

Notice of proposed rule amendments and statement regarding abortion ban exceptions

The Texas Medical Board (TMB) proposes amendments to 22 TAC 165 by adding Subchapter B, new rule section 165.7-165.9 concerning Exceptions to the Abortion Ban.

The proposed rules have been published on the Board's website at the following link:
<https://www.tmb.state.tx.us/page/proposed-rule-changes>

The public may submit written comment on the proposed rule using this [web form](#).

The proposed rules do not regulate or prohibit abortion but are being promulgated to clarify the regulatory analysis to be utilized by the TMB.

The rules as drafted reaffirm that when investigating any complaint, it will be conducted consistent with the standard processes and disciplinary authority that applies to all complaints and investigations.

For more information and updates on the rulemaking process, visit:
<https://www.tmb.state.tx.us/page/proposed-rule-changes>

Statement from TMB President Dr. Sherif Zaafran, M.D., FASA

“The Texas Medical Board has proposed rules to clarify how the state abortion ban exceptions apply to the Board's enforcement process. This is the first step in what will be a rulemaking process that will allow the public to be heard and provide written comment to these proposals.

“In determining to go forward with the rulemaking process, the Board thoroughly analyzed the Administrative Procedures Act, the Health and Safety Code, and reviewed the series of recent court cases involving multiple provisions of the state's abortion regulations.

“The proposed rules are written within the bounds, and definitions, of existing statutes to clarify what required criteria the Board expects to consider in the event it receives a related complaint.

“Importantly, the Board does not have the authority to change or amend any laws as written or create new statutory definitions in existing laws.

“While there may be expectations from some that the Board, as a state agency, should go further in clarifying the law as written by delineating specific conditions and scenarios that would qualify as exceptions, the Board has a narrow lane to operate in. Simply put, the Board does not have authority to regulate or prohibit abortion. The new law did not provide any new authority for the Board to begin regulation or prohibition of abortion, but rather continued to allow disciplinary actions for violations of this “other law” and that is why these rules focus on re-affirming the analysis and procedures that will be applied if a complaint is received.

“As physicians, we know the uniqueness of each patient is the very reason medicine is an art and our practice is not confined to a formula or list. It is indeed impossible to create any specific delineated list or catalogue of conditions that may arise in any given patient situation.

“Given the uniqueness of each patient, and their individual health, it is not only impractical, but is impossible to address the situations that may confront a patient and the treating physician. The Board also acknowledges that even if there were a ‘list’ it still would not be enforceable without going through our standard process because even though the same condition may exist, the impact to the pregnant woman and the unborn child’s health could be markedly different in each case. Therefore, the use of “reasonable medical judgment” does not lend itself to a list or formula but rather is completely and fully dependent upon the patient and the skill, training, and knowledge of the treating physician.

“The Board is confident that its existing processes and procedures are appropriate and adequate to handle any complaints in this area of medicine.

“The Board wants to assure patients and physicians that the agency’s complaint process related to abortions, and the exceptions to the prohibition on abortion, will be treated no differently than any patient care issue that comes before the Board.”