

Matthew Bouthe



The Honorable Larry Gonzales
Chairman, Texas Sunset Advisory Commission
P.O. Box 2910
Austin, Texas 78768

Re: Texas Physician Assistant Board and Physician Assistant Practice Act

Dear Chairman Gonzales,

The Texas Academy of Physician Assistants (TAPA) representing over 8,000 practicing physician assistants (PAs) in Texas, respectfully submits the following issues for consideration by the Sunset Advisory Commission with regards to the Texas Physician Assistant Board and the Physician Assistant Practice Act.

TAPA has reviewed the entirety of the Sunset staff report and is in full agreement with the sole recommendation relating to physician assistants, recommendation number 2. TAPA truly appreciates the opportunity the Sunset Commission staff and members have provided and look forward to testifying at the hearing. TAPA provides the following recommendations:

- **Recommends Informal Settlement Conference (ISC) hearings of the Texas Physician Assistant Board require at least one PA member to be present** (*Texas Occupations Code 204.312 (b)(4)*): The Physician Assistant Practice Act currently mandates that two members of the PA Board be present for an ISC hearing, and at least one must be a public member. TAPA agrees that the interests of the public must be represented at all hearings, however TAPA believes that a PA member should also be mandated to be present at these hearings. A PA member would provide a unique perspective as to the issues of a PA facing disciplinary proceedings given their status as a practicing PA and also a member of the regulatory board.
- **Recommends removing "working" from "working diagnosis"** (*Texas Occupations Code 204.202(b)(3), and Texas Administrative Code Title 22, Part 9, Chapter 185.10(3)*): Diagnosis is an essential part of the practice of medicine. According to the American Academy of Physician Assistants, "PAs diagnose, treat and prescribe medicine." Physician assistants practice medicine in a team model, wherein the physician supervises and delegates to the physician assistant the authority to practice medicine including diagnosing, treating, prescribing, ordering and any and all other tasks and services included in the practice of medicine.

This is a true and accurate reflection of the daily practice of every PA in Texas. TAPA believes the law and rules should conform to the reality that PAs are diagnosing, treating, prescribing and ordering under the supervision and delegation of their physician(s) every day. This will not change the fundamental basis of the relationship between physicians and physician assistants, a team model for the practice of medicine based on the supervision and delegation from a physician, the hallmark of the PA profession.

- **Recommends Texas Physician Assistant Board be allowed to go into executive session during both disciplinary and licensing meetings:** Currently the Texas Physician Assistant Board does not have the authority to go into executive session during either disciplinary or licensing meetings. This does not match the practice of the Texas Medical Board. TAPA believes that this basic function of the Texas Medical Board should also be provided to the Texas PA Board.
- **Recommends mandatory training of non-PA members of the Texas Physician Assistant Board:** While there are requirements in place for training the Texas PA Board members regarding basic functions of the board, there are no such requirements regarding the education of the board members on the physician assistant profession itself. Currently, there are no requirements for Texas PA Board members, particularly the public members, to have any familiarity with PAs before they are appointed to the board. The PA profession has only been around for 50 years in the United States. TAPA believes that non-PA members of the Texas PA Board should undergo a mandatory training module regarding the profession they are tasked with licensing and regulating.
- **Recommends mandatory time frame for the processing and issuing of physician assistant licenses:** The Texas Medical Board is currently required to complete and issue physician licenses in 51 days (average). There is no such requirement for issuing a PA license. Anecdotally, TAPA has heard from numerous PA license applicants over the years about delays in permanent licenses being issued in order for PAs to begin practice. These delays manifested to the point that the Chair of the Texas PA Board called a special session in August just to approve the backlog of license applications. TAPA is concerned this problem may continue to worsen, as there are 3 additional PA programs starting in the next 2-3 years, joining the 7 current programs already in Texas. TAPA believes that a mandatory time frame should be put into place for the issuance of PA licenses, mirroring the requirement placed on the Texas Medical Board for physician licenses.
- **Recommends removal of “agent of” language (*Texas Occupations Code 204.202(e)*):** In addition to the scope of practice outlined in the Physician Assistant Practice Act, section 202(e) also provides that: “A physician assistant is the agent of the physician assistant’s supervising physician for any medical services that are delegated by that physician.” The scope of practice outlined in 204.202, coupled with Texas Occupations Code 157 (Authority of Physician to Delegate Certain Medical Acts), covers the entire spectrum of PA practice and delegation from a physician. TAPA believes the “agent of” language is unnecessary and asks that it be removed from statute.

- **Recommends clarification of physician liability language:** There currently exists a conflict between two statutes regarding physician liability for the practice of physician assistants. Texas Occupations Code 204.207 is in conflict with Texas Occupations Codes 157.001 and 157.060. Texas Occupations Code 204.207 should be removed.
- Texas Occupations Code 204.207 (*Physician Assistant Practice Act*)
 - ASSUMPTION OF PROFESSIONAL LIABILITY:
 - (a) Each supervising physician retains legal responsibility for a physician assistant's patient care activities, including the provision of care and treatment to a patient in a health care facility.
 - (b) If a physician assistant is employed by an entity, including a health care facility, the entity shares the legal responsibility for the physician assistant's acts or omissions with the physician assistant's supervising physician.
- Texas Occupations Code 157.001 and 157.060 (*Authority of Physician to Delegate Certain Medical Acts*)
 - **157.001(b):** “The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts.”
 - **157.060:** “PHYSICIAN LIABILITY FOR DELEGATED ACT. Unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform the act, a physician is not liable for an act of a physician assistant or advanced practice registered nurse solely because the physician signed a standing medical order, a standing delegation order, or another order or protocol, or entered into a prescriptive authority agreement, authorizing the physician assistant or advanced practice registered nurse to administer, provide, prescribe, or order a drug or device.”

TAPA believes that Texas Occupations Code 204.207 is in conflict and should be removed. The provisions provided in Texas Occupations Code 157 regarding physician liability prevail under the laws of construction, because Chapter 157 is the Medical Practice Act which governs the practice of physicians, and Texas Occupations Code 204 governs the practice of physician assistants. TAPA asks for the clarification of this language by removing Chapter 204.207.

Thank you for the consideration of our recommendations. TAPA values this opportunity and offers the committee our continued assistance. It is our hope Texans continue to benefit from the unique practice relationship between physicians and PAs and that the state of Texas foster this partnership to expand access and quality of care to all Texans.



Bruce Christensen, DHSc, PA-C
President

cc: Texas Sunset Advisory Commission Members