

OCCUPATIONS CODE
TITLE 3. HEALTH PROFESSIONS
SUBTITLE B. PHYSICIANS
CHAPTER 151. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. SHORT TITLE. This subtitle may be cited as the Medical Practice Act.

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

Sec. 151.002. DEFINITIONS. (a) In this subtitle:

(1) "Board" means the Texas Medical Board.

(2) "Continuing threat to the public welfare" means a real danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients, as determined by:

(A) the board;

(B) a medical peer review committee in this state;

(C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;

(D) a physician engaged in graduate medical education or training; or

(E) a medical student.

(3) "Disciplinary order" means an action taken under Section [164.001](#), [164.053](#), [164.058](#), or [164.101](#).

(4) "Doctor of osteopathic medicine" includes a doctor of osteopathy, an osteopath, an osteopathic physician, and an osteopathic surgeon.

(5) "Health care entity" means:

(A) a hospital licensed under Chapter [241](#) or [577](#), Health and Safety Code;

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, hospital district, hospital

authority, or other health care facility, that:

(i) provides or pays for medical care or health care services; and

(ii) follows a formal peer review process to further quality medical care or health care;

(C) a professional society or association of physicians, or a committee of such a society or association, that follows a formal peer review process to further quality medical care or health care;

(D) an organization established by a professional society or association of physicians, hospitals, or both, that:

(i) collects and verifies the authenticity of documents and other information concerning the qualifications, competence, or performance of licensed health care professionals; and

(ii) acts as a health care facility's agent under the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.); or

(E) a health care collaborative certified under Chapter 848, Insurance Code.

(6) "Legally authorized representative" of a patient means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(C) an agent of the patient authorized under a durable power of attorney for health care;

(D) an attorney ad litem appointed for the patient;

(E) a guardian ad litem appointed for the patient;

(F) a personal representative or statutory beneficiary if the patient is deceased; or

(G) an attorney retained by the patient or by another person listed by this subdivision.

(6-a) "License holder" means a person holding a license, permit, or certificate issued under this subtitle.

(6-b) "Maintenance of certification" means the satisfactory completion of periodic recertification requirements that are required for a physician to maintain certification after initial certification from:

(A) a medical specialty member board of the American Board of Medical Specialties;

(B) a medical specialty member board of the American Osteopathic Association Bureau of Osteopathic Specialists;

(C) the American Board of Oral and Maxillofacial Surgery; or

(D) any other certifying board that is recognized by the Texas Medical Board.

(7) "Medical peer review" or "professional review action" means the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners. The term includes evaluation of the:

(A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;

(B) accuracy of a diagnosis;

(C) quality of the care provided by a health care practitioner;

(D) report made to a medical peer review committee concerning activities under the committee's review authority;

(E) report made by a medical peer review committee to another committee or to the board as permitted or required by law; and

(F) implementation of the duties of a medical peer review committee by a member, agent, or employee of the committee.

(8) "Medical peer review committee" or "professional

review body" means a committee of a health care entity, the governing board of a health care entity, or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians, including evaluation of the performance of those functions specified by Section 85.204, Health and Safety Code. The term includes:

(A) an employee or agent of the committee, including an assistant, investigator, intervenor, attorney, and any other person or organization that serves the committee; and

(B) the governing body of a public hospital owned or operated by a governmental entity, the governing body of a hospital authority created under Chapter 262 or 264, Health and Safety Code, and the governing body of a hospital district created under Article IX, Texas Constitution, but only:

(i) in relation to the governing body's evaluation of the competence of a physician or the quality of medical and health care services provided by the public hospital, hospital authority, or hospital district; and

(ii) to the extent that the evaluation under Subparagraph (i) involves discussions or records that specifically or necessarily identify an individual patient or physician.

(9) "Medical records" means all records relating to the history, diagnosis, treatment, or prognosis of a patient.

(10) "Operation" means the application of surgery or the performance of surgical services.

(11) "Person" means an individual, unless the term is expressly made applicable to a partnership, association, or corporation.

(12) "Physician" means a person licensed to practice medicine in this state.

(13) "Practicing medicine" means the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who:

(A) publicly professes to be a physician or surgeon; or

(B) directly or indirectly charges money or other compensation for those services.

(14) "Surgery" includes:

(A) surgical services, procedures, and operations; and

(B) the procedures described in the surgery section of the common procedure coding system as adopted by the Health Care Financing Administration of the United States Department of Health and Human Services.

(b) The terms "physician" and "surgeon" are synonyms. As used in this subtitle, the terms "practitioner" and "practitioner of medicine" include physicians and surgeons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.021(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 1, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.06, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1180 (S.B. 949), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 2, eff. January 1, 2018.

Sec. 151.003. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the practice of medicine is a privilege and not a natural right of individuals and as a matter of public policy it is necessary to protect the public interest through enactment of this subtitle to regulate the granting of that privilege and its subsequent use and control; and

(2) the board should remain the primary means of licensing, regulating, and disciplining physicians.

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

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle and Chapters 204, 205, 206, 601, 602, 603, and 604 expire September 1, 2019.

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

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.02, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.001, eff. September 1, 2015.

Acts 2017, 85th Leg., 1st C.S., Ch. 2 (S.B. 20), Sec. 1, eff. August 11, 2017.

Sec. 151.005. GOVERNMENTAL DISCRIMINATION PROHIBITED. (a) A program supported in whole or in part by the state or by a political subdivision of the state may not discriminate against a health care practitioner because the practitioner is a physician specializing in ophthalmology.

(b) A law or policy of the state or of a political subdivision of the state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a health care practitioner because the practitioner is a physician specializing in ophthalmology.

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

SUBCHAPTER B. APPLICATION AND CONSTRUCTION OF SUBTITLE

Sec. 151.051. DISCRIMINATION BASED ON TYPE OF ACADEMIC MEDICAL DEGREE OR CERTAIN RELIGIOUS TENETS PROHIBITED. (a) A hospital, institution, or program that is licensed by the state, is operated by the state or a political subdivision of the state, or directly or indirectly receives state financial assistance may not differentiate in regard to a person licensed under this subtitle solely on the basis of the academic medical degree held by the

person. The hospital, institution, program, state agency, or political subdivision may adopt rules and requirements relating to qualifications for medical staff appointments, including reappointments and the termination of appointments, the delineation of clinical privileges, or the curtailment of clinical privileges of persons who are appointed to that medical staff or permitted to participate in educational programs if those rules and requirements do not differentiate solely on the basis of the academic medical degree held by the affected physician and are:

- (1) determined on a reasonable basis, such as the professional and ethical qualifications of the physician;
- (2) based on reasonable standards;
- (3) applied without irrelevant considerations;
- (4) supported by sufficient evidence; and
- (5) not arbitrary or capricious.

(b) The limitations imposed under this section relating to discrimination based on the academic medical degree of a physician do not apply to practice limitations adopted by:

- (1) a medical school or college, including a program of a medical school or college; or
- (2) any office or offices of physicians, singularly or in groups, in the conduct of their profession.

(c) This subtitle may not be construed in a manner that:

- (1) discriminates against a school or system of medical practice; or
- (2) affects the use of the principles or teachings of any church in ministering to the sick or suffering by prayer or pastoral counseling without the use of a drug or other material substance represented as medically effective.

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

Sec. 151.0515. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as otherwise provided by this section, the following entities may not differentiate between physicians based on a physician's maintenance of certification:

- (1) a health facility that is licensed under Subtitle B, Title 4, Health and Safety Code, or a mental hospital that is

licensed under Chapter 577, Health and Safety Code, if the facility or hospital has an organized medical staff or a process for credentialing physicians;

(2) a hospital that is owned or operated by this state;

(3) an institution or program that is owned, operated, or licensed by this state, including an institution or program that directly or indirectly receives state financial assistance, if the institution or program:

(A) has an organized medical staff or a process for credentialing physicians on its staff; and

(B) is not a medical school, as defined by Section 61.501, Education Code, or a comprehensive cancer center, as designated by the National Cancer Institute; or

(4) an institution or program that is owned, operated, or licensed by a political subdivision of this state, if the institution or program has an organized medical staff or a process for credentialing physicians on its staff.

(b) An entity described by Subsection (a) may differentiate between physicians based on a physician's maintenance of certification if:

(1) the entity's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the entity requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the entity; and

(2) the differentiation is limited to those physicians whose maintenance of certification is required for the entity's designation, certification, or accreditation as described by Subdivision (1).

(c) An entity described by Subsection (a) may differentiate between physicians based on a physician's maintenance of certification if the voting physician members of the entity's organized medical staff vote to authorize the differentiation.

(d) An authorization described by Subsection (c) may:

(1) be made only by the voting physician members of the entity's organized medical staff and not by the entity's governing body, administration, or any other person;

(2) subject to Subsection (e), establish terms applicable to the entity's differentiation, including:

(A) appropriate grandfathering provisions; and

(B) limiting the differentiation to certain medical specialties; and

(3) be rescinded at any time by a vote of the voting physician members of the entity's organized medical staff.

(e) Terms established under Subsection (d)(2) may not conflict with a maintenance of certification requirement applicable to the entity's designation under law or certification or accreditation by a national certifying or accrediting organization.

Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 3, eff. January 1, 2018.

Sec. 151.052. EXEMPTIONS. (a) This subtitle does not apply to:

(1) a dentist, licensed under the laws of this state, engaged strictly in the practice of dentistry;

(2) a licensed optometrist or therapeutic optometrist engaged strictly in the practice of optometry or therapeutic optometry as defined by law;

(3) a licensed chiropractor engaged strictly in the practice of chiropractic as defined by law;

(4) a registered nurse or licensed vocational nurse engaged strictly in the practice of nursing in accordance with the applicable licensing acts and other laws of this state;

(5) a licensed podiatrist engaged strictly in the practice of podiatry as defined by law;

(6) a licensed or certified psychologist engaged strictly in the practice of psychology as defined by law;

(7) a licensed physical therapist engaged strictly in the practice of physical therapy in accordance with the law relating to physical therapy practice;

(8) a commissioned or contract surgeon in the United States uniformed services or Public Health Service in the performance of that person's duties if the person is not engaged in

private practice;

(9) a person who furnishes medical assistance in an emergency or disaster situation if no charge is made for the medical assistance;

(10) a student in training in a board-approved medical school while performing, under the supervision of a licensed practitioner, the duties assigned in the course of training;

(11) a legally qualified physician of another state who is in this state for consultation with a physician licensed in this state but who does not:

(A) maintain an office in this state; or

(B) appoint a place in this state for seeing, examining, or treating a patient; or

(12) any other activity that the board designates as exempt from the application of this subtitle.

(b) Notwithstanding Subsection (a)(10), a medical resident, intern, or fellow is required to register and is subject to the other applicable provisions of this subtitle.

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

Sec. 151.053. APPLICATION TO CERTAIN PERSONS PROVIDING NUTRITIONAL ADVICE. (a) This subtitle does not prohibit a person from giving advice regarding the use and role of food and food ingredients, including dietary supplements.

(b) Subsection (a) does not authorize a person to:

(1) practice medicine; or

(2) state, in violation of law, that a product might cure a disease, disorder, or condition.

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

Sec. 151.054. APPLICATION TO SELF-CARE. (a) This subtitle does not prohibit:

(1) a person from providing or seeking advice or information relating to that person's self-care; or

(2) the dissemination of information relating to self-care.

(b) This section does not confer authority to practice

medicine.

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

Sec. 151.055. APPLICATION TO CERTAIN INDEPENDENT CONTRACTOR AGREEMENTS. This subtitle does not prohibit a hospital from entering into an independent contractor agreement with a physician to provide services at the hospital or at another health care facility owned or operated by the hospital and:

(1) paying the physician a minimum guaranteed amount to ensure the physician's availability;

(2) billing and collecting from patients the physician's professional fees; or

(3) retaining the collected professional fees up to the amount of the minimum guaranteed amount plus a reasonable collection fee.

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

Sec. 151.056. APPLICATION TO TELEMEDICINE. (a) A person who is physically located in another jurisdiction but who, through the use of any medium, including an electronic medium, performs an act that is part of a patient care service initiated in this state, including the taking of an x-ray examination or the preparation of pathological material for examination, and that would affect the diagnosis or treatment of the patient, is considered to be engaged in the practice of medicine in this state and is subject to appropriate regulation by the board.

(b) This section does not apply to the act of:

(1) a medical specialist located in another jurisdiction who provides only episodic consultation services on request to a physician licensed in this state who practices in the same medical specialty;

(2) a physician located in another jurisdiction who is providing consultation services to a medical school as defined by Section 61.501, Education Code;

(3) a physician located in another jurisdiction who is providing consultation services to an institution subject to:

(A) Subchapter C, Chapter 73, Education Code; or

(B) Subchapter K, Chapter 74, Education Code; or

(4) a physician located in another jurisdiction of a state having borders contiguous with the borders of this state who is the treating physician of a patient and orders home health or hospice services for a resident of this state to be delivered by a home and community support services agency licensed in this state. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.022(a), eff. Sept. 1, 2001.