

APPENDIX E

**Summary of the Texas Physician Assistant
Licensing Act**

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Summary of the Texas Physician Assistant Licensing Act

The Physician Assistant Licensing Act

Prior to the Legislative session in 1993, Physician Assistants [PAs] were registered in Texas. This meant that PAs submitted minimal information to the Texas State Medical Board and their names were registered. However, when the 73rd Legislature enacted the licensing statute for in 1993, were given the distinction of being licensed. This distinction helped to eliminate difficulties were experiencing because they were not “licensed” health care providers.

Both the Texas Senate and the House of Representatives passed bills, which led to the enactment of the PA Licensing Act [“The Act”]. The 1993 statute, article 4495b-1, provided that PAs were to be licensed beginning September 1, 1994. The 76th Legislature, as part of Texas’ continuing statutory revision program placed various occupations, including health care occupations, in one code, the Occupations Code. Therefore, it is no longer correct to refer to the PA Licensing Act as article 4495b-1. The current statute is found at V.T.C.A., Occupations Code §204.

There are other chapters in the Occupations Code that also apply to (these chapters apply to all health care professionals governed by the Occupations Code): General Provisions, Consequences of Criminal Convictions, Examination on Religions Holy Day, Renewal of License While on Military Duty, Health Professions Council, Solicitation of Patients, and the Right to Object to Participation in Abortion Procedure.

The Texas State Board of Physician Assistant Examiners

Prior to 1993, there was an advisory council to the Texas State Board of Medical Examiners. Under the 1993 Act, the advisory council was given more authority and structure. In reality, the advisory council had all of the powers of a board, but not the distinction. However, the 74th Legislative Session changed the name to reflect the powers granted under the original Act and the advisory council then became the Texas State Board of Physician Assistant Examiners [the “Board”].

The current Board is composed of nine members who are appointed by the governor: “three practicing physician assistant members who each have at least five years of clinical experience as a physician assistant; three physician members who are licensed in this state and who supervise physician assistants; and three public members who are not licensed as a physician or physician assistant.” [V.T.C.A., Occupations Code §204.052]. The Board members serve staggered six-year terms. The leadership of the Board is composed of a presiding officer and a secretary who serve one-year terms. The Board members receive compensation of \$100 per day when they are engaged in Board business, and the actual expenses. The Act prohibits the appointment of lobbyists to the Board and Board members cannot have spouses who are licensed health care providers or who are involved with an organization that sells, manufactures, or distributes health care supplies or equipment. The Act also provides for removal of Board members who

do not have the required qualifications, or who fail to attend one-half of the Board meetings that they are eligible to attend.

The Board is charged with protecting and promoting the welfare of the people of Texas by ensuring that PA licensed in Texas is competent to practice. The Board fulfills this mission by:

- Adopting rules (discussed below)
- Review and approve, or reject licensure applications
- Review and approve, or reject renewal applications
- Monitor the competency of licensed (CME requirements and disciplinary actions)

A staff composed of an Executive Director and other staff members provides the necessary work of the Board. These personnel are from the departments of Licensure, Legal, and Investigations.

The Texas State Board of Physician Assistant Examiners Board rules

The PA Board rules are drafted by the PA Board and approved by the Medical Board. The PA Board rules are found within the Medical Board's rules at Texas Administrative Code 22 ["TAC"] §185. Any rules adopted by the PA Board and approved by the Medical Board undergo rule-making procedures including publication in the *Texas Register*, public comment, and codification in the Texas Administrative Code.

Other regulatory agencies also draft rules that impact PA practice. For example, the Medical Board enacted the Standing Delegation rules in Section 193 of the Texas Administrative Code, which regulate the prescriptive authority, delegated to physician assistants and the supervision required at medically underserved areas.

The PA Board rules allow for exceptions to be granted if there are compelling reasons and if the exception is in the best interest of the public. If a PA or supervising physician requires an exception to the rules, a written application must be submitted to the PA Board. The PA Board considers the request during a scheduled Board meeting and if approved, the Medical Board must also approve the request for exception.

Requirements of all Physician Assistants

Identification (Occupations Code §204.203, §204.352; 22 TAC §185.13)

- The PA license must be available for inspection at the primary place of business.
- The PA must wear a nametag identifying the PA as a PA. It is a felony of the third degree if a person who is not a licensed Texas physician:
 - Holds themselves out as a PA
 - Uses "physician assistant" or "PA" to indicate or imply that the person is a PA

Complaint notification (22 TAC §185.22)

- The medical practice must notify the public where to file complaints in both English and Spanish. This is set out in a form contained in the Board rule §185.22. The rule sets out the size of type, that it must be in black ink, and where the notice may be placed.
- The notice must be located in a site where all patients would have the opportunity to view the notice.

Continuing Medical Education (Occupations Code §204.2; 22 TAC §185.6)

PAs are required to obtain 40 hours of CME annually:

- 20 hours from Category I approved by the American Academy of Physician Assistants
- The remaining 20 hours can be Category I or Category II (informal self-study, such as reading journals; attendance at hospital lectures; ground rounds; or case conferences)

Hours obtained in excess of the required 40 hours may be carried forward to a maximum of 80 total hours excess. The excess hours have to be applied within two years after the date of the annual registration following the date when the CME was taken. There are also exemptions for the CME requirements. The accepted reasons for granting an exemption are found in §185.6(b)(3) and the request for an exemption must be in writing.

The Board audits licenses for CME compliance. The Board randomly selects some licenses and requests written verification of both formal (Category I) and informal (Category II) credits. The PA has thirty days to respond to the request.

PAs have found themselves in trouble with the Board because they confused the CME required for national certification (100 hours every two years) with the CME required for annual renewal for a Texas License (40 hours every year).

Annual Renewals (Occupations Code §204.156; 22 TAC §185.6)

It is the responsibility of the PA to maintain annual licensure and monitor their licensure status to ensure that timely renewal takes place whether or not a renewal notice is received from the Board.

To maintain an active PA license in Texas, must:

- Register annually
- Pay a renewal fee
- Register the number and type (Category I or II) of CME hours

Practicing without an annual permit is considered to be practicing without a license.

Documents required for practice (Occupations Code §204.201; 22 TAC §185.14-17)

Notification of Intent to Practice and Supervise:

- A PA must submit notification of an intent to practice on the appropriate Board form prior to beginning practice or upon changing practice

- A PA must submit notification of the identity of the supervising physician(s) on the appropriate Board form prior to beginning practice or whenever the supervising physician changes.
- A PA must notify the Board within thirty days of any changes or additions to the intent to practice or in the identity of the supervising physician

Supervising physician

In addition to the form above, the PA must ensure that the supervising physician(s) submits to the Board, on the approved Board form, a statement notifying the Board of their intent to supervise the PA. The form also requires the supervising physician to attest that the physician will:

- Supervise the PA according to the Board rules
- Retain professional and legal responsibility for care rendered by the PA.

The physician must also submit the names of any alternate supervising physicians.

Supervision (Occupations Code §204.204-207; 22 TAC §185.15-17)

In order to be eligible to supervise a PA, the physician must have a current Texas license that is active and unrestricted. Thus, if the physician is under a Board Order (a disciplinary Order imposed by the Medical Board), the physician does not qualify to supervise a PA.

Supervision must be continuous, but this does not mandate that the physician be physically present when the PA provides patient care and treatment. The physician must, however, always be available by telecommunication.

A PA may have more than one supervising physician. Each supervising physician must complete the Notification of Intent to Supervise form described above. Although a PA may have an unlimited number of supervising physicians, a physician may only supervise the equivalent of five full time PA positions. The supervising physician retains liability for the PA's care and treatment of patients. If the PA is employed by an entity, the supervising physician shares liability with that entity for the PA's acts and omissions in the care and treatment of patients.

It is the responsibility of both the PA and the supervising physician to ensure that:

- The PA's scope of practice is identified;
- That the PA is properly trained and educated to perform the tasks being delegated and that there is a method of evaluation of the PA's performance;
- That the working relationship between all members of the health team is defined;
- That the access by the PA to the physician is clear;
- That the PA's annual registration permit is current (Physicians are held responsible by the Medical Board for the status of the PA's licensure).

ALTERNATE SUPERVISING PHYSICIANS

- An alternate supervising physician is the physician that the supervising physician designates to supervise the PA in his/her absence (usually the physician who is on call or is covering for the physician).
- A PA may have an unlimited number of alternate supervising physicians.
- The alternate supervising physician has to be appointed by the Board.
- The alternate supervising physician has to provide the same information to the Board as the supervising physician.

SUPERVISION AT A MEDICALLY UNDERSERVED SITE:

- The supervising physician must be on-site at least once every 10 business days to provide medical direction and consultation.
- The PA must also be on-site and providing care at the time of the supervising physician's visit.
- The supervising physician must receive a daily status report regarding any problem or complication encountered.
- The supervising physician must be "available by direct telecommunication for consultation, patient referral, or assistance with a medical emergency."

Scope of Practice (Occupations Code §204.202; 22 TAC §185.11, §185.17)

A PA has to be properly trained and educated to perform the medical services delegated by the supervising physician. A PA may perform the following activities in any location allowed by the supervising physician (but the PA is not limited to these activities; the PA may perform medical services delegated by the supervising physician):

- Histories and physicals
- Ordering or performing procedures
- Formulating a working diagnoses
- Monitoring the effectiveness of interventions
- Assisting in surgery
- Counseling patients
- Educating patients
- Requesting, receiving, signing for, and distributing samples if the PA has prescriptive authority
- Signing or completing a prescription if the PA has prescriptive authority
- Making appropriate referrals

A PA cannot be maintained in an office setting separate from the supervising physician unless the PA is located in a medically underserved area. A PA is not allowed to independently bill patients for their services unless the law allows it.

Prescriptive Authority (Occupations Code §157.51-101; 22 TAC §193.6)

In Texas PAs are not allowed to prescribe controlled (any scheduled, including schedule four and five) medications.

Physicians may only delegate prescriptive authority to the equivalent of three full-time PAs.

A site serving a medically underserved population: A PA has prescriptive authority if the PA:

- Has prescriptive authority delegated by the supervising physician
- The prescription must originate from the physician's order, a standing medical order, a standing delegation order, or protocol

PRIMARY PRACTICE SITE: is defined as

- Where the physician spends the majority of the physician's time
- A licensed hospital
- A licensed long-term care facility
- A licensed adult care center where both the physician and the PA are authorized to practice
- A public school clinic
- Residence of an established patient
- Another location if the supervising physician is physically present with the PA

A PA HAS PRESCRIPTIVE AUTHORITY IF THE PA:

- Has prescriptive authority delegated by the supervising physician;
- The prescription must originate from the physician's order, a standing medical order, a standing delegation order, or protocol;
- If the physician has established or will establish a physician-patient relationship. There is no specific time period in which the physician must see the patient.

FACILITY-BASED PRACTICE SITE

- A supervising physician may delegate prescriptive authority to a PA if:
 - The physician's practice is facility-based at a hospital or licensed long-term care facility and if
 - The physician is either
 - The medical director or chief of medical staff of the facility where the PA practices;
 - The chair of the facility's credentialing committee;
 - A department chair in the facility where the PA practices;

- A physician who consents to the request of the medical director or chief of medical staff to delegate prescriptive authority
- The prescriptive delegation must occur under orders or protocols approved by the facility's medical staff or a facility committee as set out in the bylaws.
- The delegation must not be for the patients of other physicians unless the other physician has provided prior consent.
- In a long-term care facility, the medical director must make the delegation.
- A physician can only delegate at one facility or two long-term care facilities, unless otherwise approved by the Board.

PROTOCOLS

A PA utilizes protocols for the authorization to carry out or sign prescriptions:

- Protocols are written authorization to initiate medical aspects of patient care
- The PA and supervising physician must review them, agreed upon, and signed initially and annually.
- They must be kept on site
- They must contain a list of the "types or categories of dangerous drugs available for prescription, a limit on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring" OR
- They must contain "a list of the types or categories of dangerous drugs that may not be prescribed."

PRESCRIPTIONS

Prescriptions must have the following information:

- Patient's name and address
- Drug to be dispensed
- Directions for taking the drug
- Dosage
- The name, address, telephone number, identification number and signature of the PA
- The date
- Number of refills
- The name, address, and telephone number of the supervising physician
- If appropriate – the intended use of the drug

A PA may telephone prescriptions to a pharmacy under the PA's prescriptive authority.

Complaint process (Occupations Code §204.251-255, §204.308; 22 TAC §185.22-23)

Complaints may be reported voluntarily or they may be required reporting. Consumers and health care providers that are not required to report may voluntarily report to the Board. Peer review committees, physician assistants, physician assistant students, and physicians are required to report a PA's acts or omissions to the PA Board if in that person's opinion the PA poses a continuing threat to the public welfare through practice as a PA. If a PA has a professional liability claim or complaint or complaint filed against the PA, that PA must report to the Board on the appropriate form (found at §183.23). If the PA is covered under professional liability insurance, the insurer shall report professional liability claims or complaints on the appropriate form.

The identity of a complaint is confidential and cannot be obtained through discovery, subpoena or other means of legal compulsion. If a complaint is filed against a PA, the Board must inform the PA, at least quarterly, of the status of the complaint unless notifying the PA would jeopardize the investigation. If a health care entity makes a written request, the Board must provide information about the basis and status of any complaint under investigation and any information about a complaint that was resolved by Order of the Board. The Board may also release information to another licensing authority if the PA is licensed there or is seeking licensure in that state or country or to a peer review committee reviewing an application or the qualifications of the PA with respect to privileges or to law enforcement agencies.

Once a complaint has been received, it is reviewed for basic issues such as: is the complaint against a PA or is the individual licensed under another agency? Does there appear to be a possible violation?

If the initial review reveals that the Board has jurisdiction over the PA, the complaint is assigned to an investigator and the PA is informed of the complaint.

Disciplinary process (Occupations Code §204.301-304, §204.351; 22 TAC §185.20; §185.25)

The Informal Conference is a meeting where a panel composed of Board members questions the PA about the complaint and tries to determine if there is a concern for the safety of the public. After all the questions and answers are completed, the PA will be excused from the conference room and the panel will deliberate. The Board may take several actions at the conclusion of the Informal Conference: recommendation for dismissal of the complaint, deferral to allow for additional investigation, recommendation for restrictions on the PA's license, or recommendation for revocation or suspension.

If the PA decides not to accept the settlement offer (restrictions) or if the recommendation is for revocation or suspension, formal charges will be filed with the State Office of Administrative Hearings and the case will proceed to an Administrative Law Judge.

The hearing before the Administrative Law Judge is the equivalent of a trial. The hearing is heard before an Administrative Law Judge who is a non-biased examiner of the evidence and testimony. The Board will present evidence that shows the allegations to be true, and the PA's attorney will present evidence that either the allegations are

false or not as bad as the Board is setting them out to be. The judge does not make a decision that day. The judge prepares what is called a proposal for decision, which represents the judge's recommendation.

The judge's recommendation is presented to the entire Board at a later time. The Board must accept the judge's recommendation unless the Board can show that the judge was wrong for policy reasons or that the judge misapplied the law. If the recommendation is against the PA it may be appealed to a district court.

Any determination by the Board, other than a dismissal, is public record and is reported in the Medical Board's newsletter. The action is reported to the National Practitioners Databank. Note that other state licenses may be affected by the decision (depending on that state). The Order remains on the PA's record forever, even after the probation/restriction ends.

Rehabilitation Order (Occupations Code §204.305-307; 22 TAC §185.22)

If a PA has engaged in the intemperate use of drugs or alcohol (or other conditions which may adversely affect the PA's ability to safely practice), the PA may self-report the usage to the Board in order to be eligible for a private nondisciplinary rehabilitation order.

In order to qualify for a rehabilitation order, the PA or their designated agent must report the situation in writing prior to the Board obtaining a complaint about the PA from elsewhere. The PA must not have a previous substance abuse related order with the Board. Whether to place a PA under a rehabilitation order is at the discretion of the Board. If a rehabilitation order is entered it is statutorily confidential.

Note:

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