

UPDATED

Texas Medical Board (TMB) Frequently Asked Questions (FAQs) **Regarding Notice and Compliance Requirements Concerning** **COVID-19 Minimum Standards of Safe Practice**

May 6, 2020

(Questions #15, 16, 17 Added; #9, 10, 11, 12 Updated)

***Disclaimer – The COVID-19 Disaster is a fluid and rapidly evolving situation. Please check these FAQs often as events may warrant frequent updates.**

On April 27, 2020, Governor Abbott issued Executive Order GA-19, which replaces Executive Order GA-15 at 12:01 a.m. on May 1, 2020. The new executive order will be in effect until Executive Order GA-19 is terminated, modified, or extended by the Governor.

1. What is the effect of Executive Order GA-19?

[Executive Order \(EO\) GA-19](#) discusses one aspect of the plan to re-open Texas put forth by Governor Abbott. The implementation of re-opening Texas is now possible due to prior actions that increased, and have maintained, hospital bed availability for Texas patients. Texas has also enhanced the available supply of personal protective equipment (PPE) and strengthened supply chains for vital medical resources to address COVID-19.

The need to minimize potential exposure of patients and healthcare professionals to COVID-19 continues to be paramount and critical as we move towards re-opening Texas in a safe and measured manner.

Executive Order GA-19 sets forth two critical healthcare requirements to safely facilitate the re-opening of Texas:

- All licensed healthcare professionals shall be limited in their practice by, and must comply with, any emergency rules promulgated by their respective licensing agencies dictating minimum standards for safe practice during the COVID-19 disaster.

- Every hospital licensed under Chapter 241 of the Texas Health and Safety Code shall reserve at least (15%) percent of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients, as determined by the Texas Health and Human Services Commission.

2. What happens to Executive Order GA-15 and the Texas Medical Board emergency rule associated with it?

Executive Order GA-15 has been superseded by Executive Order GA-19 effective 12:01 a.m. on May 1, 2020. The TMB emergency rule related to Executive Order GA-15 will no longer be effective and will be withdrawn from the Texas Register.

3. Did the TMB pass any emergency rules pursuant to Executive Order GA-19?

The TMB Executive Committee, during an emergency meeting on April 30, 2020, [adopted an emergency rule amendment](#) to 22 TAC §190.8(2)(U). This emergency amendment describes the minimum standards for safe practice that physicians and their delegates must follow at this time.

It also requires that providers post notice of these minimum standards in specific locations to ensure patients understand the measures being taken for their safety during this COVID disaster. A violation of this rule may be considered unprofessional conduct.

The new emergency rule will immediately go into effect when Executive Order GA-15 expires.

4. What are the minimum standards for safe practice for physicians and their delegates under the new emergency rule?

There are four requirements for physicians and their delegates:

1. A mask must be worn by both the patient and physician or the physician's delegate when in proximity of the patient (meaning less than a 6-foot distance between the patient and the physician or the physician's delegate);

2. Everyone must follow policies that the physician, medical and healthcare practice, or facility has in place regarding COVID-19 screening and testing and/or screening patients;
3. Before any patient encounter, patients must be screened for potential symptoms of COVID-19 or verified they were previously screened within last 20 days; and
4. That any medical procedure or surgery involving the mucous membranes, including the respiratory tract, with a high risk of aerosol transmission, the minimum safety equipment used by a physician or physician's delegate should include N95 masks or an equivalent protection from aerosolized particles and face shields.

5. Do the minimum safety standards apply to care provided by physicians in hospitals?

Yes. The minimum safety standards apply to all physicians and their delegates, regardless of the practice setting.

6. Does TMB have any role in the Executive Order GA-19 requirement for a hospital to reserve 15 percent of its capacity for treatment of COVID-19 patients?

No. This requirement will be facilitated and implemented by HHSC and not TMB.

7. How do I know if the licensed healthcare facility where the surgery or procedure is taking place has reserved the 15 percent hospital capacity?

Texas HHSC is the agency responsible for that aspect of and enforcement of this particular requirement of GA-19.

8. Can I schedule and perform office-based visits for my patients?

Yes, as long as you comply with minimum standards for safe practice requirements set out in 22 TAC Section 190.8(2)(U) and post the required notice.

The key for all patient visits or encounters is that they be conducted in accordance with the minimum safe practice requirements set forth in 22 TAC Section 190.8(2)(U). TMB encourages healthcare practitioners to consider taking all necessary safety measures, beyond the minimum requirements delineated in the new emergency rule, to help prevent the spread of COVID-19 and allow the re-opening of Texas to safely progress.

9. Is there a notice I can print to display in the office to meet the posting requirement in the rule?

There is no required design of the notice to post, as long as it contains the required information in the rule and is visible to your patients. Per the TMB emergency rule, the posting must be displayed in each public area and treatment room or area of the office, practice, or facility. TMB encourages a robust approach when displaying the required posting, making them the most visible to patients. The following printable PDF notice has been created for your convenience: [COVID-19 Notice - Minimum Standards of Safe Practice](#)

10. Are doctor offices responsible for providing masks and gloves to patients who come to their offices? What type of mask is required?

The rule does not require gloves. The rule requires wearing of masks when in “proximity of the patient.” If the physician, or the physician’s delegate, and patient are not within proximity of each other, then masks do not have to be worn. Offices may set their own policy on mask and glove requirements outside of a patient-physician interaction. If a patient does not have a mask for use during an exam with the physician, the practice must provide a mask or some type of face covering. There are no requirements specific to the type of mask patients must wear.

11. If a patient is physically and mentally able to wear a mask but refuses to do so, are physicians allowed to refuse treatment?

Yes. The decision to treat/see any patient is at the discretion of the physician/practice.

12. How would I treat and/or examine a patient if they are required to wear a mask?

The patient does not have to be wearing a mask if it needs to be removed during the course of examination and/or during treatment including a procedure or surgery. However, a physician should be wearing a mask and appropriate PPE. If there is a high risk for aerosol transmission, physicians should wear appropriate PPE, as stated in CDC guidelines and by the TMB emergency rule.

13. What about children? Are they required to wear a mask?

The Board would urge physicians to follow CDC guidelines and require most children to wear masks who visit their practice to protect themselves and others. However, the [American Academy of Pediatrics](#) does not recommend children younger than age 2 to wear masks.

14. If a patient has screened negative for COVID-19, does the physician still need to require them to wear a mask?

Yes. All requirements in the rule still apply even if a patient has previously been screened.

15. Are there any situations where masks do not have to be worn for a medical encounter?

EO GA-19 and the emergency rule are intended to address safe practices to keep patients and health care workers safe as part of re-opening Texas during the COVID-19 crisis. The new rule requires wearing of masks when in “proximity of the

patient.” If the physician and patient are not within proximity of each other, then masks do not have to be worn. “Proximity of the patient” means less than a 6-foot distance between the patient and the physician or the physician’s delegate.

There may be situations where a patient cannot wear a mask or is incapable of donning a mask, but is in need of medical assistance. Additionally, there might be certain medical acts or procedures where the wearing of the mask is not feasible as it would impede the medical procedure or act being performed. Examples include infants, head and neck trauma, examination of the mouth, and situations where the patient cannot put on a mask.

Each practitioner must use his or her judgment in these situations, utilizing all possible safety means while taking into account the needs of the patient and the safety of healthcare workers and other patients. If the physician chooses to deliver care and the patient cannot wear a mask, practitioners should document the circumstances surrounding the decision to render care to a patient who is not wearing a mask.

16. Do EO GA-19 and the TMB’s emergency rules allow medspas to now operate?

TMB cannot advise or direct businesses as to when they can or should reopen. If medical procedures, such as Botox injections or medical cosmetic procedures are taking place, they must be performed under the delegation of a physician and consistent with TMB rules and all other applicable laws and rules, including implementing proper safety measures to reduce the risk of exposure and spread of COVID-19.

TMB’s enforcement jurisdiction is limited to its licensees and the procedures they undertake regardless of the type of business offering these services. Licensees regulated by other state agencies who are considering providing non-medical services should refer to their specific licensing boards for guidance, rules, laws and direction as to when or if they may reopen (<https://www.tdlr.texas.gov/covid19.htm>).

17. Do EO GA-19 and the TMB’s emergency rules allow licensees subject to TMB regulation to operate?

There are no restrictions on access to medical care in Texas. There are minimum safety measures required due to COVID-19. All licensees, certificate holders, and permit holders subject to regulation by TMB or its advisory boards and committees must follow the minimum safety requirements set out in the emergency rule.

18. If I report a violation, will it be confidential?

Yes. While the law does not allow for the TMB to accept *anonymous* complaints, a complainant’s identity will remain confidential. This means that the TMB will know the complainant’s identity, but no one else will.

19. Can I be sued, fired, or otherwise retaliated against for filing a complaint?

Texas law prohibits retaliation against any complainant, regardless of the complainant’s identity as a physician, patient, family member or concerned citizen.

All complaints to TMB are confidential, and your identity will not be disclosed to the individual against whom the complaint is made.

20. If I perform a surgery or procedure, how would I show I followed the emergency rule?

Documentation is key. While there is no requirement to document your compliance, you should consider documenting that you informed the patient of safe practice measures you are taking in the medical record. Or indicate they were provided a copy of office protocols, standings, orders, or policies regarding the minimum standards for safe practice.

Also, the rule specifically addresses the minimum standards for safe practice for procedures and surgeries that involve the mucous membranes, including the

respiratory tract, with a high risk of aerosol transmission. These procedures and surgeries require minimum safety equipment standards to be used by a physician or physician's delegate that include N95 masks, or an equivalent protection from aerosolized particles, and face shields.

21. If a complaint is received, how will the TMB determine if a physician met the requirements of the new rule or the posting requirement, if necessary?

The TMB can only act on a valid written complaint. Complaints can be filed confidentially, but not anonymously. The complainant's identity will remain confidential with TMB. If a complaint is received, then TMB will begin by reviewing the complaint. If there is enough information in the complaint, TMB will proceed with an investigation, including gathering witness statements and requesting medical records for review.

When reviewing the information gathered during the investigation, TMB will determine if the physician complied with the requirements of the emergency rule. Further, TMB will determine whether or not the standard of care (SOC) was met using the existing expert panel review process.

If it appears there was a violation of the emergency rule, TMB will follow all statutes, rules, and standard processes when proceeding with an investigation.

22. What are the benefits resulting from EO GA-19 and the new emergency rule?

This Order continues to focus on several key benefits, including:

1. It allows physicians to continue practicing without limitation while ensuring that healthcare practitioners are utilizing minimum safe practice requirements;
2. By posting of the Notice, patients know what the minimum safe practice requirements are that they can expect when they see a physician or their delegate; and

3. It keeps adequate hospital capacity reserved, especially intensive care unit (ICU) beds if needed, available for the treatment of COVID-19 patients.