

The Texas Medical Board (Board) proposes the repeal of current Chapter 189, concerning Compliance Program, §§189.1 – 189.16.

The Board also proposes new Chapter 189, concerning Medical Physicists, §§189.1 – 189.13.

Also, the Board contemporaneously proposes the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 – 160.5, §§160.7 – 160.31.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 189 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §189.1, Definitions, defines terms used in new Chapter 189.

New §189.2, Meetings, explains how Advisory Committee meetings are conducted.

New §189.3, General Requirements for Licensure, outlines the general requirements and specific documentation necessary for an applicant to obtain a Medical Physicist license.

New §189.4, Required References, explains the requirement for an applicant to submit three professional references to obtain a license.

New §189.5, Acceptable Education for Licensure, outlines the applicant's eligibility requirements including specific educational programs and degrees, as well as specified credit hours necessary to apply for Medical Physicist licensure.

New §189.6, Specialty Examinations, details the specific examination in each specialty that the applicant must pass to obtain a Medical Physicist license.

New §189.7, Current Clinical Practice, outlines the process of submission of an applicant's professional or work history information, demonstrating fulfillment of the minimum practice requirements to apply for licensure as set forth under §602.207 of the Act.

New §189.8, Temporary License, explains the requirements and process of the applicant to obtain a temporary Medical Physicist license.

New §189.9, Procedural Rules for Licensure Applicants, states that applications will be processed in accordance with Chapter 602 of the Act. The section also describes the Executive Director's review of the licensure applications and the several options which may be offered to the applicant.

New §189.10, Registration and Renewal of Certificate, details the process of renewal of the registration of the licensee's license on a biennial basis and the basis for cancellation of the certificate.

New §189.11, Biennial Continuing Education (CE) Requirements, describes the CE courses that the license holder is required to complete biennially and the specified number of hours. Exemptions for CE requirements are also detailed.

New §189.12, Reporting Requirements, states that a Medical Physicist must report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

New §189.13, Procedural Rules, describes the applicability of Chapter 179, regarding Procedural Rules; Chapter 177, regarding Complaints and Investigation; Chapter 180, regarding Disciplinary Guidelines and Sanctions; and Chapter 181, regarding Compliance.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/VNDveErjnx>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

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§189.1. Purpose and Scope.

§189.2. Definitions.

§189.3. Responsibilities of Probationers.

§189.4. Limitations on Physician Probationer's Practice.

§189.5. Compliance Visits and Communications.

§189.6. Probation Appearances.

§189.7. Modification/Termination Hearings.

§189.8. Procedures Concerning Non-compliance.

§189.9. Grounds for Temporary Suspension or Automatic Suspension of Probationers.

§189.10. Drug Screens.

§189.11. Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.

§189.12. Suspended licenses.

§189.13. Investigative Reports.

§189.14. Receipt of Probationer's Address of Record and Contact Information.

§189.15. Determination of Successful Completion of an Order.

§189.16. Monitoring, Proctoring, or Supervising Physician/Professional's Recommendation for Competency Assessment.

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The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated, Chapter 602. No other statutes, articles or codes are affected by this proposal.

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§189.1. Definitions.

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

(1) Act -- Texas Occupations Code, Chapter 602.

(2) Board -- The Texas Medical Board.

§189.2. Meetings.

Advisory Committee meetings shall be conducted in compliance with §602.058 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

§189.3. General Requirements for Licensure.

(a) All applicants for a license must meet the requirements in §§602.203 and 602.207 of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$130.00 for a single specialty, \$50.00 for each additional specialty, and additional fees and surcharges as applicable; and

(3) required documentation, including but not limited to:

(A) an educational transcript;

(B) a current Board Certification;

(C) Professional Reference forms;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of medical physics for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS fingerprint report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence Examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a); and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

§189.4. Required References.

In accordance with §602.203(b)(4) of the Act, an applicant must submit three professional references as follows:

(1) If applying for a single specialty, an applicant must submit references from at least two medical physicists and one licensed physician practicing in the same specialty.

(2) If applying for two or more specialties, an applicant must submit references from at least two medical physicists and a licensed physician practicing in the same specialty area(s). One of the medical physicists must be practicing in at least one of the specialty areas, and the other medical physicist must practice in the other specialty area(s).

(c) If applying for a license in medical health physics, the physician providing a reference must practice in diagnostic radiology, radiation oncology, or nuclear medicine.

§189.5. Acceptable Education for Licensure.

(a) To be eligible for a license, an applicant must have earned a master's or doctoral degree from:

(1) a medical physics program accredited by the Commission on Accreditation of Medical Physics Education Programs (CAMPEP);

(2) an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses; or

(3) an accredited university in physical science (including chemistry), applied mathematics or engineering with 20 hours upper division or graduate level physics courses. For the purpose of this clause, upper division semester hour credits are defined as third-level or above (junior, senior, or graduate) course work completed from a regionally accredited college or university.

(b) Degrees received at international universities shall be acceptable only if such course work could be counted as transfer credit by regionally accredited universities. An applicant with an international degree must provide:

(1) an International Credential Evaluation from the Foreign Credential Service of America (FCSA);

(2) a credential evaluation from an American Board of Radiology (ABR) approved Credentials Evaluation organization; or

(3) another similar entity as approved by the board.

§189.6. Specialty Examinations.

(a) An applicant under this section must successfully pass one of the following examinations in each specialty for which an application is submitted:

(1) Therapeutic Radiological Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in therapeutic radiological physics, radiological physics or therapeutic medical physics;

(B) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in radiation oncology physics;

(2) Medical Nuclear Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in medical nuclear physics radiological physics or nuclear medical physics;

(B) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(C) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation or in molecular imaging science; or

(D) the Canadian College of Physicists in Medicine or its successor organization in nuclear medicine physics;

(3) Diagnostic Radiological Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in diagnostic radiological physics, radiological physics or diagnostic medical physics;

(B) the American Board of Medical Physics or its successor organization in diagnostic imaging physics or diagnostic radiology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in diagnostic radiology health physics;

(4) Medical Health Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in radiological physics;

(B) the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(C) the American Board of Medical Physics or its successor organization in medical health physics; or

(D) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection.

§189.7. Current Clinical Practice.

(a) Applicants must submit professional or work history evaluations demonstrating fulfillment of the minimum practice requirements set forth under §602.207 of the Act. “Current clinical practice” may be demonstrated by:

(1) currently practicing as a medical physicist;

(2) enrollment as a student at an acceptable approved school; or

(3) appointment as an active teaching faculty member at an approved school.

§189.8. Temporary License.

(a) Applicants for a temporary license must meet the educational requirements under §189.5 of this title.

- (b) A temporary license shall be issued for each specialty for a one-year period.
- (c) The holder of a temporary license may apply for up to twelve temporary licenses.
- (d) Upon application for the seventh temporary license, the Board shall perform an evaluation of an applicant's progress toward certification in a medical physicist area of specialty. This evaluation will include, but is not limited to:
- (1) information on the applicant's current participation in any medical physicist training program;
 - (2) identification of the medical physicist specialty/specialties an applicant is working toward;
 - (3) the number of certification examinations taken during the previous six years and the results of said examinations;
 - (4) any medical physicist certification(s) successfully completed during the previous six years. If this evaluation determines that satisfactory progress has not been made toward completion of a medical physicist certification, an application for an additional temporary license may be denied.
- (e) The board may, in its discretion, allow the holder of a temporary license to apply for more than twelve licenses.
- (f) The application for a temporary license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.
- (g) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area. The work experience must be completed in accordance with a supervision plan approved by the board, signed by both the supervisor and the temporary license holder. In order to be approved as a supervisor, the licensed medical physicist must:
- (1) have an unrestricted license or certificate in Texas;
 - (2) have no pending investigation;
 - (3) not be a relative or family member;
 - (4) have never had a license or certificate revoked, suspended, restricted, or cancelled for cause; and
 - (5) meet any other eligibility criteria established by the board.
- (h) A supervisor shall supervise no more than two temporary license holders or their full-time equivalents, unless in a CAMPEP approved medical physics training.
- (i) Applicants for a temporary license must submit:
- (1) a board required application form; and
 - (2) the required fee.
- (j) Temporary licenses will be terminated upon:

- (1) issuance of a full license; or
- (2) violation of conditions of a temporary license.

§189.9. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with Chapter 602 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may within 20 days of notice of non-approval request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of receipt of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§189.10. Registration and Renewal of Certificate.

(a) Licensees must renew the registration of their license on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee and additional fees and surcharges, as applicable;

(A) \$260.00 for the first specialty;

(B) \$50.00 for each additional specialty, if applicable; and

(3) completing biennial Continuing Education (CE) required under §189.11 of this subtitle; and

(4) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§189.11. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete Continuing Education (CE) as follows:

(1) A licensee must complete 24 contact hours of CE recognized by the board. A contact hour shall be defined as 50 minutes of attendance and participation.

(2) Recognized CE includes:

(A) programs sponsored by American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), Health Physics Society (HPS), Society of Nuclear Medicine and Molecular Imaging (SNMMI), Radiological Society of North America (RSNA), American Society for Therapeutic Radiology and Oncology (ASTRO), or other professional organizations acceptable to the board;

(B) a program of study in medical physics that is accredited by the American Association of Physicists in Medicine Commission on Accreditation of Medical Physicist Education Programs;

(C) participation in medical physics related courses, refresher courses, conferences, and seminars sponsored by state and private universities that have an accredited graduate medical physics program;

(D) a course of study from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering; and

(E) other courses that enhance the practice of medical physics and are acceptable to the board.

(3) A medical physicist shall be presumed to have complied with this section if in the preceding 24 months, they obtain board certification or recertification by the American Board of Radiology (ABR), American Board of Medical Physics (ABMP), American Board of Science in Nuclear Medicine (ABSNM), or American Board of Health Physics (ABHP).

(b) Military service members are subject to the same CE requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(c) Exemptions for CE requirements.

(1) Requests for exemptions from completing the CE requirements must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the state;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§189.12. On-Going Reporting Requirements.

A medical physicist must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

§189.13. Procedural Rules.

(a) The Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls, including, but not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.