

TEXAS MEDICAL BOARD RULES
Texas Administrative Code, Title 22, Part 9
Proposed Changes

Chapter 177
Business Organizations

Draft May 2, 2012
V1-177-Initial Draft

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; or

(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

(21) U.S. Government and Military Forces

(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.

(3) Rural health clinics operated in accordance with 42 CFR 491.8 of the Rural Health Services Clinic Act.

(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 of 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.