

The Texas Medical Board (Board) proposes the repeal of current Chapter 181, concerning Contact Lens Prescriptions, §§181 – 181.7.

The Board also proposes new Chapter 181, concerning Compliance Program, §§181.1 – 181.8.

Also, the Board contemporaneously proposes the repeal of current Chapter 189, concerning Compliance Program, §§189.1 – 189.16.

The Board has determined that due to the extensive reorganization of Chapters 160 – 200, repeal of Chapter 181 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §181.1, Definitions, defines terms used in new Chapter 181.

New §181.2, General Compliance Standards, explains the general compliance requirements for licensees subject to board action.

New §181.3, Compliance Process, describes the compliance process, including the initial meeting with the compliance officer and ongoing compliance reviews.

New §181.4, Determination of Non-Compliance, describes conduct considered by the board to be non-compliant with the terms or conditions of a non-disciplinary or disciplinary action.

New §181.5, Enforcement Process for Violations, identifies non-compliance by a compliance officer. It also describes the proper timeframe of ISC notification to the licensee, as well as information the board must receive from the licensee prior to the ISC.

New §181.6, Modification and Termination Process for Disciplinary Orders, explains the process to follow for licensees under disciplinary orders when seeking to modify or terminate the order.

New §181.7, Automatic Termination of a Disciplinary Order, explains the condition or terms that allow for an automatic termination of a licensee's disciplinary order.

New §181.8, Recommendation for Competency Assessment, explains the process followed when a third-party monitor for the board believes a licensee poses a continuing threat.

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 is 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 repeals 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/VdXUSaASBh>. 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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§181.1. Purpose.

§181.2. Definitions.

§181.3. Release of Contact Lens Prescription.

§181.4. Delegation of Fitting of Contact Lenses.

§181.5. Contact Lens Dispensing Permit Not Required of Physician or Physician's Employees.

§181.6. Physician's Prescriptions: Delegation.

§181.7. Liability.

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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 Chapter 164 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

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§181.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise:

(1) Licensee -- A person to whom the board or an advisory board or committee of the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(2) Monitoring physician -- A licensed Texas physician who conducts reviews of medical/billing records and/or conducts onsite reviews and periodically reports in writing to the board on the licensee's compliance.

(3) Toll -- To extend the term of an order for any period of time that:

(A) a licensee practices exclusively outside the State of Texas;

(B) a licensee's license is cancelled for nonpayment of licensure fees;

(C) the order is stayed or enjoined by court order; or

(D) is longer than 60 consecutive days that a licensee does not actively practice medicine.

§181.2. General Compliance Standards.

(a) All licensees who are subject to non-disciplinary or disciplinary action must submit to compliance monitoring.

(b) All terms and conditions of a non-disciplinary or disciplinary action are binding and enforceable.

(c) Licensees are solely responsible for timely providing to the board all requested or required documentation of compliance.

(d) Licensees must maintain current contact information with the board, through board approved processes, including:

(1) work address(es);

(2) home address;

(3) work and cell telephone number(s), and

(4) electronic mail address.

(e) Any change to the required contact information must be reported to the board no later than ten calendar days after the effective date of the change.

(f) A compliance file is considered investigative and is confidential and subject to the provisions of §164.007(c) of the Act.

§181.3. Compliance Process.

(a) The compliance officer shall provide notice to the licensee of an initial meeting to review terms and conditions of the non-disciplinary or disciplinary action and the compliance process.

(b) At the initial meeting, the compliance officer will provide the licensee with a copy of the non-disciplinary or disciplinary action and other written information, including protocols for compliance with each term and condition.

(c) The compliance officer will meet with the licensee on a periodic and random basis and provide ongoing compliance reviews. The compliance reviews may be unannounced. The meetings may be conducted at a practice location or other location to verify compliance, and the time, date, and location of all visits are to be determined by staff unless otherwise agreed to by staff.

§181.4. Determination of Non-Compliance.

In addition to failing to comply with a term or condition of a non-disciplinary or disciplinary action, the following are also considered violations:

(1) failure to cooperate with board representatives, including:

(A) failing to promptly respond to communications;

(B) interference with board representatives that compromises or prevents them from fulfilling duties and responsibilities; or

(C) any harassing or threatening conduct directed toward board representatives.

(2) failure to timely submit a required report, unless a licensee presents evidence of good faith efforts to ensure the timely submission of reports.

§181.5. Enforcement Process for Violations.

(a) If a compliance officer identifies potential non-compliance, the Informal Settlement Conference (ISC) processes under Chapter 179 of this title will apply, except:

(1) the notice of the ISC to the licensee must be provided at least ten days prior to the date of the ISC, and

(2) any information the licensee wants considered at the ISC must be received by the board at least five days prior to the date of the ISC.

(b) To resolve violations of an order or remedial plan, a licensee may waive appearance at an ISC, and accept a settlement agreement approved by the Executive Director or their designee.

§181.6. Modification and Termination Process for Disciplinary Orders.

(a) In order to be eligible to submit the modification or termination request, the licensee must not be subject to a pending complaint, investigation, or board proceeding.

(b) The timing of the initial modification or termination request will be specified in the disciplinary order.

(c) Requests must be in writing and explain the basis for the request.

(d) If a licensee is determined to be eligible for modification or termination, an informal meeting will be scheduled for consideration of the request by a board representative panel. The meeting, will be conducted in a manner similar to an ISC; except that the burden is on the licensee to demonstrate grounds such as:

(1) a significant change in circumstances;

(2) an unanticipated, unique, or undue hardship as a result of the board action, but not the denial of insurance coverage or an adverse action taken by a medical specialty board; or

(3) any other relevant considerations.

(e) If at any time prior to final approval of the modification or termination request, the licensee becomes ineligible for any reason, the pending action will be cancelled, including any scheduled informal meeting to consider the request or board meeting to consider the recommendation.

(f) Subsequent requests can only be made once a year after the effective date of any order granting or denying modification or termination of the original order.

(g) Remedial plans are not allowed to be modified. Termination is automatic upon successful completion of the terms and conditions of the remedial plan.

§181.7. Automatic Termination of a Disciplinary Order.

(a) An order may be automatically terminated if specified in an order or upon successful completion.

(b) Successful completion of an order means:

(1) the compliance officer has verified timely completion of all terms and conditions of the order;

(2) there is no board complaint, investigation, or action pending related to violation of the order; and

(3) the order is not in tolled status, including partial tolling.

(c) When successful completion is verified, a written Notice of Termination of the Order will be issued.

§181.8. Recommendation for Competency Assessment.

(a) A third-party monitor may recommend that the licensee complete a competency evaluation if they have a good faith belief the individual poses a continuing threat.

(b) A recommendation must be reviewed and approved by the Chair of the Disciplinary Process and Review Committee (DPRC).

(c) If approved, the following procedure applies:

(1) the compliance officer will notify the licensee of the evaluation;

(2) the approved program must send a written report regarding the performance and results of evaluation directly to the compliance officer;

(3) upon completion of the competency evaluation, the licensee may be required to appear before a panel of board representatives;

(A) Informal Settlement Conference (ISC) processes under Chapter 179 of this title will apply to these appearances, except:

(i) the notice of the ISC to review the competency assessment must be provided to the licensee at least ten days prior to the date of the ISC; and

(ii) any information the licensee wants considered at the ISC must be received at least five days prior to the date of the ISC.

(4) Nothing in this paragraph limits the board's authority to conduct a temporary restriction or suspension proceeding under §164.059 of the Act.

(5) The panel may make recommendations for appropriate action, including but not limited to:

(A) a requirement to follow all the program recommendations,

(B) necessary re-training;

(C) re-education measures;

(D) practice restrictions; or

(E) a recommendation to convene temporary restriction or suspension proceedings if a continuing threat is identified.