



## Texas Medical Board's Response to COVID-19

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The Texas Medical Board, with direction and assistance from Governor Abbott's administration, is issuing and implementing various temporary rules and guidance to help Texas physicians, physician assistants and other health care professionals respond to COVID-19. These standards will be in effect through the time period that encompasses the Governor's Disaster Declaration in Texas.

### Audio-Only Telemedicine Encounters Temporarily Allowed in Texas

Governor Abbott approved the Texas Medical Board's request to temporarily allow the use of telephone-only encounters to establish a physician-patient relationship in Texas. Only a patient (or a patient's proxy decision maker) may initiate the audio-only encounters by telephone. The standard of care remains the same whether the encounter is via technology or in-person, and physicians should always attempt to ensure patient continuity of care. A patient must give written or oral consent to the physician via telemedicine. This consent must be documented in the patient's medical record. The Texas Medical Board notes that for the encounter to be eligible for payment, services provided through a telemedicine visit (including audio-only telephone calls) must be medical services that would be billable if provided in person.

Previously, under Texas law, a physician-patient relationship could only be established via a synchronous audiovisual interaction between the patient and physician or asynchronous store and forward technology (e.g., photographs). The Texas Medical Board is indicating that the temporary expanded use of telemedicine may be used for diagnosis, treatment, ordering of tests, and prescribing for all patient conditions. Chronic pain treatment is currently allowed by telemedicine until April 10, 2020.

### Prohibition of Elective Procedures & Surgeries

The Texas Medical Board is prohibiting Texas physicians from performing surgeries and medical procedures "not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician" until April 21, 2020. The Texas Medical Board's accompanying guidance indicates that the prohibition applies to all surgeries and procedures that are not immediately medically necessary, including routine dermatological, ophthalmological, and dental procedures, as well as most scheduled healthcare procedures that are not immediately medically necessary (e.g., orthopedic surgeries). The Texas Medical Board notes that the performance of a non-urgent elective procedures is considered a continuing threat to the public welfare during the battle against COVID-19, and any physicians in violation of this prohibition could be subject to disciplinary action.

If a surgery or procedure is performed, the Medical Board expects that a patient's medical record clearly reflects why the elective surgery or procedure was urgent and necessary to prevent serious adverse medical consequences or death. This documentation could include information on the patient's medical history, prescriptions, lab results, imaging, or other relevant factors used to make the determination of the urgent necessity of the elective surgery or procedure.

The Texas Medical Board indicates that the prohibition does not apply to office-based visits without surgeries or procedures. Notwithstanding, any office-based visits should be conducted in accordance with standard protocols, including safety measures that prevent the spread of COVID-19.



### Expedited Licensing of Out-of-State Physicians

The Texas Medical Board and the Texas Board of Nursing are expediting temporary license applications for out-of-state physicians, physician assistants, certain retired physicians, nurses, and other license types to assist in Texas' response to COVID-19. The Texas Medical Board is allowing out-of-state physicians to obtain a Texas limited emergency license via two options: (1) hospital to hospital credentialing or (2) the issuance of an emergency license based on written verification of a physician licensed in Texas.

With respect to hospital to hospital credentialing, a licensed physician to practice medicine in another U.S. State, territory or district and has unrestricted hospital credentials and privileges in any U.S. state, territory or district may temporarily practice medicine at a Texas hospital upon the following terms and conditions being met: (1) the licensed Texas hospital verifies the physician's credentials and privileges; (2) the licensed Texas hospital maintains a list of all physicians coming to practice and provides this list to the Texas Medical Board within ten (10) days of each physician starting to practice at the licensed Texas hospital; and (3) the licensed Texas hospital provides the Texas Medical Board a list of when each physician has stopped practicing medicine in Texas within ten (10) days after the physician has stopped practicing medicine under the emergency rule. Hospitals may e-mail the required provider information to [TMBtransition@tmb.state.tx.us](mailto:TMBtransition@tmb.state.tx.us).

With respect to applications for an emergency license based on the verification of a Texas licensed physician, the Texas Medical Board is permitting a singular Texas licensed physician to submit one application and attach a list of an unlimited number of out-of-state physicians that the physician is verifying for purposes of obtaining the emergency licenses. According to a representative of the Texas Medical Board, this is the most efficient process to obtain emergency licensure and the license is valid until the public health emergency or state of disaster is lifted with no need to file a renewal or extension during the term of the emergency. The Board will conduct a limited review of each physician's licensure in their home state and prior disciplinary action before providing emergency licensure.

The Texas Medical Board is also encouraging Texas physicians who have been retired for less than two years to consider returning to active status.

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For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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