

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

Chapter 164
Physician Advertising

Draft – January 21, 2011
V2-164-Stakeholder Draft

§164.2 Definitions

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

(1) Advertising and advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of a physician. Advertising may include oral, written, broadcast, and other types of communications disseminated by or at the behest of a physician. The communications covered include, but are not limited to, those made to patients, prospective patients, professionals or other persons who might refer patients, and to the public at large. The communications covered include signs, nameplates, professional cards, announcements, letterheads, listings in telephone directories and other directories, brochures, radio and television appearances, and information disseminated on the Internet or Web.

(2) A testimonial - An attestation or implied attestation to the competence of a physician's service or treatment. Testimonials also include expressions of appreciation or esteem, a character reference, or a statement of benefits received. Testimonials are not limited to patient comments but may also include comments from colleagues, friends, family, actors, models, fictional characters, or other persons or entities.

(3) Applicant--an individual physician requesting recognition of his or her certifying board for the physician's advertising purposes or a certifying board requesting recognition as an entity for its diplomates.

(4) Application--An application is all documents and information necessary to complete an applicant's request including the following:

(A) forms or addenda furnished by the board, completed by the applicant, typed, printed in ink, or completed online if requiring a written response;

(B) documentation furnished by the certifying board as required;
and (C) the required fee.

§164.4 Board Certification

(a)-(i) (No change)

(j) Application for board certification approval.

(1) Applicants for recognition of board certification under subsection (b) shall complete a written application and payment of an application fee as set out in Section 175.1 of this title (relating to Application Fees).

(2) Applicants whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited. Any further request for board certification recognition will require submission of a new application and inclusion of the current application fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;
(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) The reviewing committee requires an applicant to meet specific additional requirements for approval and the application will expire prior to deadline established by the Committee; or

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation.

(3) If the executive director determines that an application meets all qualifications, the application shall be presented to a committee of the board for review and approval.

(4) If the Executive Director determines that the applicant does not clearly meet all requirements, the executive director shall notify the applicant and the applicant may appeal that decision to a committee of the board.

(5) Disapproval Determination.

(A) If a committee of the board or the full board determines that an applicant's certifying board does not meet the board's requirements for approval, the applicant shall be notified of the committee's determination.

(B) If an applicant's certifying board is disapproved by the board, the applicant may request a rehearing of the application before a committee of the board. The request must be made within 20 days receipt of notice of the committee's determination. It is at the discretion of the committee whether to grant a rehearing. The request for rehearing must be based on information not previously presented to or considered by the board.

(6) A certifying board approved by the board under this subsection must be reviewed every five years from the date of initial approval and the board must obtain information of any substantive changes in the certifying board's requirements for diplomates since the certifying board was last reviewed by the board. In addition, a renewal fee as set out Section 175.2 (relating to Registration and Renewal Fees) must be paid by an applicant to have the certifying board reviewed.

§164.6.Required Disclosures on Websites.

(a) Disclosure. Physician medical practice sites must clearly disclose:

- (1) ownership of the website;
- (2) specific services provided;

- (3) office address and contact information;
 - (4) licensure and qualifications of physician(s) and associated health care providers;
 - (5) fees for online consultation and services and how payment is to be made;
 - (6) financial interest in any information, products, or services;
 - (7) appropriate uses and limitations of the site, including providing health advice and emergency health situations;
 - (8) uses and response times for e-mails, electronic messages, and other communications transmitted via the site;
 - (9) to whom patient health information may be disclosed and for what purpose;
 - (10) rights of patients with respect to patient health information; and
 - (11) information collected and any passive tracking mechanisms utilized.
- (b) Accountability. Medical practice sites must provide patients with a clear mechanism to:
- (1) access, supplement, and amend patient-provided personal health information;
 - (2) provide feedback regarding the site and the quality of information and services; and
 - (3) register complaints, including information regarding filing a complaint with the **Texas Medical Board** [~~Texas State Board of Medical Examiners~~] as provided for in Chapter 178 of this title (relating to Complaints).
- (c) Advertising/Promotion of Goods or Products. Advertising or promotion of goods or products from which the physician receives direct remuneration or incentives is prohibited.
- (d) This section applies only to licensees who bill for services provided via the Internet .**