

OCCUPATIONS CODE
TITLE 3. HEALTH PROFESSIONS
SUBTITLE B. PHYSICIANS
CHAPTER 152. STATE BOARD OF MEDICAL EXAMINERS

SUBCHAPTER A. ORGANIZATION OF BOARD

Sec. 152.001. TEXAS MEDICAL BOARD. (a) The Texas Medical Board is an agency of the executive branch of state government with the power to regulate the practice of medicine.

(b) A reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.03, eff. September 1, 2005.

Sec. 152.002. BOARD MEMBERSHIP. (a) The board consists of 19 members appointed by the governor with the advice and consent of the senate as follows:

(1) twelve members who are learned and eminent physicians licensed in this state for at least three years before the appointment, nine of whom must be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.) and three of whom must be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) seven members who represent the public.

(b) Appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 26.01, eff. Sept. 1, 2003.

Sec. 152.003. ADDITIONAL MEMBERSHIP REQUIREMENTS. (a) In this section:

(1) "Direct provider of health care" includes:

(A) an athletic trainer;

- (B) a chiropractor;
- (C) a dentist;
- (D) a hospital administrator;
- (E) a licensed vocational nurse;
- (F) a nursing home administrator;
- (G) an optometrist;
- (H) a pharmacist;
- (I) a physical therapist;
- (J) a physician assistant;
- (K) a podiatrist;
- (L) a psychologist;
- (M) a registered nurse; and
- (N) a social psychotherapist.

(2) "Fiduciary position or interest" means a position or interest with respect to an entity that has the character of a trust. The term includes:

- (A) a member of a board of directors;
- (B) an officer;
- (C) a majority shareholder;
- (D) an agent; and
- (E) a person who, directly or through that person's spouse, receives more than one-tenth of the person's annual income from compensation for research into or instruction in the provision of health care received from:

(i) a health care entity or other person, association, or organization engaged in the provision of health care; or

(ii) a person, association, or organization engaged in producing drugs or analogous products.

(3) "Immediate family member" means the parent, spouse, child, or sibling of a person who resides in the same household as the person.

(4) "Provider of health care" means:

- (A) a direct provider of health care:
 - (i) whose primary current activity is the provision of health care to persons or the administration of facilities or institutions in which that care is provided,

including hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations;

(ii) who, if required by law or otherwise, has received professional or other training in the provision of that care or administration; and

(iii) who is licensed or certified or otherwise claims the authority to provide that care or administration;

(B) a person who is an indirect provider of health care in that the person holds a fiduciary position with or has a fiduciary interest in a health care entity;

(C) a member of the immediate family of a person described by this subdivision;

(D) a person who is engaged in or employed by an entity issuing a policy or contract of individual or group health insurance or hospital or medical service benefits; or

(E) a person who is employed by, on the board of directors of, or holds elective office by or under the authority of a unit of federal, state, or local government or any organization that receives a significant part of its funding from a unit of federal, state, or local government.

(b) A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board;

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses; or

(5) is a provider of health care.

(c) Each public member must be a resident of this state for

at least the five years preceding appointment.

(d) Each physician board member must be actively engaged in:

(1) the practice of medicine for at least the five years preceding appointment; and

(2) medical peer review at a health care entity for at least the three years preceding appointment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.04, eff. September 1, 2005.

Sec. 152.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is ineligible for appointment to the board if, at the time of appointment, the person is younger than 18 years of age or is a stockholder or a member of the board of trustees of a medical school.

(c) A person may not be a member of the board and may not be a board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care or a national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) Expired.

(e) Expired.

(f) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.05, eff. September 1, 2005.

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board member who is a physician or a physician acting as an agent of the board, including a member of an expert physician panel appointed under Section 154.056(e), may not use information to which the person has access solely by virtue of the person's position as a member or agent of the board for the benefit of the person's practice or for the benefit of another physician or person affiliated with the physician.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.06, eff. September 1, 2005.

Sec. 152.005. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the vacancy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.006. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 152.002;

(2) does not maintain during service on the board the qualifications required by Section 152.002;

(3) is ineligible for membership under Sections 152.003 and 152.004;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's

term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president of the board, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 1.07, eff. September 1, 2005.

Sec. 152.007. PER DIEM. (a) Each board member is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) If the General Appropriations Act does not prescribe the amount of the per diem, the per diem consists of actual expenses for meals, lodging, and transportation, plus \$100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.008. OFFICERS. Not later than December after each regular session of the legislature, the governor shall appoint from the members of the board a president, to serve in that capacity at the pleasure of the governor, and the board shall elect from its members a vice president, secretary-treasurer, and other officers as are required, in the board's opinion, to carry out the board's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.08, eff. September 1, 2005.

Sec. 152.009. MEETINGS; QUORUM REQUIREMENTS. (a) The board shall conduct regular meetings at least four times a year at the times and places the board considers most convenient for applicants and board members.

(b) The board may hold special meetings in accordance with rules adopted by the board.

(c) After hearing all evidence and arguments in an open meeting, the board may conduct deliberations relating to license applications and disciplinary actions in executive sessions. The board shall vote and announce its decisions in open session.

(d) A majority of the appointed board members constitutes a quorum for all purposes except for a board activity related to examining the credentials of license applicants as provided by Section 155.053.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.010. TRAINING; GUIDELINES. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) this subtitle;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of laws relating to open

meetings, public information, administrative procedure, and conflicts of interest; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) Repealed by Acts 2005, 79th Leg., Ch. 269, Sec. 1.49(1), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.09, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.49(1), eff. September 1, 2005.

SUBCHAPTER B. EXECUTIVE DIRECTOR AND OTHER PERSONNEL

Sec. 152.051. EXECUTIVE DIRECTOR. (a) The board shall appoint an executive director. The executive director serves as the chief executive and administrative officer of the board.

(b) The executive director serves at the pleasure of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.052. EXECUTIVE DIRECTOR POWERS AND DUTIES. The executive director shall administer and enforce this subtitle under the supervision and at the direction of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.054. CHIEF OPERATING OFFICER; MEDICAL DIRECTOR.

(a) The executive director may employ a chief operating officer to:

(1) administer, implement, and monitor systems and necessary measures to promote the quality and efficiency of board operations; and

(2) perform other duties as assigned by the executive director.

(b) If the executive director is not a physician licensed to practice in this state, the executive director shall appoint a medical director who is:

(1) a physician licensed to practice in this state; and

(2) primarily responsible for implementing and maintaining policies, systems, and measures regarding clinical and professional issues and determinations.

(c) The chief operating officer or medical director acts under the supervision and at the direction of the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.055. PERSONNEL. (a) The board shall employ, compensate, and provide persons as determined necessary by the board to administer this subtitle, including administrators, clerks, employees, consultants, and professionals.

(b) The board shall reimburse those persons for actual and necessary expenses, including investigation expenses, travel expenses, and other incidental expenses, incurred in the performance of official duties as determined by the board.

(c) An employee of the board may not be employed by or paid a fee for services provided by a statewide or national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine.

(d) A person is not eligible to serve as an employee of the board if the person is related within the second degree by affinity or within the third degree by consanguinity, as determined under Chapter 573, Government Code, to a person who is employed by or paid a fee for services provided by an organization described by Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board

shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.10, eff. September 1, 2005.

Sec. 152.057. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.058. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The board shall develop a system of annual performance evaluations of the board's employees based on measurable job tasks. Any merit pay authorized by the board must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.059. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of an equal employment opportunity program under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating

to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with requirements adopted under Chapter 21, Labor Code;

(2) a comprehensive analysis of the board's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually and reviewed by the Commission on Human Rights for compliance with requirements adopted under Chapter 21, Labor Code; and

(3) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.