

The Texas Medical Board (Board) proposes the repeal of current Chapter 177, concerning Business Organizations and Agreements. This includes Subchapter A, concerning Definitions, §177.1, Subchapter B, concerning Non-Profit Health Organizations, §§177.2 – 177.13, Subchapter C, concerning Jointly Owned Entities, §§177.14 – 177.16, Subchapter D, concerning Employment of Physicians, §177.17, Subchapter E, concerning Physician Call Coverage Medical Services, §§177.18, 177.20.

The Board also proposes new Chapter 177, concerning Complaints and Investigations. This includes new Subchapter A, concerning Complaints, §§177.1 – 177.3; Subchapter B, concerning Investigative Process, §§177.10 – 177.13, and Subchapter C, concerning Expert Panel Review, §177.20 and §177.21.

Also, the Board contemporaneously proposes the repeal of the following current chapters:

Chapter 178, concerning Complaints, §§178.1 – 178.9;

Chapter 179, concerning Investigations, §§179.1 – 179.8; and

Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 177 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

SUBCHAPTER A. COMPLAINTS.

New §177.1, Definitions, explains the meaning of several terms as used in new Chapter 177.

New §177.2, Mandatory Complaint Notification, requires the posting of a notice of how to file a complaint and explains to whom the requirement applies.

New §177.3, Complaint Initiation, explains how to file a complaint and what information a complaint must contain.

SUBCHAPTER B. INVESTIGATIVE PROCESS.

New §177.10, Preliminary Investigation, explains how a preliminary investigation is to be conducted and how it is utilized by the board.

New §177.11, Official Investigation, how an official investigation is to be conducted and how it is utilized by the board.

New §177.12, Appeal of Dismissal, explains the process for a complainant to appeal the dismissal of a complaint and the possible outcomes of a complainant's appeal.

New §177.13, Probable Cause Guidelines for Requiring Mental or Physical Examination, explains the process for the board to order a mental or physical examination of a licensee if there is cause for concern regarding the fitness of the licensee to practice the regulated profession.

SUBCHAPTER C. EXPERT PANEL REVIEW.

New §177.20, Qualifications, explains the general qualifications necessary to act as an expert reviewer for the board.

New §177.21, Expert Reviewer Selection and Report, explains the selection and assignment process for assigning expert reviewers and duties if assigned as an expert reviewer.

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. It also ensures qualified individuals willing be performing the required reviews.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, 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 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 the following link:

<https://forms.office.com/g/FLvK02KrPm>. 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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SUBCHAPTER A. DEFINITIONS.

§177.1. Definitions.

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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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SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS.

§177.2. Initial Certification of 162.001(b) Health Organizations.

§177.3. Qualifications for Certification as a 162.001(b) Health Organization.

§177.4. Applications for Certification as a 162.001(b) Health Organization.

§177.5. Special Requirements for 162.001(b) Health Organizations.

§177.6. Biennial Reports for 162.001(b) Health Organizations.

§177.7. Establishment of Fees.

§177.8. Failure to Submit Reports or Fees for 162.001(b) Health Organizations.

§177.9. Migrant, Community or Homeless Health Centers.

§177.10. Review of Applications and Reports.

§177.11. Denial of Certification.

§177.12. Revocation of Certification.

§177.13. Complaint Procedure Notification.

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SUBCHAPTER C. JOINTLY OWNED ENTITIES.

§177.14. Therapeutic Optometrists.

§177.15. Podiatrists.

§177.16. Physician Assistants.

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SUBCHAPTER D. EMPLOYMENT OF PHYSICIANS.

§177.17. Exceptions to Corporate Practice of Medicine Doctrine.

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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 E. PHYSICIAN CALL COVERAGE MEDICAL SERVICES.

§177.18. Purpose and Scope.

§177.20. Call Coverage Minimum Requirements.

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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 §153.012(1) and Chapter 154 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER A. COMPLAINTS.

§177.1. Definitions.

The following words and terms shall have the following meanings in this Chapter unless the context clearly indicates otherwise.

(1) Baseless or unfounded -- not based on any evidence or fact.

(2) Board -- The Medical Board, Physician Assistants Board, Texas Board of Acupuncture Examiners, Respiratory Care Practitioners Board, Medical Radiological Technologists Board, Perfusionists Advisory Committee, and Medical Physicists Advisory Committee.

§177.2. Mandatory Complaint Notification.

(a) Licensees must post the following public notifications on how to file complaints with the board:

Figure 1:22 TAC §177.2

Figure 2:22 TAC §177.2

(b) The required notice must be:

(1) displayed in a prominent location at a licensee's place of business, practice, or any location where physician supervision or delegation is required;

(2) in English and Spanish of no less than 8½ inches by 11 inches in size;

(3) no smaller than standard 24-point Times Roman print;

(4) entirely in black print on white background; and

(5) with no alterations, deletions, or additions to the language.

(c) Licensees providing telemedicine must provide the required notice:

- (1) on a prominently displayed link on the provider website;
- (2) in a provider app, by recording, or in a bill for services;
- (3) in no less than a 10-point easily readable font; and
- (4) with no alterations, deletions, or additions to the language.

§177.3. Complaint Initiation.

A complaint must be made in writing and include:

- (1) the complainant's name and contact information;
- (2) the name of the licensee against whom the complaint is made;
- (3) the name and birth date of the patient or individual harmed, if applicable; and
- (4) the time/date and place of the alleged violation or action.

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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 154 and §164.056. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER B. INVESTIGATIVE PROCESS.

§177.10. Preliminary Investigation.

(a) A preliminary investigation shall be conducted in accordance with §154.057 of the Act. Information gathered during a preliminary investigation may include:

- (1) the history of the licensee collected and maintained by the board, including prior board complaints and investigations, if any;
- (2) a National Practitioner's Data Bank report;
- (3) any additional information provided by the complainant, if needed; and
- (4) a response from the licensee, if requested by the board.

(b) The preliminary investigation will determine if the complaint:

- (1) is jurisdictional;
- (2) is sufficient to open an official investigation;
- (3) should be dismissed; or
- (4) should be referred to another government agency.

(c) Notwithstanding §154.051(d) and (d-1) of the Act, there is no statute of limitations to consider or act on complaints alleging non-standard of care violations or violations not covered under §22.011(b)(12) of the Texas Penal Code, including action by another state licensing entity or criminal conduct.

§177.11. Official Investigation.

(a) If the preliminary investigation shows that a complaint is jurisdictional and that there is probable cause to justify further investigation, the complaint will be filed with the board and an official investigation shall be conducted. Official investigations will be assigned a priority in accordance with §154.056(a)(1) of the Act.

(b) Board staff will:

(1) use the preliminary investigation information;

(2) obtain any additional necessary information and documents to determine if a potential violation occurred;

(3) utilize expert physician reviewers in accordance with §154.056(e) of the Act when the investigation relates to standard of care; and

(4) issue subpoenas or requests for information to obtain information and documents.

(A) Responses to these subpoenas or requests for information shall be provided to the board within fourteen calendar days from receipt of the subpoena or request for information.

(B) The board may require responses to a subpoena or request for information in less than fourteen calendar days, based on individual circumstances.

(c) Upon completion of the official investigation, the matter will be:

(1) referred to the board's litigation department as a legal case; or

(2) recommended for dismissal.

§177.12. Appeal of Dismissal.

(a) A complainant may appeal the dismissal of a complaint. The appeal must:

(1) be in writing;

(2) be made within 90 days after receipt of the notice of the dismissal;

(3) list the reason(s) for the appeal; and

(4) provide information, if any, supporting the appeal.

(b) The complainant will be given notice of the opportunity to make a statement about the appeal.

(c) Only one appeal shall be allowed for each complaint.

(d) The Disciplinary Process Review Committee shall hear the appeal and set time limits for complainants who make a statement to the committee.

(e) Decisions on an appeal may be to:

(1) deny the appeal and uphold the dismissal;

- (2) grant the appeal and continue the investigation; or
- (3) grant the appeal and the refer to an Informal Settlement Conference.

§177.13. Probable Cause Guidelines for Requiring Mental or Physical Examination.

(a) In accordance with §164.056 of the Act, a mental or physical examination of a licensee can be requested:

(1) if an official complaint concerns allegations under §164.051(a)(4) of the Act and during the investigation:

(A) there has been no treatment or other ongoing remedial actions to address the allegations; and

(B) there is other evidence of the same or similar continuing conduct, including arrests, reports required under Chapter 160 of the Act, or receipt of multiple complaints or statements concerning the conduct; or

(2) if, during an Informal Settlement Conference, the actions or statements of the licensee indicate probable cause that there may be a violation of §164.051(a)(4) of the Act. In such a situation, the Panel can:

(A) defer the Informal Settlement Conference;

(B) request a new complaint be opened alleging a violation of §164.051(a)(4) of the Act; or

(C) order a mental or physical examination in accordance with §164.056 of the Act.

(b) If a physical or mental examination is ordered, the Notice will include a general statement of the basis for seeking the examination.

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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 154. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER C. EXPERT PANEL REVIEW.

§177.20. Qualifications.

(a) In addition to the requirements of §154.056(e) of the Act, an expert reviewer must also hold a current certification from the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery at the time of appointment as an expert reviewer.

(b) The term of service of an expert reviewer is until:

(1) resignation; or

(2) removal for cause.

§177.21. Expert Reviewer Selection and Report.

(a) Expert reviewers must:

- (1) be selected for review of an investigation at random;
- (2) be of the same or similar specialty for the area of practice that is the basis of the complaint;
- (3) be from a different geographic area than the physician under investigation, if possible; and
- (4) not have any conflict of interest.

(b) An expert reviewer selected must immediately report any potential conflict of interest.

(c) If no expert fully meets the selection criteria, the Medical Director, with advice from General Counsel, will determine which expert reviewer will be selected.

(d) Each expert reviewer will:

- (1) issue a report in accordance with §§154.0561 and 154.058 of the Act; and
- (2) include the expert reviewer's area of specialty.

(e) Agency staff must add the following statement to each expert reviewer report:

"PURSUANT TO §164.007 OF THE MEDICAL PRACTICE ACT, THIS DOCUMENT CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND CONFIDENTIAL. THE EXPERT REVIEWER REPORTS (REPORTS) ARE STATUTORILY LIMITED FOR USE AT THE INFORMAL PROCEEDING ONLY, UNDER TEXAS OCCUPATIONS CODE, §164.003(f). THE REVIEWERS' REPORTS ARE REQUIRED TO BE PROVIDED TO THE LICENSEE UNDER §164.003(f). THE REPORTS REMAIN CONFIDENTIAL AND PRIVILEGED UNDER §§164.003(h) AND 164.007(c). THE REPORTS CANNOT BE RELEASED TO ANY PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. THE REPORTS CANNOT BE OFFERED, UTILIZED, OR SUBMITTED AS EVIDENCE OR DOCUMENTS IN A CONTESTED CASE PROCEEDING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR IN ANY LEGAL PROCEEDING."

(f) Agency staff must add the following statement in bold letters to each expert reviewer report, when applicable, below the expert reviewer's specialty: **"This review involves Complementary or Alternative Medicine."**

NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, surgical assistants, medical radiologic technologists, non-certified radiologic technicians, respiratory care practitioners, medical physicists, and perfusionists may be reported for investigation at the following address:

**Texas Medical Board
Attention: Investigations
1801 Congress Avenue, Suite 9.200
P.O. Box 2018
Austin, Texas 78768-2018**

Assistance in filing a complaint is available by calling the following telephone number:

1-800-201-9353

For more information please visit our website at
www.tmb.state.tx.us

AVISO SOBRE LAS QUEJAS

Quejas sobre médicos, así como sobre otros profesionales médicos de la Junta Médica de Texas, incluyendo asistentes medicos profesionales, acupunturistas, asistentes quirúrgicos, tecnólogos médicos en radiología, técnicos radiólogos no certificados, profesionales de cuidados respiratorios, físicos médicos, y perfusionistas se pueden presentar en la siguiente dirección para ser investigadas:

**Texas Medical Board
Attention: Investigations
1801 Congress Avenue, Suite 9.200
P.O. Box 2018
Austin, Texas 78768-2018**

Si necesita ayuda para presentar una queja,
llame al:

1-800-201-9353

Para obtener más información, visite nuestro
sitio web en

www.tmb.state.tx.us