

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

Chapter 195
Pain Management Clinics

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195.2. Certification of Pain Management Clinics.

(a) Application for Certification.

(1) Certification requirement. Effective September 1, 2010, a pain management clinic may not operate in Texas without obtaining a certificate from the board. A physician who owns or operates a pain management clinic shall submit an application on a form prescribed by the board. If a clinic has more than one physician owner, then only the medical director must file an application with the board. Certificates issued pursuant to this subsection are not transferable or assignable. If there is more than one physician owner of the clinic, only the primary physician owner shall be required to register with the board.

(2) Determination of Eligibility by the Executive Director. The executive director shall review applications for certification and may determine whether an applicant is eligible for certification or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a certificate by the executive director pursuant to 167.001 - 167.202 of the Act or this chapter, the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(3) Ineligibility Determination.

(A) If the board, upon recommendation by a committee of the board, determines that an applicant is ineligible for certification, the applicant shall be notified of the board's determination and given the option of appealing the determination to State Office of Administrative Hearings (SOAH)~~[or request a rehearing]~~. An applicant has 20 days from the date the applicant receives notice of the committee's determination to appeal to SOAH ~~[or request rehearing]~~.

(B) If the applicant timely requests a SOAH hearing, the applicant must file a petition with SOAH appealing the determination and shall comply with all other provisions relating to formal proceedings as set out in Chapter 187, Subchapter D. If an applicant subsequently withdraws the appeal, the matter shall be referred to the full board to render a final determination on the application. ~~[the matter shall be referred to the agency's legal division.]~~

~~[(C) Requests for rehearing must be based on information not previously presented to or considered by the board. It is at the discretion of the committee whether to grant a rehearing. If committee does not grant a rehearing, then the applicant may appeal to SOAH.]~~

(D) If the applicant does not timely request an appeal to SOAH ~~[or a rehearing]~~, the board's determination shall be shall become administratively final at the next scheduled board meeting.

(E) A determination of ineligibility by the board shall be in writing and made available to the public.

(4) Withdrawal. Applicants for certificates may withdraw their applications at any time, unless:

(A) the executive director has made a determination of ineligibility;

(B) the executive director has referred an application to a committee of the board for a determination of eligibility and the committee has determined that the applicant is not exempt

from the requirements of 195.4 of this title (relating to Operation of Pain Management Clinics) or is ineligible for a certificate; or

(C) the applicant is under investigation by the board for inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(5) Temporary Suspension of Certificate. A temporary suspension hearing for a clinic shall be held pursuant to the procedures of Chapter 187, Subchapter F of this title (relating to Temporary Suspension Proceedings). Evidence of continuing threat to public health and welfare shall include evidence that a clinic is in violation of this chapter regarding eligibility or operation or that the clinic's staff is dispensing, administering, or prescribing medications in a nontherapeutic manner.

(6) Confidentiality of Records. All records in the possession of or received or gathered by the board relating to an application for or investigation of a pain clinic shall be considered confidential under 164.007 of the Texas Occupations Code and not subject to release under the Public Information Act, Chapter 552 of the Texas Government Code.

(7) Expiration. An application that has been filed with the board in excess of one year will be considered expired. Any further request for certification will require submission of a new application. 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) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(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;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events.

(b) Eligibility for Certification.

(1) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(A) have been denied, by any jurisdiction, a license issued by the Drug Enforcement Agency or a state public safety agency under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(B) have held a license issued by the Drug Enforcement Agency or a state public safety agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(C) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(2) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(A) an offense that constitutes a felony; or

(B) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Texas Occupations Code 551.003(11).

(3) As a requirement for eligibility, a physician applying for a pain management certificate must meet the active practice of medicine definition as defined under 163.11 of this title (relating to Active Practice of Medicine).

(c) Expiration of Certificate.

(1) Certificates shall be valid for two years.

(2) Certificate holders shall have a 180-day grace period from the expiration date to renew the certificate, however, the owner or operator of the clinic may not continue to operate the clinic while the permit is expired.

(d) Certificate Renewal.

(1) Certificates must be timely renewed. If a certificate is not renewed before the expiration of the grace period, the certificate will be automatically cancelled and the owner or operator of the clinic must reapply for original certification.

(2) A certificate may not be cancelled for nonrenewal or by request, while a clinic is under investigation with the board.

(e) The board shall coordinate the certification required under this section with the registration required under the Medical Practice Act, Texas Occupations Code, Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.