

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

Chapter 172

Temporary and Limited Licenses

Page 1 of 18

Draft – July 22, 2011

V3-172- Draft

Chapter 172. Temporary and Limited Licenses

Subchapter A. General Provisions and Definitions

§§172.1-172.2

§172.1. Purpose.

Pursuant to §155.104 of the Medical Practice Act, the Board is authorized to adopt rules relating to granting temporary and limited licenses. This chapter is promulgated to provide criteria for the eligibility and discipline of physicians who apply for and are granted temporary and limited licenses.

§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

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

Chapter 172

Temporary and Limited Licenses

Page 2 of 18

Draft – June 29, 2011

V1-172-Initial Draft

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 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 dilutant, 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.

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

Chapter 172

Temporary and Limited Licenses

Page 3 of 18

Draft – June 29, 2011

V1-172-Initial Draft

(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.

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

Chapter 172

Temporary and Limited Licenses

Page 4 of 18

Draft – June 29, 2011

V1-172-Initial Draft

Subchapter B. Temporary Licenses

§§172.3-172.11

§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,

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

Chapter 172

Temporary and Limited Licenses

Page 5 of 18

Draft – June 29, 2011

V1-172-Initial Draft

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.

§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 §163.1(a)(9)(K) of this title (relating to Definitions of Examinations accepted by the board for licensure); 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."

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

Chapter 172

Temporary and Limited Licenses

Page 6 of 18

Draft – June 29, 2011

V1-172-Initial Draft

§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, for educational purposes or in order to practice charity care to underserved populations in Texas. 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 with an unrestricted license in Texas;

(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) present written verification from the supervising physician as to the purpose for the requested permit.

(2) 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 with an unrestricted license in Texas;

(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,

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

Chapter 172

Temporary and Limited Licenses

Page 7 of 18

Draft – June 29, 2011

V1-172-Initial Draft

may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

§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.

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

Chapter 172

Temporary and Limited Licenses

Page 8 of 18

Draft – June 29, 2011

V1-172-Initial Draft

(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.

§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.

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

Chapter 172

Temporary and Limited Licenses

Page 8 of 18

Draft – June 29, 2011

V1-172-Initial Draft

§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, Tex. Occ. 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 three 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 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 §162.00, 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 a 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 a 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

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

Chapter 172

Temporary and Limited Licenses

Page 10 of 18

Draft – June 29, 2011

V1-172-Initial Draft

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** [~~Three~~] 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** [~~three~~] years of approved postgraduate training if, at the conclusion of this **two** [~~three~~] -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** [~~three~~] 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** [~~three~~] years of an approved postgraduate residency program as described in §171.3(a)(1) of this title (relating to

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

Chapter 172

Temporary and Limited Licenses

Page 11 of 18

Draft – June 29, 2011

V1-172-Initial Draft

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.

§172.9. Postgraduate Research Temporary License.

The board may issue a temporary license to practice medicine to a medical school graduate, who holds a research appointment at a Texas medical school, in a program approved by the board, under the following terms and conditions listed in paragraphs (1) - (6) of this section.

- (1) The research must be in clinical medicine and/or the basic sciences of medicine.
- (2) The research must be conducted in the Texas medical school or its affiliated institutions.
- (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 Texas medical school who has an active unrestricted Texas medical license.
- (5) The research appointment 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 year and is not renewable.

§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.

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

Chapter 172

Temporary and Limited Licenses

Page 12 of 18

Draft – June 29, 2011

V1-172-Initial Draft

(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.

§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.

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

Chapter 172

Temporary and Limited Licenses

Page 13 of 18

Draft – June 29, 2011

V1-172-Initial Draft

Subchapter C. Limited Licenses

§§172.12-17

§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 ;

~~[be certified in a medical specialty pursuant to the standards of and approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists and Boards of Certification;]~~

(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, any grounds for denial of an application for a full license, 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).

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

Chapter 172

Temporary and Limited Licenses
Page 14 of 18

Draft – June 29, 2011
V1-172-Initial Draft

(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 Section 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

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

Chapter 172

Temporary and Limited Licenses
Page 15 of 18

Draft – June 29, 2011
V1-172-Initial Draft

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(f)(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)(9) 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:

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

Chapter 172

Temporary and Limited Licenses

Page 16 of 18

Draft – June 29, 2011

V1-172-Initial Draft

(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.

§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, Tex. Occ. 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

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

Chapter 172

Temporary and Limited Licenses
Page 17 of 18

Draft – June 29, 2011
V1-172-Initial Draft

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.

§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; or
 - (2) the 270th day after the date the provisional license was issued.
- (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 for review, but due to a force majeure, the Licensure Committee must defer action until the Committee's next scheduled meeting, however, the provisional license is set to expire before the next committee meeting.

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

Chapter 172

Temporary and Limited Licenses
Page 18 of 18

Draft – June 29, 2011
V1-172-Initial Draft

§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.