



APR 25 2018

April 24, 2018

The Honorable Brian Birdwell
Chair, Texas Sunset Advisory Commission
P.O. Box 2910
Austin, Texas 78768

Re: Texas Physician Assistant Board and Physician Assistant Practice Act

Dear Chairman Birdwell:

On behalf of the Texas Academy of Physician Assistants (TAPA), thank you for the opportunity to submit comments to the Sunset Advisory Commission (Commission) on its Sunset review of the Texas Medical Board (TMB) and Texas Physician Assistant Board (TPAB). Specifically, TAPA's comments are in response to the TMB Sunset Staff Report, released in March 2018.

TAPA is a non-profit organization, which is the voice of Physician Assistants (PAs) in Texas. With approximately 9000 licensed Texas PAs, PAs are examining, diagnosing, ordering, and prescribing for over 100,000 patients per day.

TAPA appreciates the consideration of our past requests during the most recent comprehensive Sunset review, which led to the passage and implementation of several key items that have helped improve the function of the Texas Physician Assistant Board after the 2017 Regular Session.

TAPA provides the following recommendations and requests the Commission include the following in its final report to the Texas Legislature:

1. TAPA recommends removal of physician liability language in the "Physician Assistant Practice Act" Texas Occupations Code 204.207: There is a conflict of law 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, and should be removed. Under Chapter 204.207, the PA Practice Act, the physician is held to a higher standard that under the Medical Practice Act, Texas Occupations Code 157.001(b) and 157.060.

*Texas Occupations Code 204.207. 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 omission with the physician assistant's supervising physician.*

Whereas the Medical Practice Act in Texas Occupations Code 157.001 and 157.060 clearly holds the physician liable **only if the physician has reason to believe the PA (or APRN) lacked the competency to perform the act.**

Texas Occupations Code 157.001(b). GENERAL AUTHORITY OF PHYSICIAN TO DELEGATE. (b) The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts.

*Texas Occupations Code 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 sets physician liability for physicians with regard to both PAs and APRNs because PAs and APRNs fill the same legal position in the medical arena. In addition, because Chapter 157 is part of the Medical Practice Act, which governs the practice of physicians, and Texas Occupations Code 204 governs the practice of physician assistants, Chapter 204.207 should be removed.

From the PA's perspective, perhaps more importantly, the higher liability standard for physicians delegating to PAs, is used in an anti-competitive manner to prevent the hiring of PAs by facilities and practice groups all across Texas. Accordingly, TAPA respectfully requests Texas Occupations Code 204.207 be removed from statute.

2. TAPA recommends removal of the "agent of" language in the "Physician Assistant Practice Act" Texas Occupations Code 204.202(e): This provision is also in conflict with the Medical Practice Act because it identifies the PA as an "agent of" the physician. In doing so, 204.202(e) also places a higher liability standard on the physician delegating to PA, in conflict with Texas Occupations Code 157.060.

Texas Occupations Code 202(e). A physician assistant is the agent of the physician assistant's supervising physician for any medical services that are delegated by that physician and that:

- (1) Are within the physician assistant's scope of practice; and*
- (2) Are delineated by protocols, practice guidelines, or practice directives established by the supervising physician.*

TAPA believes that Texas Occupations Code 204.202(e) is also in conflict with Chapter 157 of the Medical Practice Act because it provides a higher liability standard for physicians delegating to PAs, and therefore should be removed for the same reasons outlined above regarding the removal of Chapter 204.207.

The existence of two different standards of liability for physicians delegating to PAs, and the use of these two provisions in an anti-competitive manner to block the hiring of PAs by facilities and practice groups, is unfair to both physicians and PAs in Texas.

Thank you for the consideration of our recommendations. TAPA values this opportunity and offers the committee our continued assistance. It is our hope that Texans will continue to benefit from the practice relationship between PAs and physicians and that the state of Texas foster this partnership to expand access and quality of care to all Texans, and remove conflicting liability standards and outdated language from the Texas PA Practice Act.

Yours respectfully,

A handwritten signature in black ink that reads "Tina M. Butler PA-C". The signature is written in a cursive, flowing style.

Tina Butler, PA-C
President

cc: Texas Sunset Advisory Commission Members