

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

**Chapter 167**  
Reinstatement and Reissuance  
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**§167.1. Reinstatement or Reissuance of Medical License Following Suspension or Revocation.**

(a) Reinstatement of Medical License Following Suspension.

(1) A physician whose license has been suspended by order of the board must submit a written request to the board's compliance division and appear at a probationer show compliance proceeding as described in §187.44 of this title (relating to Probationer Show Compliance Proceedings) and in paragraph (2) of this subsection to request reinstatement of licensure.

(2) A person may not apply for reinstatement of a license that was suspended before the first anniversary of the date on which the suspension became effective.

(3) A request for reinstatement following suspension cannot be considered more often than annually unless otherwise specified by order of the board.

(4) A physician's request for reinstatement must include evidence that all stipulations for the probation of the suspension have been completed.

(5) A physician who allows his or her license to be cancelled for nonpayment while under a suspension order may apply for relicensure in accordance with §163.10 of this title (relating to Relicensure).

(b) Reissuance of License Following Revocation.

(1) A physician whose license has been revoked must complete in every detail the application for reissuance of license, including payment of the required application fee.

(2) The physician whose license has been revoked must appear before a committee of the board for a determination regarding reissuance of license.

(3) A person may not apply for reissuance of a license that was revoked before the first anniversary of the date on which the revocation became effective.

(4) An application for reissuance of a license following revocation cannot be considered more often than annually.

(5) In addition to any other requirement set out in this chapter for reissuance of a license following revocation, a physician must also demonstrate compliance with current licensure eligibility requirements.

**§167.2. Procedure for Requests for Reinstatement.**

Pursuant to the Medical Practice Act, §§154.006, 164.003 and 164.151-.154, and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to dispositions of any requests for reinstatement of a medical license following suspension.

(1) The board may make a disposition of any request for reinstatement of a medical license following suspension by stipulation, agreed order, agreed settlement, consent order, or default.

(2) In the event the board makes such a disposition of a request for reinstatement of a medical license following suspension, the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

(3) To facilitate the expeditious disposition of requests for reinstatement following suspension, the board may provide an applicant with an opportunity to attend a

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probationer show compliance proceeding in accordance with §187.44 of this title (relating to Probationer Show Compliance Proceedings).

(4) In accordance with §187.44 of this title (relating to Probationer Show Compliance Proceedings) an applicant for reinstatement shall be provided with written notice of the time, date, and location of the probationer show compliance proceeding and the rules governing the proceeding by certified mail - return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the applicant or the applicant's attorney on file with the board.

(5) The probationer show compliance proceeding shall allow:

(A) the board staff to address whether it is in the best interest of the public and the physician to return to the practice of medicine by presenting a synopsis of the allegations and the basis of the suspension of the applicant's medical license, the facts which the board staff reasonably believes could be proven by competent evidence at a hearing, and whether the applicant has complied with the terms and conditions of the order suspending his license if applicable;

(B) the applicant to reply to the board staff's presentation and present facts the applicant reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the applicant which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representative(s) are relevant to the proceeding;

(D) representation of the applicant by counsel;

(E) presentation of oral or written statements by the applicant or the applicant's counsel;

(F) presentation of oral or written statements or testimony by witnesses;  
and,

(G) questioning of witnesses.

(6) The board's representative(s) shall exclude from the probationer show compliance proceeding all persons except witnesses during their testimony or presentation of statements, the applicant, the applicant's attorney or representative, board members, district review committee members, and board staff.

(7) During the probationer show compliance proceeding, the board's legal counsel shall be present to advise the board's representative(s) or the board's employees.

(8) During the deliberations of an appropriate settlement, the board's representative(s) at a probationer show compliance proceeding shall exclude the applicant, the applicant's attorney or representative, any witnesses, and the general public. A board legal counsel and board staff shall be available to assist the representative(s) in their deliberations.

(9) At the probationer show compliance proceeding the board's representative(s) will attempt to mediate disputed matters, and the board's representative(s) may call upon the board staff at any time for assistance in conducting the proceeding.

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(10) The board's representative(s) shall prohibit or limit access to the board's investigative file by the applicant, the applicant's attorney or representative, any witnesses, and the public consistent with the Medical Practice Act, §164.007.

(11) At the conclusion of the probationer show compliance proceeding, the board's representative(s) shall make recommendations for disposition of the request for reinstatement which may include deferral pending receipt of additional information, denial of the request, or in accordance with board rule §187.43 of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders), a modification or termination of the agreed or disciplinary order under which the suspension was originally granted. The board's representative(s) may make recommendations to the applicant for resolution of the issues. Such recommendations may include any reasonable restrictions authorized by the Act and any other remedial actions in the public interest. These recommendations may be subsequently modified by the board's representative(s) or staff based on new information, a change of circumstance, or to expedite a resolution in the interest of protecting the public. These recommendations may be adopted, modified, or rejected by the duly convened board or through the duly authorized actions of the board's Disciplinary Process Review Committee.

(12) The applicant may either accept or reject the settlement recommendations proposed by the board's representative(s). If the applicant accepts the recommendations, the applicant shall execute the settlement agreement in the form of an agreed order or affidavit as soon thereafter as is practicable. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting a formal hearing. If the applicant requests a formal hearing, the matter shall be referred to the board's staff for hearing, as described in Chapter 187, Subchapter C of this title (relating to Formal Proceedings at SOAH).

(13) Following acceptance and execution by the applicant of the settlement agreement, the agreement shall be submitted to the board for approval.

(14) The following as stated in subparagraphs (A)-(C) of this paragraph relate to consideration of an agreed disposition by the board.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed settlement agreement. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve a proposed settlement agreement, the applicant shall be so informed and the matter shall be referred to the board staff for appropriate action to include further negotiation, further investigation, an additional probationer show compliance proceeding or a formal hearing.

(C) To promote the expeditious resolution of any request for reinstatement, with the approval of the executive director, a member of the Executive Committee, or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement to the board for consideration and acceptance without conducting a probationer show compliance proceeding. If the board does not approve such a proposed settlement agreement, the applicant shall be so informed and the matter shall be referred to the

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board staff for appropriate action to include further negotiation, further investigation, a probationer show compliance proceeding or a hearing.

**§167.3. Application for Reissuance of a Revoked License.**

Pursuant to the Medical Practice Act, §164.151 and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to the dispositions of any applications for reissuance of a license to practice medicine.

(1) The board may make an informal disposition of any application for reissuance of a medical license following revocation by stipulation, agreed order, agreed settlement or default.

(2) In the event the board makes such a disposition of an application for reissuance of a medical license following revocation, the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

(3) If an opportunity to appear before a committee of the board is provided to an applicant, the applicant shall be provided with written notice of the hearing including the date and time and allegations to the last mailing address of the applicant or the applicant's attorney on file with the board. The applicant shall also be provided with written notice of the time, date and location of the committee hearing and the rules governing the proceeding.

(4) The committee hearing shall allow:

(A) board staff to present a synopsis of the allegations and the facts that supported the revocation of the applicant's medical license, and to address whether it is in the best interest of the public and the physician to return to the practice of medicine;

(B) the applicant the opportunity to reply to the board staff's presentation and offer relevant evidence;

(C) representation of the applicant by counsel; and

(D) presentation of oral or written statements by the applicant or the applicant's counsel.

(5) At the conclusion of the applicant's presentation, the committee shall make a recommendation for disposition of the application for reissuance which may include:

(A) deferral pending receipt of additional information;

(B) denial of the request for reissuance;

(C) reissuance of an unrestricted license; or

(D) reissuance of a restricted license subject to any reasonable restrictions or conditions authorized by the Act and any other remedial actions found to be in the public's best interest.

(6) An applicant who is offered a restricted license may either accept or reject the recommendations proposed by the committee. If the applicant accepts the recommendations, the applicant shall execute the agreement in the form of an agreed order. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting judicial review in the manner provided by §164.009 of the Act.

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(7) Following acceptance and execution by the applicant of the agreement to restrictions on the applicant's license, the application for reissuance and the agreed order shall be submitted to the board for approval.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed reissuance of licensure subject to restrictions or conditions. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve the proposed order or otherwise denies the applicant's application for reissuance, the applicant shall be so informed and the board's decision shall be subject to judicial review in the manner provided by §164.009 of the Act.

**§167.4. Best Interests of Public.**

Pursuant to §164.151 of the Act, a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the best interests of the public. Best interests of the public may include, but not be limited to, an assessment by the Board as to whether the physician demonstrates:

(1) remediation of any competency, technical, educational, training or ethical limitations as found in the order leading to revocation or suspension of a license or any competency, technical, educational, training or ethical limitations found since the entry of the order;

(2) that risk of further disciplinary proceedings for the revocation or suspension of the license will be minimal or minimized if the physician is returned to the practice of medicine and the public will adequately be protected, whether by probationary order or other terms and conditions as agreed to by the physician or authorized by §164.101 and §164.102 of the Act;

(3) that an adequate practice plan will be in place to reduce or eliminate the risk of further disciplinary proceedings by the board;

(4) continued medical competency such that the physician is able to provide the same standard of medical care as any applicant for a license under Chapter 163 of this title (relating to Licensure). Further, the board shall require an applicant for reissuance to meet the qualifications and requirements set forth in Chapter 163 of this title, including, but not limited to documentation of completion of the process of a current application for licensure; and

(5) that the physician's services are needed and would benefit the citizens of Texas.

**§167.5. Best Interests of the Physician.**

Pursuant to §164.151 of the Act, a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the physician's best interests. Best interests of the physician may include, but not be limited to, an assessment by the Board as to whether the physician:

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(1) understands all issues of competency, technical, educational, training or ethical limitations as found in the order which led to the revocation or suspension of a license; and

(2) demonstrates that risk of further disciplinary proceedings for the revocation or suspension of the license of the physician will be minimal or minimized if the physician is returned to the practice of medicine.

**§167.6. Final Action.**

In any contested case proceeding regarding a reinstatement or reissuance request, the order revoking or suspending a license is a final action and shall not be subject to further litigation as to its findings of fact or conclusions of law, provided, however, that the order may be admissible and relevant for purposes of establishing the basis for the original action and subsequent efforts after the order by the physician to demonstrate reinstatement of the license is in the best interests of the public and the applicant physician.

**§167.7. Judicial Review.**

A decision by the board to deny a request for reinstatement or application for reissuance of a medical license is subject to review in the manner provided by §164.009 of the Act.

**§167.8. Certain Persons Ineligible for Reinstatement or Reissuance of License.**

Except on express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interest of the public and of the person whose license has been suspended or revoked, the board may not reinstate or reissue a license to a person whose license has been suspended or revoked because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code relating to dangerous drugs and controlled substances;

(2) Section 485.033, Health and Safety Code relating to inhalant paraphernalia; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §§801 et seq.) which is a federal law relating to controlled substances; and

(4) any of the following sections of the Penal Code:

(A) Section 22.011(a)(2) (sexual assault of a child);

(B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);

(C) Section 21.02 (continuous sexual abuse of a young child or children);

or

(D) Section 21.11 (indecent with a child).