



# Texas Medical Board

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December 10, 2018

The Honorable Brian Birdwell, Chair & Members  
Texas Sunset Advisory Commission  
P.O. Box 13066  
Austin, TX 78711-3066

Delivered via e-mail to: [Sunset@sunset.texas.gov](mailto:Sunset@sunset.texas.gov)

Dear Chairman Birdwell and Commission Members,

Please find attached the Texas Medical Board's report related to Recommendation 4.1, adopted with modifications in June 2018, requiring the board to review its current licensing practices for out-of-state physicians and identify any necessary changes to statute or rules required to implement a new expedited process for providing Texas licensure to these physicians.

The board was directed to report on the results of this review no later than December 10, 2018.

The attached provides proposed recommended changes to current Section 155.056, Occupations Code (Medical Practice Act) relating to examination attempt limits for a physician licensing exam.

Please do not hesitate to contact me if you have questions or need any additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brint Carlton", is written over a horizontal line.

Brint Carlton, Executive Director

Enclosure

cc: Jennifer Jones, Acting Director, Texas Sunset Commission  
Erick Fajardo, Senior Policy Analyst, Texas Sunset Commission  
Sherif Zaafran, M.D., President, Texas Medical Board

# **TMB Report on Expedited Physician Licensure for Out-of-State Physicians**

## **Summary**

After review of current licensure processes and requirements, TMB recommends amending existing Sec. 155.056 relating to caps on the number of attempts a physician licensure applicant can have to take a licensing examination. In most instances, this section applies to the United States Medical Licensing Examination (USMLE) which is the standardized national licensing exam for physicians and is recognized and approved by all state medical boards to meet licensure requirements in each state.

Currently, this statute limits the number of times a physician can take on each part of a licensing examination to three attempts per part with very limited exceptions.

The recommended changes would provide needed clarity by removing certain outdated and confusing requirements and expanding current exceptions to allow for additional attempts to take licensing examinations, thus providing increased flexibility for out-of-state physicians applying for Texas licensure.

Specifically, the recommended changes would:

- Add definitions for the terms “full license” and “actively practicing” in new subsection (c).
- In revised subsection (d) allow out-of-state physicians, who hold a full license and are actively practicing in another state for more than one but less than five years, to take one of the three parts of the USMLE four times, or to take one part up to six times if the physician is specialty board certified in specific area of medicine.
- In new subsection (e), authorize expedited licensure for out-of-state physicians who have not passed all parts of an approved exam, but who meet specified criteria, and who have been fully licensed and actively practicing for five or more years in another state. In many cases there is no way to remedy exceeding the cap on examination attempts, and therefore these physicians cannot ever be licensed. There are a number of cases where this has prevented highly qualified long-time practitioners from state licensure despite their desire to come to Texas.
- In new subsection (f), clarify that those applicants who qualify for licensure under subsection (e) may be considered on an expedited basis.

## **Recommended Statutory Changes**

### **Sec. 155.056. EXAMINATION ATTEMPT LIMITS.**

(a) Except as provided by Subsection (a-1), an applicant must pass each part of an examination within three attempts.

(a-1) The limit on the number of examination attempts under Subsection (a) does not apply to the Texas medical jurisprudence examination.

(b) The board shall adopt rules that prescribe how the limit on the number of examination attempts under Subsection (a) shall apply to an applicant who seeks a license and who attempts more than one type of examination.

~~(c) Notwithstanding Subsection (a), an applicant who, on September 1, 2005, held a physician-in-training permit issued under Section 155.105 or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:~~

~~(1) passed all but one part of the examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;~~

~~(2) is specialty board certified by a specialty board that:~~

~~(A) is a member of the American Board of Medical Specialties; or~~

~~(B) is approved by the American Osteopathic Association; and~~

~~(3) has completed in this state an additional two years of postgraduate medical training approved by the board.~~

**(c) Definitions applying to (d) and (e) of this Section:**

**“Full license or fully licensed”- means a license to practice medicine that is not a training license, permit or any other form of authority to practice issued while in a residency, fellowship or other supervised training program.**

**“Actively Practicing”- means the practice of medicine that is done after successful completion of all training program such as residency or fellowships. Moonlighting or practice outside of a program, while still completing or enrolled in such a training program, is not considered active practice and cannot be applied toward fully licensed time period specified in (d) or (e) of this section.**

**(d)** The limitation on examination attempts by an applicant under Subsection (a) does not apply to an applicant who:

(1) **holds a full license** is licensed, **is actively practicing**, and in good standing as a physician in another state, **U.S. territory or Canada**;

(2) has been **fully** licensed for at least **one and less than** five years **in another state, U.S. territory or Canada**;

(3) holds a an unrestricted medical license in another state, **U.S. territory, or Canada**, that is not the subject of any restrictions, disciplinary orders, or probation

(4) has never held a medical license that was the subject of any restrictions, disciplinary orders, or probation;

~~(4-5)~~ (5) is not currently under investigation by any licensing or law enforcement agency;

~~(5 6)~~ (6) has successfully completed an accredited graduate medical education program or an equivalent accepted in Texas; and

~~(6 7)~~ (7) has not been and is not currently the subject of a peer review that resulted in or may result in limitation(s), restriction(s), suspension, or other adverse impact on hospital or other medical facility privileges; and

~~(4 8)~~ (8) passed **each part of a board-approved examination within three attempts**, except but one part of the examination approved by the board within three attempts one part and:

(A) passed ~~the~~ that remaining part of the examination within one additional attempt; or

(B) passed ~~the~~ remaining part of the examination within six attempts if the applicant ~~;~~ and if specialty board certified by a specialty board that:

(a) is a member of the American Board of Medical Specialties; or

- (b) is approved by the American Osteopathic Association; and
- (C) passed the remaining part of the examination within six attempts total. if the applicant
  - (i) is specialty board certified by a specialty board that:
    - (a) is a member of the American Board of Medical Specialties; or
    - (b) is approved by the American Osteopathic Association; and
  - (ii) has completed in this state an additional two years of postgraduate medical training approved by the board.

**(e) The board shall allow an applicant, who has not passed all parts of an approved examination, to be licensed under an expedited licensing process. To be eligible for a license under this section an applicant shall meet the following requirements:**

- (1) currently possesses a full and unrestricted license, not a training license or permit, to practice medicine in another state, U.S. territory, or Canada;**
- (2) been fully licensed for at least five years in another state, U.S. territory, or Canada;**
- (3) be actively engaged in clinical practice, and in good standing as a physician in another state, U.S. territory or Canada;**
- (4) cannot ever held or currently hold any medical license that is or was the subject of any restriction, suspension, revocation, voluntary surrender, disciplinary action, or probation;**
- (5) is not currently under investigation by any licensing or law enforcement agency;**  
**and**
- (6) has not been and is not currently the subject of a peer review that resulted in or may result in limitation(s), restriction(s), suspension, or other adverse impact on hospital or other medical facility privileges.**

**(f) The licensure application of an applicant who qualifies for license under Subsection (e) shall be considered on an expedited basis.**