

The Texas Medical Board (Board) proposes the repeal of current Chapter 163, concerning Licensure, §§163.1 – 163.6, 163.8 – 163.11 and 163.13.

The Board also proposes new Chapter 163, concerning Medical Records. This includes new Subchapter A, concerning General Documentation Provisions, §§163.1 – 163.5; and Subchapter B, concerning Abortion Documentation, §§163.10 – 163.13.

Also, the Board contemporaneously proposes the repeal of current Chapter 165, concerning Medical Records, §§165. 1 – 165.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 163 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

SUBCHAPTER A. GENERAL PROVISIONS.

New §163.1, Medical Records, describes the necessary content of a medical record and the appropriate method for documenting each patient encounter.

New §163.2, Medical Record Retention, explains providers responsible for retaining medical records and the amount of time those providers must retain medical records.

New §163.3, Requests for Medical Records, explains a provider's responsibility for providing medical records to patients upon request. It also explains allowable charges for responding to requests for medical records or diagnostic imaging.

New §163.4, Physician Responsibilities when Leaving a Practice, explains a provider must provide notice to patients when they leave, retire, or terminate a practice.

New §163.5, Appointment of Record Custodian of a Physician's Records, explains who the appropriate records custodian is of medical records in certain situations. It also explains the process by which a records custodian is appointed and outlines the custodian's responsibilities.

SUBCHAPTER B. ABORTION DOCUMENTATION.

New §163.10, Definitions, describes the specific definitions for certain terms used in this subchapter.

New §163.11, Required Form Regarding an Abortion on an Unemancipated Minor, details the required disclosure and consent form to be completed when performing an abortion or related procedure on an unemancipated minor.

New §163.12, Abortion Ban Exception Performance and Documentation, explains that physicians need to comply with all applicable laws, rules, and court opinions related to abortion and its exceptions in Texas. The rules also provide the minimum required information that must be included in the medical record.

New §163.13, Complaints Regarding Abortions Performed, explains the procedures that the Board will utilize in the event a complaint is received. The rule also explains the limitation of any Board decision and that possible criminal or civil action under the law is separate and independent of any Board decision.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link:

<https://forms.office.com/g/ENi91rHrTG>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §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. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

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§163.1. Definitions.

§163.2. Full Texas Medical License.

§163.3. Exemption from Licensure for Certain Military Spouses.

§163.4. Procedural Rules for Licensure Applicants.

§163.5. Licensure Documentation.

§163.6. Examinations Accepted for Licensure.

§163.8. Authorization to Take Professional Licensing Examination.

- §163.9. Only One License.
- §163.10. Relicensure.
- §163.11. Active Practice of Medicine.
- §163.13. Expedited Licensure.

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The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of §164.052(c). The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER A. GENERAL DOCUMENTATION PROVISIONS.

§163.1. Medical Records.

- (a) The medical record must be a complete, contemporaneous, and legible documented account of each patient encounter by a physician or delegate.
- (b) A medical record must include, at a minimum:
 - (1) a reason for the encounter, relevant history, physical examination findings (ensuring any pre-populated fields contain current and accurate patient information), and any diagnostic test results;
 - (2) an assessment, clinical impression, and diagnosis;
 - (3) a plan for care (including diagnostics, risk factors, consults, referrals, ancillary services, discharge plan if appropriate, patient/family education, disclosures, and follow-up instructions), treatments, and medications (including amount, frequency, number of refills, and dosage);
 - (4) late entries, if any, that indicate the time and date entered, as well as the identity of the person who made the late entry;
 - (5) summary or documentation of communications with the patient;
 - (6) sufficient documentation of requests for records from other providers and any records received;
 - (7) clear identification of any amendment or correction to the medical record, including the date it was amended or corrected and the identity of the author of the amendment or correction, with the original text remaining legible; and

(8) documentation of a review of the patient's Texas Prescription Monitoring Program (PMP) prescribing history.

§163.2. Medical Record Retention.

(a) Medical records must be retained by a physician or a physician's employer, including group practices, professional associations, and non-profit health organizations, consistent with this chapter.

(b) Providers must maintain access to medical records for the duration of the required retention period.

(c) Retention periods.

(1) The standard retention period is at least seven years from the date of last treatment by the physician or longer if required by other federal or state law.

(2) The retention period for a patient under 18 years old is until the patient reaches age 21 years old or seven years from the date of last treatment, whichever is longer.

(d) Forensic medical examinations for sexual assault must be retained in accordance with §153.003 of the Act.

§163.3. Requests for Medical Records.

(a) Upon receipt of a request for medical records that complies with §159.005 of the Act, a physician must provide the information within 15 days of the request and in accordance with Chapter 159 of the Act.

(b) Requests for diagnostic imaging, including static films, non-static films, and imaging studies, must specify whether a copy or the original of the study is sought.

(c) Allowable charges for records:

(1) paper records - the maximum fee may be \$25.00 for the first twenty pages and \$.50 per page thereafter

(2) electronic records - the maximum fee may be \$25.00 for 500 pages or less and \$50.00 for more than 500 pages;

(3) hybrid records (part paper and electronic) - the fee for each different format may be utilized, including diagnostic studies;

(4) if an affidavit is requested for the records, the maximum fee may be \$15.00;

- (5) if a narrative is provided in lieu of records, the maximum fee may be \$20.00;
- (6) requests that all records be in paper format even though available as electronic records - the paper record fee may be charged; and
- (7) if records are mailed to the requestor - actual postage cost may be charged.
- (d) A provider cannot deny a request for medical records due to a delinquent account or amounts owed to the provider.
- (e) A provider cannot require a subpoena for the records if a proper request is made in accordance with §159.005 of the Act.
- (f) A denial of a request for records must be in accordance with §159.006(e) of the Act.

§163.4. Physician Responsibilities when Leaving a Practice.

- (a) Upon retirement, termination of employment, or leaving a medical practice, a physician must provide patients reasonable notice to obtain copies of their records or arrange for the transfer of their medical records by:
 - (1) letter or email to each patient seen in the last two years by the departing physician; and
 - (2) posting a notice in a conspicuous location in the physician's/practice office and on the practice website at least 30 days prior to the termination, leaving, or sale or relocation of practice.
- (b) The notice must include:
 - (1) the date of the termination, retirement, or departure;
 - (2) instructions as to how patients may obtain or transfer their medical records;
 - (3) the name and location of new practice, if any; and
 - (4) the name of another licensed physician, practice, or custodian if ownership of records is changing.
- (c) If the physician's license is surrendered or revoked, the notice must be provided immediately in accordance with this section.
- (d) The following physicians are exempt from providing notice to patients:
 - (1) a locum tenens physician at a practice location for less than six months;
 - (2) a physician who only treated the patient in the following settings:

(A) a hospital, as defined under §157.051(6) of the Act;

(B) an emergency room;

(C) a birthing center; or

(D) an ambulatory surgery center; or

(3) a physician who only provided the following service:

(A) anesthesia;

(B) radiology; or

(C) pathology.

(e) Responsibilities of Practice

(1) A physician, physician group, or practice must provide a list of patients seen by the departing physician in the last two years for the purposes of providing notice to patients.

(2) A departing physician's group or practice is not required to provide the requisite notice to patients.

(3) If the departing physician's group or practice agrees to provide the requisite notices to patients, they must do so in accordance with this section.

(4) No physician remaining at the group or practice may prevent or interfere with the departing physician's duties to provide notices described by this section.

§163.5. Appointment of Record Custodian of a Physician's Records.

(a) In accordance with §159.0061 of the Act, a custodian of records is as follows:

(1) physician death - the administrator, executor of the estate, or other court appointed individual, unless part of a group practice or pre-existing appointments/instructions are in place;

(2) physician mental or physical incapacity - individual with Power of Attorney, court appointed individual, or legally appointed representative of the physician;

(3) other circumstances or abandonment of records - custodian is determined on a case-by-case basis.

(b) A records custodian must:

(1) maintain the confidentiality of the medical records;

(2) within 30 days of appointment, provide notice of the custodianship of the records to the board and patients by:

(A) posting visible notice in physician's/practice office, if accessible;

(B) posting notice on a physician or practice website, if accessible; or

(C) posting notice in a newspaper of greatest general circulation in county where physician practice was located.

(3) retain the medical records in accordance with state and federal law for at least 90 days before destroying any records, including the 30-day notice period;

(4) include the following information in the notice:

(A) the name of custodian and contact information;

(B) instructions as to how patients can obtain or request transfer of medical records to another provider;

(C) all applicable fees to be charged for the records, in accordance with this chapter, including an additional \$25.00 custodial fee as applicable; and

(D) a statement that the records may be destroyed after 90 days and provide destruction date.

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The new rules are proposed under the authority of the Texas Occupations Code Annotated, §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. The new rules are also proposed in accordance with the requirements of §164.052(c). The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER B. ABORTION DOCUMENTATION.

§163.10. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

This definition is found at Chapter 245, §245.002(1) of the Texas Health and Safety Code.

(2) "Reasonable medical judgment" means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, §170A.001(4) of the Texas Health and Safety Code.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, §171.002(3) of the Texas Health and Safety Code.

(4) "Major bodily function" includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, §21.002(11-a) of the Texas Labor Code.

§163.11. Required Form Regarding an Abortion on an Unemancipated Minor.

In accordance with §164.052(c) of the Act, a physician must obtain the consent for an abortion to be performed on an unemancipated minor using the following form:

Figure 1:22 TAC §163.11

§163.12. Abortion Ban Exception Performance and Documentation.

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code, Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must document in the patient's medical record:

- (1) that the abortion is performed in response to a medical emergency;
 - (A) that places the woman in danger of death unless the abortion is performed or induced; or
 - (B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;
 - (2) the major bodily function(s) at serious risk of substantial impairment;
 - (3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;
 - (4) how the danger of death or serious risk was determined;
 - (5) if applicable, the rationale on why the abortion was performed pursuant to §170A.002 (b)(3) of the Texas Health and Safety Code; and
 - (6) if applicable, that the treatment was in response to an ectopic pregnancy at any location or a previable premature rupture of membranes, as those terms are used in §74.552 of the Texas Civil Practice and Remedies Code.
- (c) The above documentation must be made before and/or after performing the procedure, but the initial documentation must be made within 7 days of the procedure.
 - (d) Imminence of the threat to life or impairment of a major bodily function is not required.

§163.13. Complaints Regarding Abortions Performed.

- (a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.
- (b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in §154.0561 of the Texas Occupations Code, to review the available information, including the patient's medical record.
- (c) As done in other complaints, the independent expert physicians may review all relevant information including one or more of the following:
 - (1) how the decision was made to proceed with an abortion based on reasonable medical judgement including:
 - (A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and
 - (B) what alternative treatments were attempted and failed or were ruled out; and

(2) whether there was adequate time to transfer the patient to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

(d) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

(e) The Board shall not take any disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by §74.552 of the Texas Civil Practice and Remedies Code.

**DISCLOSURE AND CONSENT FORM
ABORTION AND RELATED PROCEDURES PERFORMED
ON AN UNEMANICIPATED MINOR**

This Form is available for downloading on the Texas Medical Board website at www.tmb.state.tx.us.

Unemancipated Minor is a patient who is under 18 years old, unmarried, and has not had the disabilities of minority removed by court order.

PATIENT NAME: _____ **DATE OF BIRTH:** _____ **AGE:** _____

NOTICE: When performing an abortion on an unemancipated minor a physician must obtain informed consent as required Chapter 33 of the Texas Family Code and Chapter 171 of the Texas Health and Safety Code.

This consent must be written consent obtained from one of the patient's parents, legal guardian, or managing conservator before we can perform an abortion on an unemancipated minor.

This consent is not required if the unemancipated minor has a court order waiving the parental consent requirement (a "judicial bypass order").

REQUIRED DISCLOSURES AND SPECIFIC CONSENT

The patient's parent, legal guardian, or managing conservator must initial each page only after the physician performing the abortion provides information and answers all questions about the procedure and consent. This Form must also be signed by a witness present during the disclosure and consent process.

This process should be done in the presence of the unemancipated minor to ensure full understanding of the procedure in addition to the individual consenting.

Initials of parent, guardian, or conservator

DISCLOSURES

1. The physician performing the procedures is _____.
2. I have been told specifically:
 - (1) the probable gestational age of the fetus;
 - (2) the medical risks associated with carrying the child to term;

- (3) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
- (4) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;
- (5) public and private agencies provide pregnancy prevention counseling and media referrals for obtaining pregnancy medications or devices, including emergency contraception for victims of rape or incest; and
- (6) the woman has the right to review the printed materials provided by the Department of State Health Services.

3. The following list is not meant to scare the patient, but to give her and her parent, legal guardian, or managing conservator adequate information to be used in making their decisions to have the physician perform the particular procedures listed and the **Risks and Hazards** of the procedure.

The patient and consenting individual must initial the following blanks indicating their understanding of the information.

General Risks with any Surgical Procedure:

- (A) Potential for infection.
- (B) Blood clots in veins and lungs.
- (C) Hemorrhage.
- (D) Allergic reactions.
- (E) Death.

 Initials of Parent,
 Guardian, or Conservator

 Patient Initials

Surgical Abortion Procedures:

_____Dilation and Curettage (D&C)

_____Dilation and Evacuation (D&E)

_____Manual Vacuum Aspiration

_____Machine Vacuum Aspiration

Risks with Surgical Abortion Procedures:

- (A) Hemorrhage (heavy bleeding).
- (B) A hole in the uterus (uterine perforation) or other damage to the uterus.
- (C) Sterility.
- (D) Injury to the bowel and/or bladder.

- (E) A possible hysterectomy as a result of complication or injury during the procedure.
- (F) Failure to remove all products of conception that may result in an additional procedure.

Medical Abortion Procedures:

_____Methotrexate

_____Misoprostol

Risks with Medical Abortion Procedures:

- (A) Hemorrhage (heavy bleeding)
- (B) Failure to remove all products of conception that may result in an additional procedure.
- (C) Sterility.
- (D) Possible continuation of pregnancy.

Initials of parent, guardian, or conservator

Patient initials

Risks with any Abortion Procedure:

- (A) Cramping of the uterus or pelvic pain.
- (B) Infection of the female organs: uterus, tubes, and ovaries.
- (C) Cervical laceration, incompetent cervix.
- (D) Emergency treatment for any of the above-named complications.
- (E) Other as written:

Initials of parent, guardian, or conservator

Patient Initials

Specific Consent and Acknowledgement

Each line must be initialed by the patient and the individual consenting:

_____ I understand that the physician listed above is going to perform an abortion on me, which will end my pregnancy and will result in the death of the fetus.

_____, _____ I am not being forced by anyone including the consenting individual to have this abortion and have the choice on whether to have this procedure.

_____, _____ I give my permission to this doctor and such other associates, technical assistants, and other health providers as the doctor thinks is needed to perform the abortion on me using the surgical and medical procedures checked above.

_____, _____ I understand that my physician may discover other or different conditions that require additional or different procedures than those planned.

_____, _____ I give my permission to my physician and such associates, technical assistants and other health care providers to perform such other procedures that are advisable in their professional judgment.

_____, _____ I **do** **do not give my permission for the use of blood** and blood products as deemed necessary.

_____, _____ I understand that my doctor cannot make any promise regarding the end results of the abortion or my care.

_____, _____ I understand that there are risks and hazards that could affect me if I have the surgical or medical procedures checked above.

_____, _____ I have been given an opportunity to ask questions about my condition, alternative forms of treatment, risk of nontreatment, the procedures to be used, and the risks and hazards involved.

_____, _____ I understand that information about abortion that is included in the law as the Woman's Right to Know Act has been made available to me as required by §171.001, *et seq.*, Texas Health and Safety Code, specifically the "Women's Right to Know Informational Brochure" and the "Women's Right to Know Resource Directory."

PATIENT ACKNOWLEDGEMENT: This Form has been fully explained to me. I have read it or have had it read to me, the blank spaces have been filled in, and I understand what it says.

Printed Name of Patient

Signature of Patient

Date

CONSENTING PARTY ATTESTATION:

I state and affirm that I am the patient's:

Father Mother Legal Guardian Managing Conservator

By my signature below, I give permission for _____ (print the name of the patient), who is an unemancipated female, to have the surgical or medical procedure set out above.

Printed Name of Parent, Legal Guardian,
or Managing Conservator

Signature of Parent, Legal Guardian,
or Managing Conservator

Date

Physician Declaration:

I and/or my assistant have explained the procedure and the contents of this Form to the patient and her parent, legal guardian, or managing conservator as required and have answered all questions. To the best of my knowledge, the patient and her parent, legal guardian, or managing conservator have been adequately informed and have consented to the above-described procedure.

Signature of Physician

Date

Authentication of Parent, Legal Guardian, or Managing Conservator.

The signature of the parent, legal guardian, or managing conservator must be authenticated. This means that the parent, legal guardian, or managing conservator must sign this Form in front of

(1) a person who is a notary public; or

(2) a person, other than the physician or their assistant, who was present at the time the procedure and the contents of this Form were explained to the patient and her parent, legal guardian, or managing conservator.

The signing in front of a notary public can occur at any time and at any place prior to the procedure. The signed and initialed form with the notary statement then can be brought to the physician's office or clinic by the patient.

