

The Texas Medical Board (Board) proposes the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 – 160.5, 160.7 – 160.31.

The Board also proposes new Chapter 160, concerning General Provisions. This includes new Subchapter A, concerning General §§160.1 -160.7, and Subchapter B, concerning Rulemaking, 160.10, 160.11.

Also, the Board contemporaneously proposes the repeal of current Chapter 161, concerning General, §§161.1 – 161.6, §161.7, §161.10, §161.11.

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

The proposed new sections are as follows:

SUBCHAPTER A. GENERAL.

New §160.1, Definitions, defines terms used throughout the Board's rules.

New §160.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §160.3, Officers of the Board, explains the roles and duties of the Board President, Vice-President, and Secretary-Treasurer.

New §160.4, Meetings, explains how Board meetings are conducted.

New §160.5, Committees, explains the four standing committees of the Board. It also explains when other committees may be appointed.

New §160.6, District Review Committees, explains the four districts of the Board established by the Medical Practice Act, as well as the Texas counties belonging to each.

New §160.7, Memorandum of Understanding with Texas Physician Health Program, explains the authority for the agreement between the Board and the Texas Physician Health Program (TX PHP).

SUBCHAPTER B. RULEMAKING.

New §160.10, Petition for Rulemaking, describes the process used by the Board when a member of the public initiates a petition for rulemaking under the Administrative Procedures Act.

New §160.11, Input in Rulemaking, describes public input in the Board's rulemaking process.

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 repeals 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/fKF0p6vbfY>. 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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§160.1. Purpose.

§160.2. Definitions.

§160.3. Meetings.

§160.4. Specialty License.

§160.5. Exemptions from License Requirement.

§160.7. Qualifications for Licensure.

§160.8. Application Procedures.

§160.9. Licensure Documentation.

§160.10. Temporary Licensure.

§160.11. Provisional License.

§160.12. License Renewal.

§160.13. Criminal History Record Information Required for Renewal.

§160.14. Relicensure.

§160.15. Licenses and License Holder Duties.

§160.16. Continuing Education Requirements.

§160.17. Medical Physicist Scope of Practice.

§160.18. Complaints and Complaint Procedure Notification.

§160.19. Subpoenas; Confidentiality of Information.

§160.20. Grounds for Denial of Licensure and for Disciplinary Action.

§160.21. Disciplinary Guidelines.

§160.22. Procedural Rules for Hearings.

§160.23. Disciplinary Process or Discipline of Medical Physicists.

§160.24. Code of Ethics.

§160.25. Impaired Medical Physicists.

§160.26. Compliance.

§160.27. Voluntary Relinquishment or Surrender of a License.

§160.28. Administrative Procedure.

§160.29. Criminal Convictions Related to Profession of Medical Physics.

§160.30. Construction.

§160.31. Exemption from Licensure for Certain Military Spouses.

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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. The new rules are 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 re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER A GENERAL

§160.1. Definitions.

The following words and terms used in this Part shall have the following meaning:

- (1) Act -- Tex. Occ. Code Ann. Title 3 Subtitle B, also known as the Medical Practice Act.
- (2) Board -- Texas Medical Board
- (3) Licensee -- A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission to practice in the state of Texas as authorized by law.

§160.2. Functions and Duties.

(a) The board duties and functions include:

- (1) establishing standards for the practice of medicine;
- (2) regulating the practice of medicine through the licensure and discipline of physicians;
- (3) reviewing, modifying, proposing, and adopting rules, including those for advisory boards and advisory committees subject to the board oversight;
- (4) considering, reviewing, and approving policy and changes as necessary; and
- (5) acting as a resource concerning proposed legislation.

(b) Individual Duties and Obligations. Board members are required to:

- (1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;
- (2) comply with Chapter 152 of the Act;

- (3) maintain the highest levels of professional and ethical conduct;
 - (4) refrain from making any statement that implies that the board member is speaking for the board unless the board has given the board member such authority; and
 - (5) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.
- (c) Failure to comply with any of the requirements set forth in Chapter 152 of the Act or this section of the rules, will be reported to the office of the Governor.

§160.3. Officers of the Board.

(a) Officers are selected through a process beginning with nomination, including self-nomination, followed by an election. A simple majority vote of board members is required for election.

(b) Duties of the President include:

- (1) presiding at board meetings;
- (2) reviewing the board agenda;
- (3) appearing in legislative matters;
- (4) appointing committee chairs and members, including advisory committees of the board;
- (5) conducting the annual performance review of the executive director; and
- (6) performing other duties pertaining to the office of President.

(c) Duties of the Vice President include:

- (1) acting in the absence or incapacity of the President;
- (2) serving as President in the event of a vacancy; and
- (3) performing other duties as assigned by the board.

(d) Duties of the Secretary-Treasurer include:

- (1) acting in the absence or incapacity of the President and Vice President;
- (2) serving as President in event of President and Vice President vacancies; and
- (3) performing other duties as assigned by the board.

(e) In the event that all officers are absent or incapacitated, the board may elect another member to serve as interim President for the duration of the absence or incapacity.

(f) The board shall hold an election to fill any vacant officer position.

§160.4. Meetings.

(a) Board meetings are conducted:

- (1) in accordance with Chapter 551 of the Tex. Gov't. Code;
- (2) in general accordance with Robert's Rules of Order Newly Revised;

(b) Special meetings may be called by the President, by resolution of the board, or upon written request by five members of the board.

(c) The board may only act upon a simple majority vote of its members present and voting. No proxy votes allowed.

§160.5. Committees.

(a) There are four standing committees of the board.

(1) Executive Committee:

(A) acts on urgent matters between board meetings as needed;

(B) recommends, reviews and develops agency goals, objectives, rules, policies, procedure, legislative issues, and other matters brought to their attention;

(C) delegates tasks to other committees; and

(D) assists in preparation and presentation of information before the legislature as needed.

(2) Finance Committee reviews and makes recommendations regarding finances and the budget.

(3) Disciplinary Process Review Committee:

(A) reviews and makes recommendations to resolve complaints, investigations, and cases, and to hear complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(4) Licensure Committee:

(A) reviews applications and makes recommendations for licensure, certification, and permits of physicians, physicians in training, Acudetox Specialists, Surgical Assistants, Medical Perfusionists, Medical Physicists, and non-profit health organizations; and

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary

(b) The President, in consultation with the board, may appoint other committees as deemed necessary.

§160.6. District Review Committees.

(a) Members of District Review Committees shall comply with Chapter 163 of the Act.

(b) District Review Committee regions are designated as follows:

(1) District 1 - Brazoria, Galveston, and Harris counties.

(2) District 2 - Anderson, Angelina, Austin, Bowie, Brazos, Camp, Cass, Chambers, Cherokee, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Grimes, Hardin, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Leon, Liberty, Limestone, Madison, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola,

Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Tyler, Trinity, Upshur, Van Zandt, Walker, Waller, and Wood counties.

(3) District 3 - Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Brewster, Briscoe, Brown, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collinsworth, Comanche, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallas, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kent, Kimble, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Mason, Menard, McCulloch, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Yoakum, and Young counties.

(4) District 4 - Aransas, Atascosa, Bandera, Bastrop, Basque, Bee, Bell, Bexar, Blanco, Brooks, Bureson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal, Coryell, Dewitt, Dimmit, Duval, Edwards, Falls, Fayette, Fort Bend, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hamilton, Hayes, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleburg, Lampasas, LaSalle, Lavaca, Lee, Live Oak, Llano, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Nueces, Real, Refugio, San Patricio, Starr, Travis, Uvalde, Valverde, Victoria, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala counties.

§160.7. Memorandum of Understanding with Texas Physician Health Program.

By rule, the board and the Texas Physician Health Program (TXPHP) shall adopt a memorandum of understanding (MOU) in accordance with §167.012 of the Act.

SUBCHAPTER B RULEMAKING

§160.10 Petition for Rulemaking

(a) As authorized by §2001.021(a) of the Texas Government Code, an interested person by petition to the board may request the adoption of a rule.

(b) A person must submit a petition for adoption of rules in writing via mail or hand-delivery (addressed to the Executive Director or General Counsel of the board) or email (sent to rules.development@tmb.state.tx.us).

(c) The petition shall contain the following information as applicable and except as may be waived by the board:

(1) the name and contact information of the petitioning party and their interest in the adoption of the rule;

(2) a statement of the legal authority and jurisdiction under which the petition is filed;

(3) the exact language of the proposed rule requested to be adopted;

(4) a statement and legal references regarding whether, to the petitioner's knowledge, the requested rule is in conflict with any existing rule, ruling, order or opinion of the board or any other rules or statutes; and

(5) a statement of the purpose of the requested rule.

(d) During the sixty (60) day period following receipt of the petition by the board, the board or one of its committees shall meet to consider the petition. Not less than ten (10) days prior to such meeting, the board shall notify the petitioning party in writing of the date, time, and place the petition shall be considered.

(1) At this meeting, the petitioning party may be given an opportunity to present matters to the board or its committee, at the board's or committee's discretion.

(2) If the request is considered by the full board, the board shall decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the petition is denied, the board shall state its reasons for denial in writing to the petitioning party. Publication of the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the Texas Government Code.

(3) If the request is considered by a committee of the board, the committee shall decide whether to deny the petition or to recommend to the full board at its next meeting to publish the requested rule in the *Texas Register* for comment. If the petition is denied, the committee shall state its reasons for denial in writing to the petitioning party. A committee's recommendation to the full board to publish the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the Texas Government Code.

(4) At the next board meeting following the committee's recommendation to publish the requested rule for comment, the board shall consider the committee's recommendation. The board shall then decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the board decides to deny the petition, the board shall state its reasons for denial in writing to the petitioning party.

§160.11. Input in Rulemaking.

(a) When engaged in rulemaking the board will ensure:

- (1) adequate stakeholder input through notice of proposed rules on the TMB website;
- (2) a comment form is provided, when needed, on the TMB website; and
- (3) compliance with the applicable provisions of the Texas Administrative Procedures Act.

(b) For rules impacting other licensed occupations of advisory boards overseen by the board, the board will follow the process for rulemaking as set out in subsection (a) of this section and in:

- (1) applicable sections of the Texas Occupations Code for the specific regulated occupation; and
- (2) the Medical Practice Act.