairman or presiding member of the committee based on the subject matter and available time.
(c) The Public Information/Profile Committee shall make any necessary recommendations to the board regarding matters brought to the committee's attention by the public and shall report matters of interest to the board through the committee minutes.

Source Note: The provisions of this §199.2 adopted to be effective May 16, 1994, 19 TexReg 3368; amended to be effective January 7, 2001, 25 TexReg 12977; amended to be effective January 9, 2003, 28 TexReg 73; amended to be effective November 7, 2004, 29 TexReg 10115.

§199.3. Requests for Information.
(a) The public may obtain copies of board newsletters, brochures, pamphlets, press releases and other board publications by written request to the attention of the Public Information Committee at the board's current mailing address, by fax, or by electronic mail to the board's designated email address.
(b) Public records of the board may be obtained to the extent allowed by law through a written request pursuant to the Public Information Act of Texas submitted to the attention of the Manager, Public Information at the board's current mailing address, by fax, or by electronic mail to the board's designated email address.
(c) The provision of written materials or records provided pursuant to a request made under this chapter shall be subject to applicable charges under this title and state law.

Source Note: The provisions of this §199.3 adopted to be effective May 16, 1994, 19 TexReg 3368; amended to be effective January 7, 2001, 25 TexReg 12977; amended to be effective November 7, 2004, 29 TexReg 10115; amended to be effective December 30, 2007, 32 TexReg 9631.

(a) Charges. The charge to any person requesting copies of any public record of the Texas Medical Board will be the charges established by the Office of the Attorney General.
(b) Routine items. All charges for routinely requested items shall be based upon the charges established by the Office of the Attorney General. A current price list may be requested from the Pre-Licensure, Registration, and Consumer Services Department of the Board. Upon written request, the board shall provide copies of routinely requested items,
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which shall include, but not be limited to, the following:

(1) Board Rules;
(2) Medical Practice Act;
(3) Board Action Data;
(4) New Physician List;
(5) Physician Directory; and
(6) Complete Electronic Database:
   (A) Licensed Physician Database;
   (B) Licensed Physician Assistant Database; and
   (C) Licensed Acupuncturist Database.

(c) Certified copies. Upon written request, the Texas Medical Board will certify any public records of the board. The cost for certifying copies of public records provided pursuant to the Texas Public Information Act shall be $5.00 per record or document. This cost shall be in addition to any other costs charged for providing the requested document or record, including, but not limited to, copying, retrieving, or mailing of the document or record.

(d) Waiver of charges. Copies of public records shall be furnished without charge or at a reduced charge if the executive director determines that waiver or reduction of the fee is in the public interest, and that furnishing the information can be considered as primarily benefiting the general public.

Source Note: The provisions of this §199.4 adopted to be effective August 2, 1995, 20 TexReg 5240; amended to be effective January 7, 2001, 25 TexReg 12977; amended to be effective November 7, 2004, 29 TexReg 10115; amended to be effective December 30, 2007, 32 TexReg 9631; amended to be effective June 28, 2011, 36 TexReg 3922

§199.5 Notice of Ownership Interest in a Niche Hospital

(a) A physician shall notify the Department of State Health Services of any ownership interest held by the physician in a niche hospital as required by §162.052 of the Act.

(b) In this section, "niche hospital," as defined by §105.002, Tex. Occ. Code, means a hospital that:

1. classifies at least two-thirds of the hospital's Medicare patients or, if data is available, all patients:
   (A) in not more than two major diagnosis-related groups; or
   (B) in surgical diagnosis-related groups;
2. specializes in one or more of the following areas:
   (A) cardiac;
   (B) orthopedics;
   (C) surgery; or
   (D) women's health; and
3. is not:
   (A) a public hospital;
   (B) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or
   (C) a hospital with fewer than 10 claims per bed per year.

(c) The board hereby adopts by reference the Disclosure and Consent Form, which shall be published on the board's web site and may be examined and copies obtained at the offices of the board.

Source Note: The provisions of this §199.5 adopted to be effective June 29, 2006, 31 TexReg 5110; amended to be effective December 30, 2007, 32 TexReg 9631.
§200.1. Purpose.
The purpose of this chapter is to recognize that physicians should be allowed a reasonable and responsible degree of latitude in the kinds of therapies they offer their patients. The Board also recognizes that patients have a right to seek complementary and alternative therapies.

*Source Note: The provisions of this §200.1 adopted to be effective November 22, 1998, 23 TexReg 11653; amended to be effective May 4, 2003, 28 TexReg 3495.*

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

1. Complementary and Alternative Medicine—Those health care methods of diagnosis, treatment, or interventions that are not acknowledged to be conventional but that may be offered by some licensed physicians in addition to, or as an alternative to, conventional medicine, and that provide a reasonable potential for therapeutic gain in a patient's medical condition and that are not reasonably outweighed by the risk of such methods.

2. Conventional Medicine—Those health care methods of diagnosis, treatment, or interventions that are offered by most licensed physicians as generally accepted methods of routine practice, based upon medical training, experience and review of the peer reviewed scientific literature.

3. Reasonable Potential for Therapeutic Gain—An expected beneficial outcome resulting from the application of a health care method containing medicinal or healing properties that is supported by scientific evidence and does not solely rely on placebo effect.

*Source Note: The provisions of this §200.2 adopted to be effective November 22, 1998, 23 TexReg 11653; amended to be effective May 4, 2003, 28 TexReg 3495.*

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 employing a health care method of complementary or alternative medicine, unless it can be demonstrated that such method has a safety risk for the patient that is unreasonably greater than the conventional treatment for the patient's medical condition. The Texas State Board of Medical Examiners will use the following guidelines to determine whether a physician's conduct violates the Medical Practice Act, §§164.051-.053 in regard to providing complementary and alternative medical treatment.

1. Patient Assessment. Prior to offering advice about complementary and alternative health care therapies, the physician shall undertake an assessment of the patient. This assessment should include but not be limited to, conventional methods of diagnosis and may include non-conventional methods of diagnosis. Such assessment shall be documented in the patient's medical record and be based on performance and review of the following listed in subparagraphs (A)-(D) of this paragraph:

   A. an appropriate medical history and physician examination of the patient;
   B. the conventional medical treatment options to be discussed with the patient and referral input, if necessary;
   C. any prior conventional medical treatments attempted and the outcomes obtained or whether conventional options have been refused by the patient;
   D. whether the complementary health care therapy could interfere with any other recommended or ongoing treatment.

2. Disclosure. Prior to rendering any complementary or alternative treatment, the physician shall provide information to the patient that includes the following with the disclosure documented in the patient's records:

   A. the objectives, expected outcomes, or goals of the proposed treatment, such as functional improvement, pain relief, or expected psychosocial benefit;
   B. the risks and benefits of the proposed treatment;
   C. the extent the proposed treatment could interfere with any ongoing or recommended medical care;
   D. a description of the underlying therapeutic basis or mechanism of action of the proposed treatment purporting to have a reasonable potential for therapeutic gain that is written in a manner understandable to the patient; and
(E) if applicable, whether a drug, supplement, or remedy employed in the treatment is:
(i) approved for human use by the U.S. Food and Drug Administration (FDA);
(ii) exempt from FDA preapproval under the Dietary Supplement and Health Education Act (DSHEA); or
(iii) a pharmaceutical compound not commercially available and, therefore, is also an investigation article subject to clinical investigation standards as discussed in paragraph (7) of this subsection.

(3) Treatment Plan.
(A) The physician may offer the patient complementary or alternative treatment pursuant to a documented treatment plan tailored for the individual needs of the patient by which treatment progress or success can be evaluated with stated objectives such as pain relief and/or improved physical and/or psychosocial function. Such a documented treatment plan shall consider pertinent medical history, previous medical records and physical examination, as well as the need for further testing, consultations, referrals, or the use of other treatment modalities.
(B) The treatment offered should:
(i) have a favorable risk/benefit ratio compared to other treatments for the same condition;
(ii) be based upon a reasonable expectation that it will result in a favorable patient outcome, including preventive practices; and
(iii) be based upon the expectation that a greater benefit for the same condition will be achieved than what can be expected with no treatment.

(4) Periodic Review of Treatment. The physician may use the treatment subject to documented periodic review of the patient's care by the physician at reasonable intervals. The physician shall evaluate the patient's progress under the treatment prescribed, ordered or administered, as well as any new information about etiology of the complaint in determining whether treatment objectives are being adequately met.

(5) Adequate Medical Records. In addition to those elements addressed in paragraph (1)(A)-(D) of this section, a physician implementing complementary and alternative therapies shall keep accurate and complete medical records to include:
(A) any diagnostic, therapeutic and laboratory results;
(B) the results of evaluations, consultations and referrals;
(C) treatments employed and their progress toward the stated objectives, expected outcomes, and goals of the treatment;
(D) the date, type, dosage, and quantity prescribed of any drug, supplement, or remedy used in the treatment plan;
(E) all patient instructions and agreements;
(F) periodic reviews;
(G) documentation of any communications with the patient's concurrent healthcare providers informing them of treatment plans.
(6) Therapeutic Validity All physicians must be able to demonstrate the medical, scientific, or other theoretical principles connected with any healthcare method offered and provided to patients.
(7) Clinical Investigations. Physicians using conventional medical practices or providing complementary and alternative medicine treatment while engaged in the clinical investigation of new drugs and procedures (a.k.a. medical research, research studies) are obligated to maintain their ethical and professional responsibilities. Physicians shall be expected to conform to the following ethical standards:
(A) Clinical investigations, medical research, or clinical studies should be part of a systematic program competently designed, under accepted standards of scientific research, to produce data that are scientifically valid and significant;
(B) A clinical investigator should demonstrate the same concern and caution for the welfare, safety and comfort of the patient involved as is required of a physician who is furnishing medical care to a patient independent of any clinical investigation; and
(C) A clinical investigator must have patients sign informed consent forms that are compliant with federal regulations, if applicable, and that indicate that the patients understand that they are participating in a clinical trial or investigational research.

(8) If the provisions set out in paragraphs (1)-(5) of this section are met, and if all treatment is properly documented, the board will presume such practices are in conformity with the Medical Practice Act, §§164.051-.053.

Source Note: The provisions of this §200.3 adopted to be effective November 22, 1998, 23 TexReg 11653; amended to be effective June 29, 2003, 28 TexReg 4635.