

Rule Changes Effective November 26, 2017

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RULE CHANGES ADOPTED

CHAPTER 163. LICENSURE

The amendments to **§§163.2, 163.4, 163.6, 163.13**, and the repeal of **§163.7**, concerning Licensure.

The amendment to **§163.2**, concerning Full Texas Medical License, deletes language under subsection (d)(5)(A) setting forth requirements related to §163.7 of this title (relating to the Ten Year Rule). The amendments reflect the repeal of §163.7 of this title.

The amendment to **§163.4**, concerning Procedural Rules for Licensure Applicants, deletes language under subsection (d)(5)(D) related to §163.7 of this title. The amendments reflect the repeal of §163.7 of this title.

The amendment to **§163.6**, concerning Examinations Accepted for Licensure, deletes language under subsection (e)(1), requiring that an applicant pass the jurisprudence examination within three attempts. The changes are made pursuant to Senate Bill 674 (85th Legislature, Regular Session).

The repeal of **§163.7**, concerning Ten Year Rule, repeals requirements that an applicant have 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. The amendments remove an unnecessary impediment to licensure for physicians who have maintained competency through the active practice of medicine, and otherwise meet all general eligibility requirements.

The amendment to **§163.13**, concerning Expedited Licensure Process, adds a new subsection (b), creating an expedited licensing process for out-of-state psychiatrists. The new language is in accordance with Senate Bill 674, 85th Legislative Regular Session, which requires the Board to create an expedited licensing process for applicants who hold an unrestricted license to practice medicine issued in another state, are board certified in psychiatry, and meet other general eligibility requirements.

CHAPTER 171. POST GRADUATE TRAINING PERMITS

The amendment to **§171.3**, concerning Physician-in-Training Permits, adds language to subsection (d)(2)(C), clarifying that a physician-in-training permit shall expire not only upon the date the permit holder obtains full licensure, but temporary or limited licensure as well. The purpose of the amendment is to align the language of §171.3 with §163.9 of this title (relating to Only One License), which provides that a person may not have more than one license or permit at the same time, and that upon the issuance of any license or permit, all previously issued licenses and permits, including postgraduate training permits, shall be considered to be terminated.

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The amendments to **§172.4**, concerning State Health Agency Temporary License and **§172.8**, concerning Faculty Temporary License.

The amendments to **§172.4**, deletes language under paragraphs (1)(C) and (2)(A) referencing §163.7 of this title (relating to the Ten Year Rule). The amendments reflect the repeal of §163.7 of this title.

The amendments to **§172.8**, deletes language under subsection (a)(2), requiring that an applicant pass the jurisprudence examination within three attempts. The changes are made pursuant to Senate Bill 674 (85th Legislature, Regular Session). Further amendments to subsection (k), delete language referencing §163.7 of this title. The amendments reflect the repeal of §163.7.

CHAPTER 174. TELEMEDICINE

The amendments to **§§174.1 - 174.3, 174.5 - 174.9** and new **§174.4**, concerning Mental Health Services and the repeal of **§§174.10 - 174.12**, concerning Telemedicine.

The title of Chapter 174 is renamed to "Telemedicine and Mental Health Services" and creates a new Subchapter A, "Telemedicine" and a new Subchapter B, "Mental Health Services".

The amendments to **§174.1**, concerning Purpose, add language that the purpose of the telemedicine rules is to clarify the requirements of Chapter 111 of the Texas Occupations code related to the provision of telemedicine health services.

The amendments to **§174.2**, concerning Definitions, delete multiple definitions dealing with telemedicine while adding new definitions of "Prescription," "Store and forward technology," "Telehealth services," "Telemedicine medical services," and "Ultimate user" to comport with the new definitions in Senate Bill 1107 dealing with telemedicine and telehealth services.

The amendments to **§174.3**, concerning Prevention of Fraud and Abuse, delete the current detailed requirements for protocols to prevent fraud and abuse through the use of telemedicine services, and substitute a requirement that a consistent physician's protocols to prevent fraud and abuse must be consistent standard established by the Health and Human Services Commission pursuant to §531.02161 of the Government Code.

New **§174.4**, concerning Notice to Patients, adds language requiring physicians communicating with patients by electronic communications other than telephone or facsimile to provide patients with written or electronic notification of the physician's privacy practices prior to providing telemedicine services. The amendment further requires that the notices of privacy practice be consistent with federal standards under 45 CFR Parts 160 and 164. Additionally, the amendments require physicians providing telemedicine medical services to provide patients with notice of how to file a complaint with the Board.

The amendments to **§174.5**, concerning Issuance of Prescriptions, sets out requirements for valid prescriptions issued as a result of a telemedicine medical service and limits the treatment of chronic pain through telemedicine medical services.

The amendments to **§174.6**, concerning Minimum Standards for the Provision of Telemedicine Medical Services, delete multiple requirements for providing telemedicine services and substitute simplified minimum requirements for providing a health care service or procedure as a telemedicine medical service that comport with Senate Bill 1107.

The amendments to **§174.7**, concerning Enforcement Authority rename the section and delete language related to providing telemedicine services under the Board's former definitions and requirements. The amendments clarify the Board's enforcement authority to investigation and discipline physicians for violations of statutes and rules to telemedicine services.

The amendments to **§174.8**, concerning State Licensure, rename the section, delete language related to evaluation and treatment of the patient superseded by SB 1107, and add language clarifying that physicians providing telemedicine services must possess a full Texas Medical license when treating residents of Texas.

The amendments to **§174.9**, concerning Provision of Mental Health Services, delete former rules regarding the provision of mental health care through telemedicine services and substitute simplified requirements for providing mental health services. These requirements include: a requirement of licensure or certification; establishment of a provider/patient relationship; and a requirement to conform with the standard of care. The amendments make clear that technology may be used to provide mental health services to patients in a different location from the licensed or certified provider. The amendments also make clear that the Board may investigate and discipline, or appropriately refer provider to proper regulatory authority, for violations of rules related to the provision of mental health services.

The repeal of **§174.10**, concerning Medical Records for Telemedicine Medical Services, **§174.11**, concerning On Call Services, and **§174.12**, concerning State Licensure. The repeals are necessary to ensure that the Board rules comport with SB 1107 and are not duplicative of other Board rules related to the provision of telemedicine and telemedicine services.

CHAPTER 175. FEES AND PENALTIES

The amendments to **§175.1**, concerning Application and Administrative Fees; and **§175.2**, concerning Registration and Renewal Fees.

The amendment to **§175.1** deletes language tying fee calculation for the Prescription Drug Monitoring Program (PMP) to Article IX, §18.55 of House Bill 1, 84th Legislature, and adds language requiring fee calculation to be made in accordance with the Texas General Appropriations Act. The amendment will increase flexibility under the rules for any future PMP fee changes necessitated by amendments made to the Medical Board's cost allocation for PMP administration through the General Appropriations Act.

The amendment to **§175.2** deletes language tying fee calculation for the Prescription Drug Monitoring Program to Article IX, §18.55 of House Bill 1, 84th Legislature, and adds language requiring fee calculation to be in accordance with the Texas General Appropriations Act. The amendment will increase flexibility under the rules for any future PMP fee changes necessitated by amendments made to the Medical Board's cost allocation for PMP administration through the General Appropriations Act.

CHAPTER 178. COMPLAINTS

The amendments to **§178.3**, concerning Complaint Procedure Notification.

The amendment to **§178.3** deletes the word "Procedure" from the title, deletes language related to the type size of printed copies of the board approved notification statement regarding complaints on billing statements and written contracts for services. The amendment adds language setting allowing telemedicine providers to provide the Board approved complaint notification statement through: a prominently displayed link on a website, in a provider app; by recording, or in a bill for services.

CHAPTER 187. PROCEDURAL RULES

The amendments to **§187.16**, concerning Informal Show Compliance Proceedings (ISCs), **§187.18**, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance, and **§187.83**, concerning Proceedings for Cease and Desist Orders.

The amendments to **§187.16** set out a finding that the statutory minimum requirements related to the Informal Show Compliance Proceedings (ISCs), as set out in the Texas Occupations Code, §164. et.seq.,

are comprehensive and complete. The amendments state that rules related to ISC proceedings will be promulgated only as necessary to be consistent with statutory requirements. The amendment deletes provisions duplicative of §164 of the Texas Occupations Code and deletes an incorrect reference to providing 30 rather than 45 days notice prior to an ISC. The amendments also changes the title of rule 187.16 to read “Informal Show Compliance (ISC) Information and Notices,” as this title is more descriptive of the contents of the rule and abbreviated the references to “informal meetings” and “Informal Show Compliance Proceedings” to “ISC.”

The amendment to **§187.18**, deletes ISC requirements duplicative of those set out in §164.003 and §164.0031 of the Occupations Code and clarify the procedures for conducting an ISC. The amendment also changes the title of section 187.18 to read “ISC Scheduling, Process and Procedures,” as this is more descriptive of the contents of the rule and adopted a change to the preamble of subsection (d) to read “ISCs shall be conducted in accordance with §164.003 and §164.0032 of the Act. In addition to ISC requirements under these laws, the board representative may also....”

The amendment to **§187.83**, corrects a typographical error in a citation to Texas Occupations Code §164.052.

CHAPTER 190. DISCIPLINARY GUIDELINES

The amendments to **§190.8(1)(L)**, concerning Violation Guidelines.

The amendment deletes language and requirements related to establishing a defined physician-patient relationship before prescribing any dangerous drug or controlled substance, and substitutes language requiring establishing a valid practitioner-patient relationship, a term defined by SB 1107 in amended Texas Occupations Code §111.005.