

The Texas Medical Board (Board) adopts on an emergency basis the emergency amendment to 22 TAC §187.57(c) for purposes of the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 09 and amends the definition of “Continuing Threat” under 22 TAC §187.57(c).

The amended rule 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.

The following emergency rule amends 22 TAC §187.57(c) as follows:

§187.57. Charge of the Disciplinary Panel

(a) The disciplinary panel shall determine from the evidence or information presented to it whether a person's continuation in practice constitutes a continuing threat to the public welfare.

(b) If the disciplinary panel determines that a person's continuation in practice would constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license of that person.

(c) In accordance with the Act, §151.002(a)(2), "continuing threat to the public welfare," means a real danger to the health of a physician's patients or the public caused through the physician's lack of competence, impaired status, performance of a non-urgent elective surgery or procedure, or failure to care adequately for the physician's patients. A real danger exists if patients have an exposure to or risk of injury that is not merely abstract, hypothetical or remote and is based on

actual actions or inactions of the physician. Information that the physician has committed similar actions or inactions in the past shall be considered by the disciplinary panel.

(i) For purposes of this rule all licensed health care professionals shall postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician.

(ii) Provided, however, that this prohibition shall not apply to any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID- 19 disaster.

(d) The disciplinary panel may also temporarily restrict or suspend a license of a person upon proof that a person has been arrested for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or

(4) Section 21.11, Penal Code (indecenty with a child).