

The Texas Board of Chiropractic Examiners

To: Director, Regulatory Compliance Division, Office of the Governor
From: Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners
Date: October 11, 2021
Subject: Proposed New 22 Texas Administrative Code §§72.18 and 72.19

The Texas Board of Chiropractic Examiners (Board) has proposed two new rules at 22 Texas Administrative Code (TAC) §§72.18 (Criminal History) and 72.19 (Requirement to Report a Conviction or Deferred Adjudication) as published in the September 10, 2021, issue of the Texas Register. The Regulatory Compliance Division (Division) asserts the proposed rules affects market competition; the Board therefore submits the proposed rules to the Division for review. The PDF version of the preamble and text of the proposed rules as published in the Texas Register, and the language of any amendments to the proposed rules that the Board intends to adopt are attached to this memo.

The Board does not ask for an expedited review of these new proposed rules.

To facilitate the Division's review of the proposed rules, the Board answers the following questions:

1. Briefly describe the proposed rules:

The proposed new §72.18 is simply the Board's current criminal history rule minus the requirement for licensees and applicants to report convictions and deferred adjudications to the Board, which the Board is moving to a stand-alone rule in proposed new §72.19. In the new §72.19, the Board also clarifies that licensees and applicants do not have to report Class C misdemeanor traffic violations to the Board.

2. What is the purpose of the proposed rules?

The purpose of moving the reporting requirements for a conviction or deferred adjudication into a stand-alone rule is to make the information easier to find in the Board's rules.

3. Describe any relevant background to the proposed rules and the impetus for the Board to consider rulemaking.

Board staff found that applicants and licensees had a hard time finding the information about reporting convictions and deferred adjudications in the current §72.18, so the Board decided to move those requirements into a stand-alone rule.

4. Describe the legal authority for the proposed rules.

a. Are the proposed rules specifically required or authorized by statute? If so, list them.

Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §53.22, which requires the Board to consider an applicant's criminal background.

b. Are the proposed rules within the scope of the Board's general authority to regulate the chiropractic profession? If so, describe how the proposed rule are within the scope, and reference the applicable statutes.

Yes. Texas Occupations Code §201.313, which requires the Board to conduct criminal history checks on applicants for licensure.

5. Describe the process the Board followed in developing the proposed rules, including any public hearings held, public comments, invited, studies conducted, and data collected or analyzed.

Board staff recognized that finding the requirements for reporting a conviction or deferred adjudication was somewhat difficult for licensees and applicants and therefore suggested the Board put those requirements in a stand-alone rule. Since publication of the proposed new rules in the Texas Register, the Board has received no comments from the public.

6. Describe the harm the proposed rules are intended to address and how the proposed rules will address the harm.

The only harm that was present was licensees and applicants had a difficult time finding the information in the current rule. The new stand-alone rule (§72.19) should make finding that information easier.

7. Do any less restrictive alternatives to the proposed rules exist for addressing the same harm? If so, include a comparison of the proposed rules to the alternatives and justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.

No less restrictive alternatives.

8. Indicate how the proposed rules affect market competition (See Texas Occupations Code §57.105(d)).

They create a barrier to market participation in the state.

The proposed new rules do not.

They result in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

The proposed new rules do not.

They both create a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

The proposed new rules do not.

9. Describe the specific impact that the proposed rules will have on market competition and that effect is consistent with state policy as established by the Legislature in statute.

No impact.

10. Do the proposed rules relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Do the proposed rules related to an opinion issued by the Office of the Attorney General?

No and no.

11. Do the proposed rules relate to a matter on which there is pending litigation or a pending court order?

No.

12. Is there anything else the Board would like the Division to know about the proposed rules?

The Board anticipates no changes to the proposed text of the proposed rules before adopting them at the Board's November 2021 meeting.

the reporting of criminal convictions and put that language into a stand-alone rule.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the requirements for reporting criminal convictions easier to find in the Board's rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.18. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require a decrease or increase in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposal repeals existing Board rules for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this proposed repeal.

§72.18. *Criminal History.*



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.18 (Criminal History). The Board will propose a new §72.18 in a separate rulemaking. This rulemaking action will remove the current language in §72.18 concerning

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2021.

TRD-202103327

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 10, 2021

For further information, please call: (512) 305-6700



22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.18 (Criminal History); the current rule is being repealed in a separate rulemaking action. The only purpose is to remove language in the current rule about a licensee's or applicant's requirement to report criminal convictions and deferred adjudications to the Board. That language will be placed in a stand-alone rule (proposed 22 TAC §72.19), making that information easier to find. Other than this change, the provisions about a licensee's or applicant's criminal history remain the same.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to remove language in the current rule about a licensee's or applicant's requirement to report criminal convictions and deferred adjudications to the Board. That language will be placed in a stand-alone rule (proposed 22 TAC §72.19), making that information easier to find.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the new 22 TAC §72.18. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require a decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.

(6) The proposal new rule amends an existing Board rules for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The new rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this proposed new rule.

§72.18. Criminal History.

(a) The Board may suspend or revoke a current license or refuse to approve an applicant to sit for the jurisprudence examination because of the licensee's or applicant's conviction of an offense that directly relates to the practice of chiropractic.

(b) The Board shall revoke a license upon a licensee's imprisonment following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

(c) An individual in prison is not eligible for a license.

(d) An individual in prison with a verifiable release date from prison of three months or less may submit an application for a license.

(e) The Board shall consider the following to determine whether a criminal conviction directly relates to the occupation of chiropractic:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the practice of chiropractic; and

(3) if a license might reasonably lead to a repeat of the crime.

(f) The Board shall also determine an applicant's fitness to become a licensed chiropractor by considering:

(1) the extent and nature of the applicant's past criminal activity;

(2) the age at the time of the crime;

(3) the time since the crime occurred;

(4) the applicant's personal and work conduct after the crime;

(5) evidence of the applicant's rehabilitation while incarcerated and after release; and

(6) other evidence of fitness for a license, including recommendation letters from prosecutors, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for

the applicant, the sheriff or chief of police where the applicant lives, or any other person familiar with the applicant.

(g) The Board shall notify an individual whose application has been denied or license revoked or suspended of the procedures for appealing the Board's decision.

(h) The Board may delegate to the executive director the authority to consider an applicant's minor criminal convictions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2021.

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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 10, 2021

For further information, please call: (512) 305-6700



22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.19 (Requirement to Report a Conviction or Deferred Adjudication). This rulemaking simply moves the language in the current 22 TAC §72.18 (Criminal History) about reporting convictions and deferred adjudications into a stand-alone rule, making it easier for licensees and applicants to find the information. Other than this change, the provisions about a licensee's or applicant's criminal history remain the same.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to make it easier for licensees and applicants to find the Board's requirements to report convictions and deferred adjudications.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the new 22 TAC §72.19. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed new rule does not require a decrease in fees paid to the Board.

(5) The proposed new rule does not create a new regulation.

(6) The proposal new rule amends an existing Board rules for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The new rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this proposed new rule.

§72.19. Requirement to Report a Conviction or Deferred Adjudication.

(a) An applicant shall disclose in writing to the Board any prior conviction or deferred adjudication (other than a Class C misdemeanor traffic violation) at the time of application.

(b) An applicant or licensee shall disclose in writing to the Board any new conviction or deferred adjudication (other than a Class C misdemeanor traffic violation) no later than 30 days after the trial court's judgment.

(c) An applicant or licensee shall submit certified copies of any indictment or information and the court's judgment to the Board.

(d) On notification by an applicant or licensee of a new conviction or deferred adjudication, the Board may request the applicant or licensee explain in writing why the Board should not deny the application or take disciplinary action against the licensee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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