

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 42. RURAL VETERINARIAN INCENTIVE PROGRAM

4 TAC §§42.1, 42.3, 42.5, 42.7, 42.9, 42.11, 42.13, 42.15, 42.17, 42.19, 42.21, 42.23

The Rural Veterinarian Incentive Program Committee (Committee) in a duly noticed meeting on May 4, 2023, adopted new Chapter 42, §§42.1, 42.3, 42.5, 42.7, 42.9, 42.11, 42.13, 42.15, 42.17, 42.19, 42.21, 42.23. These sections are adopted without changes to the proposed text published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1377) and will not be republished.

JUSTIFICATION FOR RULE ACTION

House Bill 1259 of the 87th Legislature, effective September 1, 2021, transferred administration of the Rural Veterinarian Incentive Program (Program) to the Texas Animal Health Commission (Commission) and established the Rural Veterinarian Incentive Program Committee (Committee). Texas Education Code §56.103(d) mandated that the Committee adopt rules to select participants of the Program, provide for the request to distribute money from the account for the Program, establish criteria necessary for qualification as a rural sponsor, govern agreements of financial support between the rural sponsor and an eligible participant, and other rules and procedures necessary to administer the Program.

Rule 42.1 sets out the authority to establish procedures to administer the Program and states that the purpose of the Program is to encourage veterinary students and recent graduates to practice veterinary medicine in rural counties in Texas.

Rule 42.3 specifies the administrative duties of Commission and the Texas Higher Education Coordinating Board.

Rule 42.5 sets out the definitions used in the rules.

Rule 42.7 specifies the Commission's role in publishing information about the Program and directs the Commission to publish applications for the Program on its website.

Rule 42.9 enumerates the eligibility requirements under the Program.

Rule 42.11 directs the Commission to screen each application for eligibility and completeness.

Rule 42.13 specifies the Program application evaluation criteria and specifies the process the Committee uses to score, rank, and select participants.

Rule 42.15 enumerates the instances where an application can be denied. The rule also allows for the voluntary withdrawal of an application and the opportunity for applicants to reapply in future application rounds.

Rule 42.17 provides the eligibility requirements to be a rural community sponsor under the Program.

Rule 42.19 sets out the requirements for an eligible loan under the Program.

Rule 42.21 specifies the amount of financial support that may be awarded under the Program and explains that the amount of financial support is contingent on available funding.

Rule 42.23 sets the required terms for the financial agreement a participant must enter to receive financial support as part of the Program.

HOW THE RULES WILL FUNCTION

The new chapter establishes all rules under the Program including guidelines to select participants, guidelines to distribute funds to participants, criteria necessary for qualification as a rural sponsor, and other rules and procedures necessary to administer the Program.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received comments regarding the proposed rules from five individual commenters. A summary of comments relating to the rules and Commission's responses follows.

Comments:

One individual commenter, a veterinarian practicing in Texas, commented that a county population of less than 100,000 encompassed too many counties and that the definition should be lowered to counties with populations less than 50,000.

The other four individual commenters are also veterinarians who practice in Texas. These commenters generally note how challenging it is to fill needed veterinarian positions in rural counties in Texas. These commenters note that many veterinarians of retirement age are hesitant to retire because it would leave the community with no veterinarians. The commenters note that loan repayment will provide an additional incentive to bring much-needed veterinarians into Texas rural communities. One of the commenters noted that the ability to repay student loans are a big concern for new veterinarian graduates.

Response: The Committee thanks the commenters for the feedback and appreciate their devotion and commitment to the field of veterinary medicine. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The rules are adopted under the Texas Education Code, §56.103, which requires the Committee to adopt rules to select participants of the Program, provide for the request to distribute money from the account for the Program, establish criteria necessary for qualification as a rural sponsor, govern agreements of financial support between the rural sponsor and an eligible participant, and other rules and procedures necessary to administer the Program.

The adopted new rules implement the Texas Education Code, §§56.101-56.106.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2023.

TRD-202301637

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

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Proposal publication date: March 10, 2023

For further information, please call: (512) 719-0718



PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

4 TAC §§225.1 - 225.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Texas Administrative Code (TAC), Title 4, Part 13, §§225.1 - 225.4. The amendments are adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1685) and will not be republished.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the March 31, 2023 issue of the *Texas Register* (48 TexReg 1738).

The adopted amendments to §225.1 remove definitions of terms that are no longer used in 4 TAC Part 13 and clarify the definition of "sponsor."

The adopted amendments to §225.2 add "certified and insured" before "prescribed burn manager" to standardize terminology used in 4 TAC Part 13 and remove language redundant to language contained within related statutes.

The adopted amendments to §225.3 remove an unnecessary cross reference to TCEQ rules.

The adopted amendments to §225.4 make editorial changes and remove the 30-day deadline for certified and insured prescribed burn managers to notify the Department of changes to their information.

No public comments were received regarding the proposed rule amendments.

The amendments are adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2023.

TRD-202301648

Skyler Shafer

Assistant General Counsel

Prescribed Burning Board

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For further information, please call: (512) 936-9360



CHAPTER 226. REQUIREMENTS FOR CERTIFICATION BY THE BOARD

4 TAC §§226.1 - 226.3, 226.5 - 226.7

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Texas Administrative Code, Title 4, Part 13, §§226.1 - 226.3 and §§226.5 - 226.7. The amendments to §§226.1 - 226.3 and 226.5 - 226.7 are adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1687) and will not be republished.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1738).

The adopted amendments to §226.1 reorganize cross references to other Board rules.

The adopted amendments to §226.2 remove redundant language relating to compliance and renewal, which is already addressed by statute and other rules.

The adopted amendments to §226.3 clarify the necessary experience required to become a certified and insured prescribed burn manager and remove unnecessary language.

The adopted amendments to §226.5 remove the subsection that provides fees will be prorated based on when an application is submitted and make editorial changes.

The adopted amendments to §226.6 allow the Department, in addition to the Board, to approve deadline extensions and make editorial changes.

The adopted amendments to §226.7 remove the subsection related to reciprocity with New Mexico, Oklahoma, Louisiana, or a federal agency and make editorial changes.

No public comments were received regarding the proposed rule amendments.

The amendments are adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 227. REQUIREMENTS FOR CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Texas Administrative Code, Title 4, Part 13, §227.1 and §227.4, and the repeal of §227.3. The amendments and repeal are adopted without changes to the proposed text as published in the March 31, 2023 issue of the *Texas Register* (48 TexReg 1689) and will not be republished.

The Board identified the need for the amendments and repeal during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1738).

The adopted amendments to §227.1 require documentation of any conditions, endorsements, exceptions or limitations to the liability insurance policy carried by a certified and insured prescribed burn manager to be disclosed to the Department, in addition to the Board; require proof of insurance to be submitted annually instead of by December 31; and make editorial changes.

The adopted repeal of §227.3 clarifies the necessary experience required to become a certified and insured prescribed burn manager and removes unnecessary, redundant language.

The adopted amendments to §227.4 change the requirements for maintenance of prescribed burn records and make editorial changes.

No public comments were received regarding the proposed amendments or repeal.

4 TAC §227.1, §227.4

The amendments are adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn

managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Skyler Shafer

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4 TAC §227.3

The repeal is adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 228. PROCEDURES FOR CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS

4 TAC §§228.1 - 228.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Texas Administrative Code, Title 4, Part 13, §§228.1 - 228.4. The amendments are adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1691) and will not be republished.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the March 31, 2023 issue of the *Texas Register* (48 TexReg 1738).

The adopted amendments to §228.1 change burn plan requirements to include a burn/no burn checklist.

The adopted amendments to §228.2 require notice of prescribed burns to be provided in advance to the local county dispatch office and the Texas A&M Forest Service central dispatch office and remove unnecessary language.

The adopted amendments to §228.3 change the requirement that a certified and insured prescribed burn manager (CIPBM) be present during a prescribed burn to instead require the CIPBM to be present during an active prescribed burn, as determined by the CIPBM, and remove unnecessary language.

The adopted amendments to §228.4 remove notification requirements for conducting burns during a burn ban that no longer reflect current practice and make editorial changes.

No public comments were received regarding the proposed amendments.

The amendments are adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 229. CONTINUING FIRE TRAINING

4 TAC §§229.1 - 229.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Texas Administrative Code, Title 4, Part 13, §§229.1 - 229.4, concerning continuing fire training. The amendments are adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1693) and will not be republished.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1738).

The adopted amendments to §229.1 add wildland firefighting to the list of eligible continuing fire training activities for clarity and change "CFT credits" to "CFT hours."

The adopted amendments to §229.2 change "CFT credit" to "CFT hours" and make editorial changes.

The adopted amendments to §229.3 remove the requirement for CFT training activities to be submitted for approval 30 days

prior to the CFT activity, add a cross reference to another rule, change the topics that CFT activities can cover, and make editorial changes.

The adopted amendments to §229.4 allow a Lead Burn Instructor to approve CFT activities, require sponsors of CFT activities to provide a completed Board Form 607 to participants, and make editorial changes.

No public comments were received regarding the proposed amendments.

The amendments are adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Prescribed Burning Board

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For further information, please call: (512) 936-9360



CHAPTER 230. LEAD BURN INSTRUCTOR REQUIREMENTS

4 TAC §§230.1 - 230.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Texas Administrative Code, Title 4, Part 13, §§230.1 - 230.4. The amendments are adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1695) and will not be republished.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1738).

The adopted amendments to §230.1 change the requirements for lead burn instructor eligibility.

The adopted amendments to §230.2 remove unnecessary language.

The adopted amendments to §230.3 make editorial changes and add recommended curriculum topics to certified and insured prescribed burn manager training courses.

The adopted amendments to §230.4 allow the Board to designate a member to develop and approve the standardized test to be administered to all applicants seeking status as a certified and insured prescribed burn manager, remove a subsection related to the appointment of subcommittee to approve the test, and make editorial changes.

No public comments were received regarding the proposed amendments.

The amendments are adopted under Texas Natural Resources Code, §153.046, which provides that the Board, by rule, shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Skyler Shafer

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Prescribed Burning Board

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For further information, please call: (512) 936-9360



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 18. TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION

13 TAC §18.9

The Texas Historical Commission (THC) adopts new §18.9, relating to the creation of Administrative Grant Rules for the Texas Holocaust, Genocide, and Antisemitism Advisory Commission's (THGAAC) grant program, as authorized in Section 448.101(c) of H.B. 3257. New §18.9 is adopted without changes to the text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 785). The rule will not be republished.

Chapter 18 creates a process for operations for the THGAAC's grant program.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five years the new rule is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the new rule as adopted. The related policy and procedure are in place for this rule and there is no anticipated additional cost as a result of the rulemaking.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the rule is in effect, the anticipated public benefit will be the ability of Texas nonprofits to apply to receive grant funds, for the purpose of supporting Holocaust, genocide, and antisemitism educational programs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with this new rule. There is no effect on local economy for the first five years that the new rule is in effect; therefore, no local employment impact state-

ment is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The adopted new rule does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The adopted new rule provides an opportunity for the THC and THGAAC to support the operation and delegation educational programming to assist with implementation of goals and objectives for the THGAAC. There is no anticipated economic impact of this new rule. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. The new rule does not affect small businesses, micro-businesses, or rural communities because the new rule only clarifies the administrative procedures with which to carry out existing statutes.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the new rule would be in effect, the adopted new section: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the new rule would be in effect, the new rules will not positively or adversely affect the Texas economy.

No comments were received on the proposed rule.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. This new rule is adopted under the authority of Texas Government Code §448.102(b), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission.

CROSS REFERENCE TO STATUTE. The new rule implement §448 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2023.

TRD-202301641

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 25, 2023

Proposal publication date: February 17, 2023

For further information, please call: (512) 463-6100



CHAPTER 21. HISTORY PROGRAMS SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.13

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, §21.13, related to Recorded Texas Historic Landmark (RTHL) removal procedures, without changes to the text published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 787). The rule will not be republished.

The amendments to Section 21.13 clarify procedures for Recorded Texas Historical Landmark (RTHL) removal requests and the time period for marker removal requests. They also correct formatting and grammatical errors in the rule.

No comments were received during the 30-day comment period following publication.

These amendments are adopted under the authority of Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2023.

TRD-202301642

Mark Wolfe

Executive Director

Texas Historical Commission

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Proposal publication date: February 17, 2023

For further information, please call: (512) 463-6100



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.2

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §104.2, concerning continuing education providers. This rule is adopted with minor non-substantive changes to the proposed text published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1698), and will be republished. The adopted amendment reflects the merger of the regional examining board CDCA-WREB-CITA. The adopted amendment includes the States Resources for Testing and Assessments (SRTA), Central Regional Dental Testing Services Inc. (CRDTS), and the American Association of Dental Boards - Accredited Continuing Education Program (AADB-ACE) as board approved continuing education providers. The adopted amendment removes Dental Quality Assurance and Dentist Secure Labs as continuing education providers.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§104.2. Providers.

(a) The Board hereby establishes a list of providers for continuing education courses. Unless specifically required by state law or Board rule, the Board shall not accept or approve specific continuing education courses for requirements related to the issuance or renewal of licensure, registrations, or sedation/anesthesia permits.

(b) At least once per calendar year, the Board shall review the list of providers for continuing education and any applications submitted for continuing education providers, and the Board shall consider additions or removals of providers from the list provided in this section.

(1) The Presiding Officer may establish an ad hoc committee pursuant to 22 TAC §100.8 (relating to Ad Hoc Committees of the Board) to review the addition or removal of providers and make recommendations to the full Board for approval.

(2) The Board and any ad hoc committee shall consider classifying each provider for full continuing education provider authorization, including clinical, scientific, and sedation/anesthesia provider courses, or for a limited continuing education provider authorization restricted to courses related to risk management, recordkeeping, ethics, and non-clinical dental assistant duties continuing education. If no classification is assigned to a provider, the provider shall be considered a full continuing education provider.

(3) Any addition, removal, or classification of providers shall require a majority vote of the full Board in an open meeting. Any provider being considered for addition, removal, or classification shall be given 10 business days' notice of the consideration, and the provider shall be given an opportunity to appear and make a presentation or submit supporting documentation at the scheduled meeting of the Board or any ad hoc committee regarding the addition, removal, or classification.

(c) Board staff shall develop and provide an application form for continuing education providers. The application form shall provide instructions for submitting provider information and supporting documentation. The Board shall provide the application form for continuing education providers and general instructions on the continuing education provider application process on its public website. Any request to become an approved continuing education provider must be submitted on the application form provided by the Board; failure to utilize the Board's application form shall be grounds to reject the application request.

(d) The Board shall consider the following criteria when reviewing providers:

- (1) the health, safety, and welfare of the residents of Texas;
- (2) access to providers for licensees and registrants in all portions of Texas;
- (3) competency of course providers and quality of course materials;
- (4) internal and external audits, guidelines, safeguards, and standards to ensure consistent and quality education; and
- (5) demonstrable clinical, professional, and/or scientific education experience.

(e) Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are certified by the following providers:

- (1) American Dental Association--Continuing Education Recognition Program (CERP);

(2) American Dental Association, its component, and its constituent organizations;

(3) Academy of General Dentistry and its constituents and approved sponsors;

(4) Dental/dental hygiene schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association;

(5) American Dental Association approved specialty organizations;

(6) American Dental Hygienists' Association, its component, and its constituent organizations;

(7) American Medical Association approved specialty organizations;

(8) American Medical Association approved hospital courses;

(9) National Dental Association, its constituent, and its component societies;

(10) National Dental Hygienists' Association, its constituent, and its component societies;

(11) Medical schools and programs accredited by the Standards of the Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association;

(12) The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), States Resources for Testing and Assessments (SRTA), and Central Regional Dental Testing Services Inc. (CRDTS);

(13) American Academy of Dental Hygiene;

(14) American Dental Education Association;

(15) American Heart Association;

(16) Texas Dental Hygiene Educators' Association;

(17) Dental Laboratory Association of Texas;

(18) Dental Assisting National Board;

(19) American Dental Assistants Association and its constituent organizations;

(20) The Compliance Division, LLC;

(21) Dental Compliance Specialists, LLC; and

(22) Other entities approved by the Board as shown in the attached graphic for this section.

Figure: 22 TAC §104.2(e)(22)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2023.

TRD-202301647

Lauren Studdard

General Counsel

State Board of Dental Examiners

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Proposal publication date: March 31, 2023

For further information, please call: (512) 305-8910

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.1

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 280, §280.1 - Application for Therapeutic Certification. The Board adopts this rule without changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 610). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in Chapter 280 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. The rule clarifies a therapeutic optometrist can prescribe both oral and topical over-the-counter medications. It updates the title of the rule to clearly reflect that the agency only issues Therapeutic Optometrist licenses, eliminates the requirement that the therapeutic certificate must be displayed along with the initial license in a conspicuous place in the principal office where the optometrist practices as all licenses issued currently are therapeutic licenses, deletes the requirement the application be notarized, and makes non-substantive capitalization and grammar changes to ensure consistency across the Board's rules. Finally, it eliminates the specific fees outlined by the rule because all authorized fees are outlined under §273.4 - Fees (Not Refundable).

COMMENTS

The 30-day comment period ended on March 12, 2023. The Board received one comment regarding the proposed rule from the Texas Medical Association (TMA). A summary of the comment relating to the rules and the Board's response follows:

COMMENT: The TMA is concerned about the proposed changes to Subsection (d) removing the requirement that an optometrist conspicuously display the TMOD certificate. The TMA asserts removing this language from the rules could mislead optometrists into thinking that this requirement no longer exists and thus no longer displaying their licensing or certification. This in turn could lead to confusion among patients as to the education and training of the health care professional from whom they are receiving treatment.

RESPONSE: The TMOD certificate referenced in this rule for display is no longer issued by the Board as a separate document, so most licensees do not even have such a certificate to display. Currently, the Board ensures the TMOD requirements are met prior to initial licensure and asserts that the display of a Texas Optometry license ensures the licensee has met the TMOD requirements. The Texas Optometry Act (Sec. 351.261) requires a person practicing optometry or therapeutic optometry in this state to display the person's license or certificate in a conspicuous place in the principal office in which the person practices optometry or therapeutic optometry. During inspections, the Board ensures the licensee is in compliance with the statutory requirement. The Board declines to make changes in response to this comment.

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code §§351.151 - Rules and 351.251 - License Required.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2023.

TRD-202301581

Janice McCoy

Executive Director

Texas Optometry Board

Effective date: May 22, 2023

Proposal publication date: February 10, 2023

For further information, please call: (512) 305-8500



22 TAC §§280.2, 280.3, 280.6, 280.8, 280.9

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 280, §280.2 - Required Education; §280.3 - Certified Therapeutic Optometrist Examination; §280.6 - Procedures Authorized for Therapeutic Optometrists; §280.8 - Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation; and §280.9 - Application for Licensure as Optometric Glaucoma Specialist.

The Board adopts §280.2- Required Education; §280.3- Certified Therapeutic Optometrist Examination; and §280.6- Procedures Authorized for Therapeutic Optometrists without changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 611). These rules will not be republished.

The Board adopts §280.8 - Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation; and §280.9- Application for Licensure as Optometric Glaucoma Specialist with changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 611). These amended rules will be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 280 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039.

As adopted, the amendment now eliminates an outdated requirement from 1991 from §280.2, updates the reference to the organization that currently administers the exam on behalf of the agency to the Association of Regulatory Boards of Optometry in §280.3, eliminates the requirement optometric glaucoma applications be notarized, updates statutory references, makes non-substantive capitalization and grammar changes to ensure consistency across the Board's rules, and eliminates the specific fees outlined by the rule because all fees currently are outlined under §273.4 - Fees (Not Refundable).

CHANGES TO TEXT AS PROPOSED

The Board made a minor edit to §280.8(c) to correct an error in the published text of the rule that did not strike-through the non-capitalized reference to "board" to the capitalized "Board" in the sentence "An applicant may sit for a Board approved review course and examination"

The Board made a minor edit to §280.9 (a)(1) to correct a stylistic error in the published text of the rule to add the phrase "of this chapter" and to change a comma to a semi-colon to now read "...as set forth in §280.10 of this chapter; and ..."

The Board edited to §280.9 (a)(2) to correct a stylistic error in the published text of the rule to add the phrase "of this chapter" and to fix the rule referenced in this section as the Board intended to strike §280.11 as that rule no longer exists to now read "as set forth in §351.3581 of the Texas Optometry Act and §280.10 of this chapter, ..."

The Board made a minor edit to §280.9 (b) to correct a stylistic error in the published text of the rule to add the phrase "of this chapter" to now read "... as set forth in §280.8 of this chapter (relating to Required Education) ..."

COMMENTS

The 30-day comment period ended on March 12, 2023. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The rules are adopted under the Texas Optometry Act, Texas Occupations Code §351.151 - Rules; §351.252 - Education Requirements for Therapeutic Optometrist; §351.358 - Ophthalmic Devices, Oral Medications, and Pharmaceutical Agents; and §351.3581 - Treatment of Glaucoma.

§280.8. Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation.

(a) Education Required.

(1) Successful completion of at least 30 verified instruction or classroom hours of Board approved review course work in glaucoma diagnosis and treatment and pharmacology of approved oral and anti-glaucoma drugs is required for licensure as an optometric glaucoma specialist. The applicant must provide documentation of successful completion of course work.

(2) To be acceptable, courses of verified instruction or classroom hours must receive prior approval by the Board. Approved courses may be given only by accredited colleges and schools of optometry or via other educational programs approved by the Board. Successfully completed classroom hours may be used to satisfy the Continuing Education requirements for that year.

(b) Examination. Each applicant for licensure as an optometric glaucoma specialist shall have passed, with a grade of 75 or above, a Board approved examination covering the 30 verified instruction or classroom hours defined in this rule. The examination must have received prior approval by the Board. The applicant must provide documentation of passing the examination. Examinations given by accredited schools of optometry or medicine covering the subjects described in the Board's Resolution dated April 14, 2000, are hereby approved.

(c) Sitting for Review Course and Examination Prior to Graduation. An applicant may sit for a Board approved review course and examination provided that the applicant submits to the course provider a written statement from the dean of an accredited college of optometry that the applicant is enrolled in good standing in the college and is in the final semester before graduation, and such other information as the Board may deem necessary for the enforcement of the Texas Optometry Act. Subsequent to licensure by the Board as a therapeutic optometrist, the applicant having sat for the course and examination as a student must obtain a clinical skills evaluation, and when making application to the Board for licensure as an Optometric Glaucoma

Specialist, include a copy of the statement from the dean originally furnished to the course provider.

(d) Clinical Skills Evaluation. Each applicant for licensure as an optometric glaucoma specialist shall submit a signed and dated certification prepared by a licensed ophthalmologist or optometric glaucoma specialist. The certification shall confirm the demonstration by the applicant in an adequate and appropriate manner, as directly observed by the ophthalmologist or optometric glaucoma specialist, of the following skills:

- (1) tonometry,
- (2) gonioscopy,
- (3) slit lamp examination,
- (4) optic nerve examination/fundus, and
- (5) interpretation of visual fields.

(e) Applicants Graduating from Curricula Which Include Instructional Clinical Course. An applicant meets the requirements of §351.3581 of the Texas Optometry Act and subsections (a) - (c) of this section, provided:

(1) The Board determines in a review of the curriculum and by certification of the dean of a school or college of optometry that:

(A) The course work required for certification in this section, including an instructional clinic review component, is part of the school or college of optometry's regular curriculum, and that the examination required for graduation from the school or college is the substantive equivalent of an examination approved by the Board pursuant to subsection (b) of this section.

(B) The students of the school or college must receive clinical training and satisfy the evaluation requirement set out in subsection (d) of this section.

(2) This subsection shall apply to all applicants graduating on or after May 1, 2008, from a school or college of optometry for which the Board has issued a determination under paragraph (1) of this subsection, in the calendar year during which the determination was issued or any year thereafter.

§280.9. *Application for Licensure as Optometric Glaucoma Specialist.*

(a) A licensed therapeutic optometrist must submit a completed application on forms provided by the Texas Optometry Board (Board) to be eligible for licensure as an optometric glaucoma specialist. An optometric glaucoma specialist may:

(1) administer and prescribe appropriate medications by topical or oral means for the purpose of diagnosing and treating visual defects, abnormal conditions and diseases of the human vision system, including the eye and adnexa, as set forth in §280.10 of this chapter; and

(2) treat glaucoma, as set forth in §351.3581 of the Texas Optometry Act and §280.10 of this chapter, including the administration and prescribing of appropriate medications by topical, oral or parenteral means.

(b) A completed application for license as an optometric glaucoma specialist consists of a signed application form entirely filled out by the applicant and forwarded to the Board along with an application fee. Proof of the required successfully completed education, examination and clinical assessment as set forth in §280.8 of this chapter (relating to Required Education) must accompany the application form. The Board may license the applicant as an optometric glaucoma specialist

provided the applicant submits a completed application as defined in this rule, and provided that the applicant is currently licensed and authorized to practice therapeutic optometry in this state.

(c) The license to practice as an optometric glaucoma specialist must be displayed along with all licenses in a conspicuous place in the principal office where the optometrist practices.

(d) Designation of authority as an optometric glaucoma specialist will appear along with the optometrist's license number in the format of the license numbers followed by the letter "T" and "G." Such designation must appear whenever the license number is required under Board statutes or Board rules.

(e) In the event the original certification is lost or destroyed, the Board may issue a duplicate certificate; the person entitled thereto must make written application to the Board for a duplicate, under affidavit setting forth that such certificate was lost or destroyed, and the circumstances under which loss or destruction occurred. Should the original subsequently be found, it must be forwarded immediately to the Board and not used by the person to whom issued originally or by any other person. A fee must be submitted to the Board along with the affidavit for the duplicate issue.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



22 TAC §280.5

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 280, §280.5 Prescription and Diagnostic Drugs for Therapeutic Optometry. The Board adopts this rule without changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 613). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 280 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039.

The rule updates statutory references to reflect legislative changes to statute; deletes the requirement the Board provide a list of appropriate pharmaceuticals to the Texas State Board of Pharmacy; authorizes the use of both oral and topical prescriptions by a therapeutic optometrist; deletes the specific classifications and limitations on medications, including list of medications that could not be used for the treatment of glaucoma if not permitted by law on August 31, 1991; states the authority of an optometric glaucoma specialist to prescribe antiglaucoma drugs is defined by Section 351.3581 of the Texas Optometry Act; and deletes the requirement a therapeutic optometrist obtain a registration number from DPS.

COMMENTS

The 30-day comment period ended on March 12, 2023. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The rule is adopted under the Texas Optometry Act, Texas Occupations Code §§351.151 - Rules; 351.358 - Ophthalmic Devices, Oral Medications, and Pharmaceutical Agents; and 351.3581 - Treatment of Glaucoma.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



22 TAC §280.10

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 280, §280.10 Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs. The Board adopts this rule without changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 616). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 280 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039.

The rule deletes the requirement the Board provide a list of appropriate pharmaceuticals to the Texas State Board of Pharmacy; authorizes the use of both oral and topical prescriptions, but deletes the specific classifications and supply limitations; authorizes the use of appropriate medications pursuant to §351.3581 of the Texas Optometry Act; authorizes an optometric glaucoma specialist to independently administer oral carbonic anhydrase inhibitors for emergency purposes and immediately refer the patient to an ophthalmologist; eliminates the specific language calling for a periodic check of the Prescription Monitoring Program; and eliminates outdated effective date. It also makes non-substantive grammar changes to ensure consistency across the Board's rules.

COMMENTS

The 30-day comment period ended on March 12, 2023. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The rule is adopted under the Texas Optometry Act, Texas Occupations Code §§351.151 - Rules; 351.358 - Ophthalmic Devices, Oral Medications, and Pharmaceutical Agents; and 351.3581 - Treatment of Glaucoma.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202301584

Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2

The Texas State Board of Pharmacy adopts amendments to §283.2, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1487). The rule will not be republished.

The amendments remove the requirement that a residency program be accredited by the American Society of Health System Pharmacists for a resident to be eligible for designation as an extended-intern.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2023.

TRD-202301631

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Effective date: May 24, 2023

Proposal publication date: March 17, 2023

For further information, please call: (512) 305-8026



22 TAC §283.4

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements. These amend-

ments are adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1488). The rule will not be republished.

The amendments remove the requirement that a residency program be accredited by the American Society of Health System Pharmacists for a resident to be eligible for designation as an extended-intern and specify that a pharmacist-intern registration expires due to failing the NAPLEX or Texas Pharmacy Jurisprudence Examination only if the intern fails either exam more than once.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202301633

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Effective date: May 24, 2023

Proposal publication date: March 17, 2023

For further information, please call: (512) 305-8026



CHAPTER 291. PHARMACIES

SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1491). The rule will not be republished.

The amendments allow remote pharmacy services to be provided using an automated pharmacy system to be provided at healthcare facilities regulated under Chapters 464 and 577, Health and Safety Code.

The Board received comments from W. Perry Flowers, R.Ph., with Becton, Dickinson and Company, in support of the amendments. The Board also received comments from Angela Babin, BSPHarm, MBA, with The Harris Center, in support of the amendments and suggesting the addition of healthcare facilities regulated under Chapter 534, Health and Safety Code, to the types of facilities authorized to provide remote pharmacy services using

an automated pharmacy system. The Board declines to make this change.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202301635

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8026



CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1503). The rule will not be republished. Due to an error by the Texas Register, the text of the proposed amendments was published incorrectly. A Correction of Error is published contemporaneously in this issue.

The amendments clarify the requirements for obtaining continuing education in approved procedures of prescribing and monitoring controlled substances and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202301634

Julie Spier, R.Ph.
President
Texas State Board of Pharmacy
Effective date: May 24, 2023
Proposal publication date: March 17, 2023
For further information, please call: (512) 305-8026



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

The Texas Board of Veterinary Medical Examiners (hereinafter "Board") adopts the repeal of 22 TAC §575.29 and adopts the new rule to 22 TAC §575.29 concerning Informal Conferences. This repeal and new rule are adopted without any changes to the proposed text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1401). These rules will not be republished.

The repeal and new rule are adopted to give veterinarians more clarification on what the Board expects from them going into informal conferences. The currently active rule where the repeal was adopted was not specific enough.

The new rule adds language to 22 TAC §575.29(b) to clarify timelines for submitting any additional evidence for review by the Board after respondents review the medical review.

No comments were received regarding the adoption of this new rule.

22 TAC §575.29

The repeal is adopted under the authority of Texas Occupations Code, §801.151(a), (b), and (c), which authorizes the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public. Cross-reference to Statute: Occupations Code, §801.408.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2023.

TRD-202301632
John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
Effective date: May 24, 2023
Proposal publication date: March 10, 2023
For further information, please call: (512) 305-7565



22 TAC §575.29

The new rule is adopted under the authority of Texas Occupations Code, §801.151(a), (b), and (c), which authorizes the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills,

and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public. Cross-reference to Statute: Occupations Code, §801.408.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2023.

TRD-202301629
John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
Effective date: May 24, 2023
Proposal publication date: March 10, 2023
For further information, please call: (512) 305-7565



TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.5, §601.9

The Texas Medical Disclosure Panel (Panel) adopts amendments to §601.5, concerning Disclosure and Consent Form for Radiation Therapy; and §601.9, concerning Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia). Sections 601.5 and 601.9 are adopted with changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7389). The rules will be republished.

BACKGROUND AND JUSTIFICATION

These amendments are adopted in accordance with Texas Civil Practice and Remedies Code §74.103, which requires the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.5 contains the Disclosure and Consent Form for Radiation Therapy. Section 601.9 contains the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).

SECTION-BY-SECTION SUMMARY

Amendments to §601.5 replace the English and Spanish forms in Figure 25 TAC §601.5(1) and Figure 25 TAC §601.5(2) respectively and specify an effective date of September 1, 2023, for these forms.

Amendments to §601.9 replace the English and Spanish forms in Figure 25 TAC §601.9(1) and Figure 25 TAC §601.9(2) respectively and specify an effective date of September 1, 2023, for these forms.

PUBLIC COMMENT

The 31-day public comment period ended December 5, 2022. The Panel extended the comment period at its December 7, 2022, meeting to allow time for additional public comment un-

til the Panel's next meeting, which was scheduled for February 1, 2023, and due to weather was postponed until April 4, 2023.

During the 31-day public comment period, the Panel received one comment from an individual regarding the proposed form language for §601.5.

Comment: The individual requested the Panel revise the form for §601.5 to include gender-neutral pronouns and inclusive language.

Response: The Panel revised the form accordingly.

During the 31-day and extended public comment periods, the Panel received 111 comments regarding the proposed form for §601.9 from three individuals and 11 organizations: the Texas Dental Association (TDA), the American Society of Dentist Anesthesiologists (ASDA), the Association of Dental Support Organizations (ADSO), the Texas Academy of Anesthesiologist Assistants (TAAA), the Texas Academy of Pediatric Dentistry (TAPD), the Texas Medical Association (TMA), the Texas Society of Oral and Maxillofacial Surgeons (TSOMS), the Texas Society of Periodontists (TSP), the Texas Association of Nurse Anesthetists (TANA), the Texas Academy of General Dentistry (TAGD), and the Texas Society of Anesthesiologists (TSA).

Comment: During the 31-day public comment period, the Panel received one comment from the TDA, one comment from the TAGD, one comment from the TSP and two comments from the ADSO. Each organization commented that the Panel reached out to some stakeholder groups but did not include dentistry stakeholder groups before the proposed revisions were published in the *Texas Register*. The TDA expressed concerns about the manner in which health care providers are identified and how the revised form in §601.9 works in conjunction with the Texas State Board of Dental Examiners' disclosure requirements. These organizations requested that the Panel delay adoption of the proposed amendments and allow an additional 30 days for comment, so that oral health stakeholders may provide additional input and participate in the rulemaking process.

Response: At its December 7, 2022, meeting, the Panel extended the public comment period until the Panel's next meeting, which was scheduled for February 1, 2023, and due to weather was postponed until April 4, 2023.

Comment: During the 31-day public comment period, the TAPD asked that the Panel not adopt §601.9 until after gathering input from all stakeholders impacted by it, including dentistry stakeholders. The TAPD noted that the American Academy of Pediatric Dentistry recommends "consent for sedation, general anesthesia, or behavior guidance techniques such as protective stabilization (i.e., immobilization) should be obtained separately from consent for other procedures." The TAPD also stated a "modified or customized form is preferred over a standard form" in pediatric dentistry and many of those basic requirements for valid consent are not to be found in the proposed document. The TAPD noted the Panel should consider the unique legal technicalities when dealing with pediatric patients, have a space to list the pediatric patient's legal name and date of birth, include a place for a dentist to sign the consent, and list the indications for the sedation or anesthetic procedure.

Response: At its December 7, 2022, meeting, the Panel extended the public comment period until the Panel's next meeting, which was scheduled for February 1, 2023, and due to weather was postponed until April 4, 2023. The Panel declined to make

the suggested changes and noted that providers are free to modify the forms to fit their practice.

Comment: During the 31-day public comment period, the TMA urged the Panel to include delegation and supervision language in the new proposed form for the purpose of patient transparency. Specifically, TMA asked the Panel to incorporate the phrase "appropriate supervision" to provide better transparency to the patient. TMA also requested the Panel change "Resident Physician" to "Physician in Training Dr. [Name]" and move the option to the top in order with the other physician options, and also requested the Panel add a form date to the document to help determine which document version is valid.

Response: The Panel revised the form by adding "The Physician in Training" in the administration of anesthesia/analgesia being delegated/supervised. The Panel declined to make additional changes and noted that providers are free to modify the forms to fit their practice.

Comment: During the 31-day public comment period, the TSOMS asked the Panel to extend the time for public comment to allow for more input, and suggested adding a third check box following the options "Anesthesiologist" and "Non-Anesthesiologist Physician or Dentist."

Response: The Panel extended the comment period and added "Physician Anesthesiologist" and "Dentist Anesthesiologist" under the Administration of Anesthesia/Analgesia Planned approach.

Comment: During the 31-day public comment period, the TAAA commented that it is supportive of the draft form in §601.9 and suggested adding the words "delegation occurs" to the parenthetical statement on page one "(check all that apply, if any)" so that the statement would read "(check all that apply, if any delegation occurs)." This would provide greater clarity to the patient as to the delegated nature of the anesthetic they are to receive.

Response: The Panel revised the form by adding "if the administration of anesthesia/analgesia is being delegated/supervised by the above provider."

Comment: During the 31-day public comment period, the ASDA advised the Panel to amend the current form by adding the title "Dentist Anesthesiologist" among the different categories included.

Response: The Panel revised the form based on this comment.

Comment: During the 31-day public comment period, the TSA recommended adding space to account for a second witness line to account for when a phone consent is obtained for an emergency situation and specifying that a second witness is required when phone consent is obtained. TSA also advised adding the terms "delegating/supervising" when the form is referring to a non-attending physician. Additionally, two individuals with the Texas Society of Anesthesiologists at the December 7, 2022, meeting recommended adding "Check all that apply, if any, when delegating to/supervising the following providers; change "resident physician to physician in training" in the Administration of Anesthesia/Analgesia section near the top of page one; and adding a section at the end of the form to allow for a signature block to record a "second witness (required by phone consents)" signature and contact information.

Response: The Panel did not revise the form with a second witness line and "delegating/supervising" because medical providers are free to revise the form if the revision does not

conflict with any existing requirements, and under Texas Civil Practice and Remedies Code §74.105, consent is considered effective if one witness signs the form. The Panel revised the form based on the "check all that apply" comment.

Comment: During the 31-day public comment period, the Panel received 93 emails with identical content indicating opposition to Certified Registered Nurse Anesthetist (CRNA) language proposed for the form in §601.9. Comments were received from individuals and members of the TxANA. One representative of TxANA also provided public comment at the December 7, 2022, meeting. These comments all expressed concern that when a CRNA is performing the anesthesia alongside a surgeon, the form would say, "the plan is for the anesthesia/analgesia to be provided by" a non-anesthesiologist physician and a CRNA." The commenters noted that in many circumstances, CRNAs not only perform the procedure but select the drug, dosage, and administration technique. In these cases, telling a patient that the plan is for anesthesia to be provided by a physician, like a surgeon, is misleading. Given that the CRNA selects the drug, dosage, and administration technique and then actually administers the anesthesia, the anesthesia care is clearly not being provided by a physician. The commenters advised the Panel to remove the "(Check one)" language and allow the care team to check any providers that will be providing anesthesia under the circumstances.

Response: The Panel revised the form to indicate specific provider types that may be providing anesthesia.

Comment: During the extended public comment period, one individual commenter thanked the group for acknowledging dentist anesthesiologists separately.

Response: The Panel acknowledges the comment.

Comment: During the extended public comment period, one individual commenter thanked the Panel for updating the Anesthesia Perioperative Pain Management and Disclosure Form in §601.9 to include dentist anesthesiologists as designated providers of anesthesia services, helping dentist anesthesiologists to be better recognized among our patients and peers.

Response: The Panel acknowledges the comment.

Comment: During the extended public comment period, the TAGD thanked the Panel for allowing time to review the form amendments to §601.9 and did not suggest any changes.

Response: The Panel acknowledges the comment.

Comment: During the extended public comment period, the TDA agreed with the Panel's proposed changes, and made a few recommendations including list "cardiac arrest" and "death" on the form in §601.9 as specific risks under General Anesthesia, Deep Sedation and Moderate Sedation "so that the patient is noticeably made aware of these possible outcomes no matter how slight that risk is"; and make the form's readability mirror that is utilized by HHSC in all patient-centric communications at or below a sixth-grade reading level as measured by the appropriate score on the Flesch-Kincaid Readability Test.

Response: The Panel did not revise the form as suggested because the specific risks mentioned were added at a higher level on the form and the forms are already written for a sixth-grade reading level.

Based on comments from Panel members, the Panel added language specifying the effective date for the forms in §601.5 and §601.9.

STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

§601.5. *Disclosure and Consent Form for Radiation Therapy.*

The Texas Medical Disclosure Panel adopts the following form, effective September 1, 2023, to be used by a physician or health care provider to inform a patient or person authorized to consent for a patient of the possible risks and hazards involved in the radiation therapy named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4(a) of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only radiation therapy procedures. If a surgical or anesthetic procedure is required in combination with a radiation therapy procedure, the general disclosure and consent form as adopted in §601.4(a) of this title and the form adopted in this section shall be used. The general disclosure and consent form shall be used for the surgical or anesthetic procedure and the radiation therapy disclosure and consent form shall be used for the radiation therapy procedure. Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Department of State Health Services.

(1) English form.

Figure: 25 TAC §601.5(1)

(2) Spanish form.

Figure: 25 TAC §601.5(2)

§601.9. *Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).*

The Texas Medical Disclosure Panel adopts the following form, effective September 1, 2023, which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in anesthesia and/or perioperative pain management (analgesia). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission.

(1) English form.

Figure: 25 TAC §601.9(1)

(2) Spanish form.

Figure: 25 TAC §601.9(2)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2023.

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Dr. Noah Appel

Panel Chairman

Texas Medical Disclosure Panel

Effective date: September 1, 2023

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For further information, please call: (512) 438-2889

