

The Texas Medical Board (Board) adopts on an emergency basis the emergency amendment to 22 TAC §178.4(d) for purposes of the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 09 and amends certain reporting requirements under 22 TAC §178.4(d) for instances of physicians undertaking and performing non-urgent elective surgeries or procedures.

The emergency rule amendment is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under the authority of the Texas Occupations Code, §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.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Medical Practice Act, Chapters 151 and 164, Texas Occupations Code.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

§178.4. Complaint Initiation.

(a) A complainant may initiate a complaint by submitting the information concerning the complaint to the board. This information should include at a minimum:

(1) The name and contact information of the complainant;

(2) The name of the licensee against who the complaint is filed;

(3) The time and place of the alleged violation of the Act; and

(4) If applicable, the name and birth date of the patient who the physician has allegedly harmed.

(b) The board may file a complaint on its own initiative.

(c) The identity of a complainant, as well as the complaint itself, is part of the investigative information gathered by board employees and shall remain confidential. All complaints must

provide sufficient information to identify the source or the name of the person who filed the complaint. Confidentiality shall be waived only by a written statement of the complainant specifically waiving confidentiality or by the complainant testifying in a contested case hearing. Notwithstanding the previous provisions, the name and address of an insurance agent, insurer, pharmaceutical company or third-party administrator that files a complaint against a physician shall be reported to the subject physician within 15 days of receipt by the board, unless the notice would jeopardize an investigation.

(d) A peer review committee, licensee, and all other groups named in §§160.003, 204.208, 205.304, and 206.159 of the Act shall report relevant information to the board relating to the acts of the licensee in this state if, in their opinion, that licensee poses a continuing threat to the public welfare through the licensee's continued practice. The report shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based; and it shall be made to the board as soon as possible after the threat is identified and the relevant information can be assembled. Pursuant to Executive Order GA 09, and notwithstanding any other statute, rule or provision concerning timing or when a report must be made to the Board, any peer review committee, licensee, and other group, entity, or person named in §§160.003, 204.208, 205.304, and 206.159 of the Act shall be immediately required to report any physician scheduling to perform, preparing to perform, performing, or who has performed a non-urgent elective surgery or procedure, as defined in §187.57(c) of this subtitle, while Executive Order GA 09 is in effect, immediately to the board. This duty to report is mandatory whether any type of proceeding, inquiry, investigation, or action of any kind is being considered, has been initiated, or is on-going at a hospital, ambulatory surgical center, or any other facility or medical setting. All reporting under this emergency rule is subject to confidentiality under §§160.004-160.008 of the Act; immunity for civil liability under §160.010 of the Act; and the prohibitions against discipline and discrimination under §160.012 of the Act.