

The Texas Medical Board (Board) proposes the repeal of current Chapter 179, concerning Investigations, §§179.1 – 179.8.

The Board also proposes new Chapter 179, concerning Procedural Rules. This includes new Subchapter A, concerning Definitions, §179.1; Subchapter B, concerning Reporting Requirements, §179.5; Subchapter C, concerning Pre-Settlement Conference Resolution Process, §179.10; Subchapter D, concerning Informal Settlement Conference, §§179.15 and 179.16; Subchapter E, concerning Contested Case Procedure §179.20; Subchapter F, concerning Temporary Suspension or Restriction Proceedings, §179.25 and §179.26; Subchapter G, concerning Suspension by Operation of Law, §179.30; Subchapter H, concerning Cease and Desist Orders, §179.35; Subchapter I, concerning Out-of-Network Billing, §179.40.

Also, the Board contemporaneously proposes the repeal of current Chapter 187, concerning Procedural Rules. This includes Subchapter A, concerning General Provisions and Definitions, §§187.1 – 187.9; Subchapter B, concerning Informal Board Proceedings, §187.10, §187.11, §§187.13 – 187.16, §187.18 – 21; Subchapter C, concerning Formal Board Proceedings at SOAH, §§187.22 – 187.31, §187.33; Subchapter D, concerning Formal Board Proceedings, §§187.35 – 187.37, §187.39, §187.42; Subchapter E, concerning Proceedings Relating to Probationers, §§187.43 – 187.45; Subchapter F, concerning Temporary Suspension and Restriction Proceedings, §§187.55 – 187.62; Subchapter G, concerning Suspension By Operation Of Law, §§187.70 – 187.72; Subchapter H, concerning Imposition of Administrative Penalty, §§187.75 – 187.82; Subchapter I, concerning Proceedings For Cease and Desist Orders, §187.83, §187.84; and Subchapter J, concerning Procedures Related To Out-Of-Network Health Benefit Claim Dispute Resolution, §§187.85 – 187.89.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 179 is more efficient than proposing multiple amendments to make the required changes.

SUBCHAPTER A. DEFINITIONS.

New §179.1, Definitions, explains the meaning of certain specific terms as used in new Chapter 179.

SUBCHAPTER B. REPORTING REQUIREMENTS.

New §179.5, Reports to Outside Entities, explains the board's mandatory reporting related to board actions.

SUBCHAPTER C. PRE-SETTLEMENT CONFERENCE RESOLUTION PROCESS.

New §179.10, Quality Assurance Panel, explains the process utilized by the board for potential disposition of certain complaints prior to the convening of an Informal Settlement Conference (ISC).

SUBCHAPTER D. INFORMAL SETTLEMENT CONFERENCE.

New §179.15, Informal Settlement Conference (ISC) Notice, explains the content of the notice of the ISC to a licensee. It also explains a licensee's ability to submit information for consideration at the ISC, request for recordation of the ISC, and a request for continuance of the ISC.

New §179.16, Conduct of the Informal Settlement Conference (ISC), explains how an ISC will generally be conducted and possible complaint resolutions that may be offered at an ISC.

SUBCHAPTER E. CONTESTED CASE PROCEDURE.

New §179.20, Notice of Oral Argument, explains the opportunity for a licensee to attend and provide oral argument to the board concerning a proposal for decision after a State Office of Administrative Hearings (SOAH) contested case hearing.

SUBCHAPTER F. TEMPORARY SUSPENSION OR RESTRICTION PROCEEDINGS.

New §179.25, Temporary Suspension or Restriction Hearing Without Notice, explains the process followed by the board if the board has reason to believe a licensee is a “continuing threat.”

A disciplinary hearing will be held as soon as practicable in accordance with §164.059 of the Act or §164.0595 of the Act.

§179.26, Temporary Suspension or Restriction Hearing With Notice, explains the process followed by the board regarding examining witnesses, closing arguments, panel deliberation and announcement of the panel’s decision. Evidence is considered under a relaxed standard described in §2001.081 of the Texas Government Code.

SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW.

New §179.30, Automatic Suspensions Based upon Felony Conviction, explains what the board considers to be initial and final criminal convictions. It also details how initial and final convictions may be handled by the board.

SUBCHAPTER H. CEASE AND DESIST ORDERS.

New §179.35, Cease and Desist Orders, explains the process utilized by the board to consider the unlicensed practice of a regulated profession.

SUBCHAPTER I. OUT-OF-NETWORK BILLING.

New §179.40, Out-of-Network Billing, explains how the board investigates complaints of bad faith participation and other consumer complaints in out-of-network billing cases.

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/4jKFB6ZdaP>. 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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§179.1. Purpose and Scope.

§179.2. Definitions.

§179.3. Confidentiality.

§179.4. Request for Information and Records from Physicians.

§179.5. Investigation of Professional Review Actions.

§179.6. Time Limits.

§179.7. Past Complaints.

§179.8. Alcohol and Drug Screening During Investigation for Substance Abuse.

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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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SUBCHAPTER A. DEFINITIONS.

§179.1. Definitions.

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

(1) Address of record--The last known mailing address of each licensee or applicant, as provided to the board pursuant to the Act.

(2) Appear; Appearance--An opportunity to present and be heard at an Informal Settlement Conference (ISC) via videoconference. A respondent who cannot utilize videoconference may request to appear via teleconference. Licensees are entitled to all substantive and procedural rights delineated in the Medical Practice Act.

(3) Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding, including an attorney of record.

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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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SUBCHAPTER B. REPORTING REQUIREMENTS.

§179.5. Reports to Outside Entities.

The board reports all actions in accordance with applicable federal and state statutes, rules, and National Practitioner Data Bank (NPDB) guidelines.

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SUBCHAPTER C. PRE-SETTLEMENT CONFERENCE RESOLUTION PROCESS.

§179.10. Quality Assurance Panel.

Prior to convening an Informal Settlement Conference, a Quality Assurance Panel (QAP) may offer resolution of certain complaints.

(1) The QAP is composed of board members or district review committee members as well as board staff members.

(2) Complaints presented to the QAP can be returned to investigations, offered a Remedial Plan, offered an Agreed Order, recommended for dismissal, or set for an Informal Settlement Conference.

(3) Recommendations for dismissal will be presented to the Disciplinary Process Review Committee for consideration.

(4) Offers of a Remedial Plan or Agreed Order by QAP will be sent to the licensee for consideration.

(A) If accepted by the licensee, the Remedial Plan or Agreed Order will be presented to the board for consideration and approval.

(B) If the offer is rejected or is not returned timely, the matter will continue to an Informal Settlement Conference.

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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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SUBCHAPTER D. INFORMAL SETTLEMENT CONFERENCE.

§179.15. Informal Settlement Conference (ISC) Notice.

(a) The board's notice and procedural rules for ISCs hereby incorporate the requirements outlined in §164.003(b) of the Act.

(b) The notice of the ISC shall:

(1) be sent to the licensee and the complainant(s) in writing at least 45 days prior to the date of the scheduled ISC;

(2) include a statement that appearance at the ISC shall be via videoconference;

(3) include a written statement of the nature of the allegations and a copy of the information the board intends to use at the ISC; and

(4) be provided via email or other verifiable means.

(c) The licensee may file responsive information with board staff up until 15 days before the date of the ISC. Any information furnished later may, but is not required to, be considered at the time of the ISC.

(d) A licensee may request for the ISC to be recorded. Such a request must be made in writing at least 15 days prior to the date of the ISC. The recording is confidential under §164.007(c) of the Act. Independent recording of an ISC is prohibited.

(e) Requests for a continuance or rescheduling of an ISC.

(1) Requests must:

(A) be in writing;

(B) be made within five business days of the initial notice of the ISC; and

(C) explain the basis for the request including supporting documentation, if any.

(2) A request made more than five business days after the licensee received notice of the date of the ISC will be considered on a case-by-case basis for good cause.

(3) Requests shall be forwarded to General Counsel to grant or deny the request, and General Counsel shall notify the licensee of the determination.

§179.16. Conduct of the Informal Settlement Conference (ISC).

(a) In addition to the requirements of Chapter 164 of the Act, the following provisions apply to the conduct of ISCs:

(1) All appearances at an ISC shall be via videoconference or teleconference.

(2) The complainant shall be invited to make an oral statement at the ISC. Only the panel members and hearing counsel may address the Complainant.

(3) The board's staff attorney and the licensee and/or the licensee's representative may discuss the investigation with and present pre-filed information to the panel.

(b) After discussion with the parties, the panel may deliberate in private and then recommend resolution as allowed under Chapter 164 of the Act, including, but not limited to:

(1) dismissal;

(2) remedial plan;

(3) agreed order with terms and conditions, including allowable administrative penalties;

(4) referral to the State Office of Administrative Hearings (SOAH);

(5) deferral for further information; or

(6) other allowed actions, including consideration of a temporary suspension.

(c) If an agreed order is recommended, limited post-ISC negotiation with the panel is allowed as follows:

(1) only a single comprehensive proposal by the licensee or the licensee's representative is allowed;

(2) the licensee's proposal must be in writing and provided to the board's staff attorney assigned to the ISC; and

(3) board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

(d) All recommendations for dismissal and remedial plans or agreed orders that are accepted and signed by the licensee will be presented to the board for consideration and possible approval.

(e) A remedial plan may not be entered into to resolve an investigation of a complaint once a SOAH complaint or petition has been filed.

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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 and Chapter 2001 of the Texas Government Code. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER E. CONTESTED CASE PROCEDURE.

§179.20. Notice of Oral Argument.

All parties shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. Notice shall be sent to the party or the party's attorney of record as set out in Texas Government Code, §2001.142(a).

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SUBCHAPTER F. TEMPORARY SUSPENSION OR RESTRICTION PROCEEDINGS.

§179.25. Temporary Suspension or Restriction Hearing Without Notice.

(a) If the board has reason to believe a licensee is a “continuing threat,” a disciplinary proceeding will be held as soon as practicable in accordance with §164.059 of the Act or §164.0595 of the Act, as applicable.

(b) The three-member panel must include at least one physician.

(c) In determining a continuing threat, a panel will consider:

(1) the definition of continuing threat to the public welfare, as defined by §151.002 of the Act;

(2) the actions or inaction of the licensee;

(3) whether the public harm alleged is more than abstract, hypothetical, or remote; and

(4) whether there have been prior complaints, investigations, or discipline of the same or similar nature against the licensee.

(d) A member of the General Counsel staff shall act as hearings counsel and assist the panel as follows:

(1) provision of advice on legal processes and procedural issues including evidentiary rulings;

(2) asking questions to clarify issues during the proceedings; and

(3) being present during deliberations of the panel for legal advice as needed.

§179.26. Temporary Suspension or Restriction Hearing With Notice.

(a) A With-Notice Hearing shall include activities such as opening statements, admission of evidence, calling and examining witnesses, closing arguments, panel deliberation, and announcement of the panel's decision. The panel has discretion over setting time limits and evidentiary determinations.

(b) Evidence will be considered under a relaxed standard described in §2001.081 of the Texas Government Code, including information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs, necessary to ascertain facts not reasonably susceptible of proof under formal rules of evidence rules, and not precluded by statute.

(c) The following applies to filing of documents by parties:

(1) All documentary evidence must be filed in electronic format;

(2) Staff's documentary evidence will accompany the Notice of Hearing;

(3) The licensee's documentary evidence must be filed at least by 9:00 a.m. on the business day before the time of the hearing; and

(4) Evidence filed by either party less than 24 hours before the hearing will be considered at panel's discretion.

(d) For purposes of suspension or restriction under §164.0595(e) of the Act, final disposition of a criminal case includes evidence of a:

(1) final, non-appealable conviction,

(2) acceptance and entry of a plea agreement;

(3) dismissal;

(4) acquittal; or

(5) successful completion of a deferred adjudication.

(e) A suspension or restriction hearing is ancillary to the ISC or other subsequent hearings described in §164.059 of the Act and may not be enjoined under §164.011(c) of the Act.

(f) Because the express statutory authority in §164.059 of the Act provides a comprehensive post-suspension hearing process, the requirements of §2001.054(c-1) of the Texas Government Code do not apply.

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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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SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW.

§179.30. Automatic Suspensions Based upon Felony Conviction.

(a) For the purpose of this Section, an initial conviction occurs when there has been an adjudication of guilt of the offense charged, including, but not limited to, a finding of guilt by a jury or judge. A final conviction occurs when there has been an adjudication of guilt and a judgment entered.

(b) Once a licensee has been initially convicted of an offense under §164.057 of the Act or has been incarcerated under §164.058 of the Act, or any other applicable law, the Executive Director or their designee shall:

(1) immediately suspend the physician's licensee; and

(2) notify the licensee or the licensee's representative of the suspension by the most appropriate method;

(c) Upon notice to the board of a licensee's final conviction under §164.057 of the Act:

(1) the licensee's license shall be revoked; and

(2) the licensee or the licensee's representative shall be notified of the revocation by the most appropriate method.

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

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SUBCHAPTER H. CEASE AND DESIST ORDERS.

§179.35. Cease and Desist Orders.

(a) In accordance with §165.052 of the Act, a Cease and Desist hearing regarding the unlicensed practice of medicine by an individual shall be conducted in the same manner as an Informal Settlement Conference, including notice, but with the following modifications:

(1) The hearing shall be considered an open meeting and notice of the hearing will be posted with the Texas Secretary of State as required by applicable law.

(2) A minimum of 10 days' notice prior to the date of the hearing shall be provided to the individual charged with the unlicensed practice of medicine.

(3) The hearing shall be recorded.

(4) The Executive Director has been delegated authority to issue a Cease and Desist Order signed by the Chair of the Cease and Desist hearing, if directed by the panel.

(b) An individual notice of a Cease and Desist hearing may resolve the matter prior to the hearing by entering into an agreed Cease and Desist order. The authority to sign the authority to the Executive Director is immediately effective when signed by the Executive Director.

(c) If the unlicensed practice of medicine continues after entrance of an order, the Board may pursue further action as authorized by law and make referrals of the matter as appropriate including to law enforcement agencies.

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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 1467 of the Texas Insurance Code. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER I. OUT-OF-NETWORK BILLING.

§179.40. Out-of-Network Billing.

(a) In accordance with §1467.003 of the Texas Insurance Code, complaints of bad faith participation shall be investigated in the same manner as all other complaints.

(b) In accordance with §1467.151 of the Texas Insurance Code, the following applies to consumer complaints other than bad faith participation:

- (1) priority is given to investigations alleging delayed health care or medical care;
- (2) investigations are conducted in the same manner as all other complaints; and
- (3) the matter may be resolved in accordance with all applicable Board statutes and rules.