Executive Summary

Texas Physician Licensure Statute

**Licensure Requirements:** Those wishing to practice medicine in the state of Texas may be required to seek a full medical license.

**Licensure Exceptions:** The Texas Licensure Statute allows for the following common exceptions:

- Consultative Services: Physicians are able to offer consultative services without being required to receive full medical licensure. Special purpose or telemedicine licenses are available to practice across state lines on a regular basis.

- Military Exception: Those physicians, licensed in any one of the 50 states, are permitted to administer care to military members, as either a civilian contract employee or a military physician officer, without having to first receive additional licensure.

**Internet Prescribing of Medications:** The Texas State Statute requires a physician to establish a physician patient-relationship before the administering of prescriptions. While a physician-patient relationship is not specifically defined, the regulations provide a list of activities (that are part of what constitute a physician-patient relationship) include a physician examination although it is unclear whether this is a requirement.
According to the Federation of State Medical Boards, the 10th Amendment police power grants states the right to regulate the practice of medicine.

All 50 states allow for some type of exemption for licensure. These exemptions permit medical practitioners to practice medicine within a state, without first obtaining a license in special cases.

TEXAS PHYSICIAN LICENSURE STATUTE
Occupations Code
Title 3. Health Professions
Subtitle B. Physicians
Chapter 151. General Provisions
Subchapter A. General Provisions

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;

All 50 states allow for the military exception. A physician practicing in the military need only be licensed on one state to have licensure reciprocity in all 50 states.

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

All 50 states allow for the emergency exception because it is considered “good public policy.” Texas allows for this exception, provide that, 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;

This is a universal exception permitted by all states.

(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:

CTel Comment: An example of a ‘medical consultation’ is when a physician calls upon a medical colleague, of comparable medical training and knowledge, to receive a second medical opinion. For example, if Dr. Jim, a cardiologist, sought the medical opinion of Dr. Kathy, a cardiologist, regarding a patient suffering from a heart attack, this would be considered a medical consultation because both physicians have the training to administer competent coronary medical care to the patient. However, if Dr. Gary, a general practitioner, calls Dr. Nancy, a neurologist, regarding care for a stroke patient, this may no longer be considered a “medical consultation” because Dr. Gary, would be unable to administer the care without the help of Dr. Nancy. In this second situation, Dr. Nancy would have to be licensed in the state to administer care.

(A) maintain an office in this state; or

This exemption is similar to the one found in the Arizona and Washington state licensure statutes.

(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
Physicians providing consultative services, via telemedicine, to another physician through remote telehealth technology, fall within the Texas State licensure exemption.

§ 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.¹

(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;

Physicians providing consultative services, via telemedicine, to another physician through remote telehealth technology, fall within the Texas State licensure exemption.

(2) a physician located in another jurisdiction who is providing consultation services to a medical school as defined by Section 61.501, Education Code²;

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

(A) Subchapter C, Chapter 73, Education Code; [FN1] or

(B) Subchapter K, Chapter 74, Education Code; [FN2] or

¹ According to the BNA Health Law & Business, “Texas may issue a special purpose telemedicine license to practice medicine across state lines, only if, the physician is certified in a specialty area and limits their practice to that specialty.” BNA Health Law & Business Series No. 2800 WP 53, Survey of State Telemedicine Authority: Regulating the Practice of Medicine (2009).

² According to Section 61.501 of the Education Code, schools that meet the Texas Statute education requirement, for Texas State medical schools, are as follows: The University of Texas Health Science Center at Houston, the medical school at The University of Texas Health Science Center at Dallas, the medical school at The University of Texas Health Science Center at San Antonio, The University of Texas Medical Branch at Galveston, the Texas Tech University Health Sciences Center, the Baylor College of Medicine, the college of osteopathic medicine at the University of North Texas Health Science Center at Fort Worth, or the Texas A&M University Medical Program.
(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.
Physicians who wish to practice telemedicine in a state that lacks specific licensure requirements for telehealth providers may be required to seek a full medical license. There are 36 states that require telehealth providers to seek a full medical license in order to practice in that state. Texas is one of 11 states that offer telemedicine providers the option of obtaining a special telemedicine license.

(a) Qualifications. A person may not engage in the practice of medicine across state lines in this State, hold oneself as qualified to do the same, or use any title, word, or abbreviation to indicate or induce others to believe that one is licensed to practice across state lines in this state unless the person is actually so licensed. For a person to be eligible for a special purpose telemedicine license to practice medicine across state lines under the Medical Practice Act, § 151.056, and § 163.1 of this title (relating to Definitions), the person must:

1. be 21 years of age or older;
2. be actively licensed to practice medicine in another state which is recognized by the board for purposes of licensure, and not the recipient of a previous disciplinary action by any other state or jurisdiction;
3. not be the subject of a pending investigation by a state medical board or another state or federal agency;
4. be certified in a medical specialty pursuant to the standards of and approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists and Boards of Certification;

In many states that require full medical licensure, telemedicine practitioners are required to purchase medical malpractice insurance, even if they only administer care in that state once. Texas does not require physician to purchase medical insurance.
(5) have passed the Texas Medical Jurisprudence Examination;

(6) complete a board-approved application for a special purpose telemedicine license for the practice of medicine across state lines and submit the requisite initial fee; and

(7) not be determined ineligible for licensure under subsection (b) of this section.

(b) Denial of Special Purpose Telemedicine License. An application for a special purpose telemedicine license to practice medicine across state lines may be denied based on failure to demonstrate the requisite qualifications for issuance of a special purpose license, any grounds for denial of an application for a full license, failure to submit the required fee, and any grounds for disciplinary action of a licensee under the Medical Practice Act, § 164.051 (relating to Grounds for Denial or Disciplinary Action).

(c) Limits on Special Purpose Telemedicine License. A special purpose telemedicine license to practice medicine across state lines shall be limited exclusively to the practice of medicine as defined by Section 163.1 of this title and limited to the specialty or specialization upon which the license was granted under subsection (a)(3) of this section, and the license holder shall practice medicine in a manner so as to comply with all other statutes and laws governing the practice of medicine in the state of Texas. Unless a person holds a current full license to practice medicine in this state pursuant to this chapter and the provisions of the Medical Practice Act, Chapter 155 (relating to License to Practice Medicine), a person holding a special purpose telemedicine license shall not be authorized to physically practice medicine in the state of Texas.

(d) Registration Requirements. All special purpose telemedicine licenses to practice medicine across state lines licenses must be renewed and maintained according to registration requirements of Section 166.1 of this title (relating to Physician Registration).

(e) Disciplinary Action. The issuance by the board of a special purpose telemedicine license subjects the licensee to the jurisdiction of the board in all matters set forth in the Medical Practice Act and all rules and regulations, including all matters related to discipline.
(f) Exemptions. The following activities shall be exempt from the requirements of a special purpose telemedicine license and this chapter:

(1) episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a person licensed in this state;

(2) consultation services provided by a physician located in another jurisdiction to a medical school as defined in the Education Code, § 61.501;

(3) consultation services provided by a physician located in another jurisdiction to an institution defined in either Subchapter C, Chapter 73, or Subchapter K, Chapter 74 of the Education Code;

(4) informal consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation;

(5) furnishing of medical assistance in case of an emergency or disaster if no charge is made for the medical assistance; and

(6) 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.

§ 155.001. License Required

A person may not practice medicine in this state unless the person holds a license issued under this subtitle.4

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4 In Thompson v. Texas State Bd. of Medical Examiners, 570 S.W.2d 123 (1978), the Court found that the state’s police power, granted to states through the 10th Amendment, allows the state to enact comprehensive and detailed regulations for the practice of medicine, surgery and dentistry.
In *Russell v. State*, 598 S.W.2d 238 (1980), the Court found that the Physician is only required to file a license in the counties, in which the physician plans on practicing medicine.

A physician looking to practice medicine within the state of Texas must produce accurate documentation that they meet the state’s licensure requirements.

In § 155.002. Issuance of License:

(a) The board, at its sole discretion, may issue a license to practice medicine to a person who:

1. submits to the board a license application as required by this chapter;
2. presents satisfactory proof that the person meets the eligibility requirements established by this chapter; and
3. satisfies the examination requirements of Section 155.051.

(b) The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this subsection does not require formal board approval.

In § 155.003. General Eligibility Requirements:

(a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:

1. is at least 21 years of age;
2. is at least 21 years of age;
3. is at least 21 years of age;

Age requirements are not standard across all 50 states and are not always established by statute.

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5 The Texas State Medical Board withholds the right to deny a medical license to a physician who does not meet the Boards ethical and professional requirements.

According to *Callejo-Tolosa v. Texas State Bd. of Medical Examiners*, 875 S.W.2d 762 (1994), in situations where an applicant chooses to bring a legal action against the Board for failure to grant a medical license, the applicant bears the burden to show that licensure was improperly denied.

6 The licensure examination requirements are as follows: 1. examination, payment of fee, submission of records, including academic and professional history.
According to the § 164.051 of the statue, titled Grounds for Denial or Disciplinary Action, a physician can be denied a medical license if they commit a felony, misdemeanor involving moral turpitude, or is unable to practice medicine due to excessive illness, drunkenness, or drug use.

(2) is of good professional character and has not violated Section 164.051, 164.052, or 164.053;

The Board has the discretionary right to limit licensure applications to those who have graduated from an accredited medical school in the United States or Canada. However, the Board may also grant medical licenses to graduates of foreign medical schools with additional requirements.

(3) has completed:

(A) at least 60 semester hours of college courses, other than courses in medical school, that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(B) the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or

(C) substantially equivalent courses as determined by board rule;

(4) is a graduate of a medical school located in the United States or Canada and approved by the board;

(5) has either:

(A) successfully completed one year of graduate medical training approved by the board in the United States or Canada; or

(B) graduated from a medical school located outside the United States or Canada and has successfully completed three years of graduate medical training approved by the board in the United States or Canada;

(6) has passed an examination accepted or administered by the board; and

State medical boards have a duty to create “licensure requirements” for the state’s licensure applications.

These academic requirements for medical licensure are standard.
(7) has passed a Texas medical jurisprudence examination as determined by board rule.

(b) All medical or osteopathic medical education an applicant receives in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. This subsection does not apply to postgraduate medical education or training.

(c) An applicant who is unable to meet the requirement established by Subsection (b) may be eligible for an unrestricted license if the applicant:

1. received medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board in the same subject as the medical or osteopathic medical education as defined by board rule; or
2. is specialty board certified by a specialty board approved by the American Osteopathic Association or the American Board of Medical Specialties.

(d) In addition to the other requirements prescribed by this subtitle, the board may require an applicant to comply with other requirements that the board considers appropriate.

(e) An applicant is not eligible for a license if:

1. the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state, a province of Canada, or a uniformed service of the United States;
2. an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation in a state, a province of Canada, or a uniformed service of the United States; or
3. a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.
§ 155.0031. Application Procedures and Requirements

(a) An application for a license must be in writing and on forms prescribed by the board. The board may allow or require applicants, by board rule, to use the Federation Credentials Verification Service offered by the Federation of State Medical Boards of the United States.

(b) The application forms must be accompanied by all fees, documents, and photographs required by board rule.

(c) Applicants for a license must subscribe to an oath. The written oath is part of the application.

(d) An applicant must present proof satisfactory to the board that:

   (1) each medical school attended by the applicant is substantially equivalent to a Texas medical school as determined by board rule; or

   (2) the applicant is specialty board certified by a specialty board organization acceptable to the board.

§ 155.006. Issuance of Limited License

(a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant’s conceded eminence and authority in the applicant’s specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the applicant:

   (1) is recommended to the board by the dean, president, or chief academic officer of:

      (A) a school of medicine in this state;

      (B) The University of Texas Health Center at Tyler;

      (C) The University of Texas M. D. Anderson Cancer Center; or

This is a non-conjunctive test, meaning that only one of the prongs needs to be met to satisfy the test.
(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define “conceded eminence and authority in the applicant’s specialty.” In adopting rules under this subsection, the board shall consider criteria that include a person's:

(1) academic appointments;
(2) length of time in a profession;

(3) scholarly publications; and

(4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program, or an affiliate of the institution or program, that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for such license.
In Balla v. Texas State Board of Medical Examiners, 693 S.W.2d 715 (1985), the Court found that the issuance of prescriptions for various amphetamines as part of weight control program, did not constitute acceptable medical practice. The Board supported a decision to revoke doctor’s license to practice medicine.

This is a non-conjunctive test, meaning that only one of the prongs needs to be met to satisfy the test.

Telehealth is used in many rural hospitals throughout the U.S. to provide care from specialists to rural and underserved populations.

APPENDIX

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.

In Balla v. Texas State Board of Medical Examiners, 693 S.W.2d 715 (1985), the Court found that the issuance of prescriptions for various amphetamines as part of weight control program, did not constitute acceptable medical practice. The Board supported a decision to revoke doctor’s license to practice medicine.

(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; or

(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.).

(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.

(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:

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7 It is the duty of the state medical board to protect its citizens from incompetent medical care. This power is afforded to the state medical board through the United States’s 10th Amendment, Police Power.
(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.\(^8\)

(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.\(^9\)

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\(^8\) A physician must be licensed in the state where they wish to practice medicine. If a physician practices medicine in a state without a license, the physician may suffer criminal and civil penalties, as well as the loss of licenses held in other states.

\(^9\) According to § 151.003 of the Texas State Statute, “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
(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.