



AMERICAN OSTEOPATHIC ASSOCIATION

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September 20, 2016

BY FIRST CLASS AND CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

The Honorable Rory R. Olsen
Harris County Probate Court No. 3
201 Caroline, 7th Floor
Houston TX, 77002

Dear Judge Olsen:

On behalf of the nation's 123,000 osteopathic physicians and osteopathic medical students, the American Osteopathic Association (AOA) respectfully requests your immediate review and rescission of a recent directive affecting physicians in Harris County, Texas. There are two types of fully licensed physicians in the United States, allopathic physicians (MDs) and osteopathic physicians (DOs). Nationally, over 11 percent of all physicians hold the DO degree, and 25 percent of all medical students are enrolled in a college of osteopathic medicine. Furthermore, DOs practice in every medical specialty. In Texas, more than 5,500 Texas physicians are DOs.

It has come to our attention that you recently directed the Clerk's Office of the Harris County, Texas, Probate Court not to accept Certificates of Preliminary Medical Examination and Certificates of Medical Examination (referred to as "Certificates") for filing if they are signed by DOs. We urge you to rescind this directive, as it is not based on Texas law, nor does it comport with the Constitution of the State of Texas, and therefore may be an unconstitutional directive, as well as an illegal directive. Moreover, the practical impact of your directive will affect the public health of Harris County residents, as well as the residents of the State as whole.

In the United States, holders of Doctor of Osteopathic Medicine (DO) degrees and Medical Doctor (MDs) degrees are equally eligible for unrestricted medical licensure to practice medicine in their respective jurisdictions, including Texas. Under the Texas State Constitution, the responsibility of regulating the practice of medicine lies squarely with the Texas Legislature: "The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine." V.A.T. Const. Art. 16, § 31. In that regard, the Texas Legislature created the Texas Board of Medical Examiners in 1907, initially comprised of 11 members. *See Id.*, Interpretive Commentary. Today, that Board is comprised of 19 members appointed by the Governor, and by regulation, three of its members must be DOs. *See* 22 T.A.C. § 161.3(b).

The Supreme Court has held that “courts are to construe statutes so as to harmonize with other relevant laws, if possible.” *La Sara Grain Co. v. First Nat’l Bank of Merced*, 673 S.W.2d 558, 565 (Tex.1984) (citing *State v. Standard Oil Co.*, 130 Tex. 313, 107 S.W. 550 (1937)). Likewise, courts “construe administrative rules, which have the same force as statutes, in the same manner as statutes, and [courts] must ensure that [an agency] interpret[s] its rules in harmony with its enabling statute.” *Southern Ins. Co. v. Brewster*, 249 S.W.3d 6, 15 (Tex.App.2007). And “where two or more separate statutory provisions pertain to the same subject, appellate courts should attempt to construe the provisions so that the statutes will be in harmony.” *In re Estate of Forister*, 421 S.W.3d 175, 180-81 (Tex.App.2013). Moreover, “[s]tatutes are *in pari materia* if they concern the same subject matter, relate to the same person or class of persons, or have the same object or purpose.” *Id.* Finally, “[s]tatutes [that] are found to be *in pari materia* are construed together, and if possible, conflicts between the statutes are harmonized.” *Id.*

Under the various statutes and regulations governing both the regulation of physicians and the practice of medicine, the term “physician” means an individual with either a DO or MD degree, without distinction. Indeed, under Texas law, the term “physician” has been construed to include both. As we understand your directive, Certificates that are required under the Texas Health and Safety Code, §574.011, and signed by an examining “physician” under that section, are acceptable to you if those Certificates are signed only by a physician with a MD degree, and not a DO degree. This reading of §574.011 is inconsistent with other provisions of Texas law. Under §571.003(18) of the Texas Health and Safety Code, a “physician” means: (A) a person licensed to practice medicine in [Texas]; (B) a person employed by a federal agency who has a license to practice medicine in any state; or (C) a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.”¹

The term “physician,” as used in §571.003 must be read in harmony with other Texas statutes and regulations. Accordingly, a physician who provides mental health services under the Texas Administrative Code governing the Department of State Health Services is “[a] doctor of medicine or osteopathy who holds a current license or institutional permit to practice medicine in Texas.” 25 T.A.C. § 415.3(7). Similarly, a physician who provides clinical services under the Texas Administrative Code governing the Department of Aging and Disability Services is “[a] doctor of medicine or osteopathy who holds a current license or institutional permit to practice medicine in Texas.” 40 T.A.C. §5.3(7). For credentialing purposes, generally, a “physician” means “a holder of or applicant for license . . . as a doctor or doctor of osteopathy.” V.A.T. Occ. Code § 166.151(4).

¹ That this section refers to postgraduate physicians who are in training programs approved by the Accreditation Council for Graduate Medical Education *and* the American Osteopathic Association should be indicative of the Legislature’s intent that physician includes both medical doctors and osteopathic medical doctors. To include a physician in training who is a DO but to disallow a fully licensed DO in the definition contravenes the *prima facie* legislative intent in the statute.

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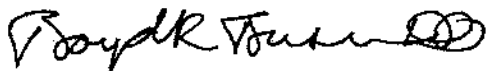
In order to be licensed to practice medicine in Texas, an individual must, among other requirements, be a graduate of a medical school in the United States or Canada. V.A.T. Occ. Code § 155.003(a)(4). An applicant for licensure must receive “medical *or osteopathic medical education*” from an accredited institution. *Id.*, §155.003(b) (italics supplied). Indeed, the Texas Medical Board considers an “acceptable approved medical school” to be a “medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education *or the American Osteopathic Association Bureau of Professional Education.*” 22 T.A.C. §163.1 (italics supplied). And as previously stated, “no preference shall ever be given by law to any schools of medicine.” Texas Const. Art. 16, § 31.

The regulations governing the practice of medicine consistently refer to both allopathic medical training – MDs – as well as osteopathic medical training – DOs. The intent of the Texas Legislature, as mandated by the Texas State Constitution, could not be clearer: Doctors of Osteopathic Medicine are on equal footing with Doctors of Medicine in all respects. The unrestricted license to practice medicine in Texas is, therefore, afforded to holders of both degrees equally. To restrict the practice of osteopathic physicians where permitted by statute and regulation solely on the basis of their osteopathic medical degree contravenes rights afforded under the Texas State Constitution, as well as the rights and privileges granted through their license to practice medicine in Texas.

Moreover, to disallow DOs to sign the Certificates at issue will have a significant impact on the public health of the residents of Harris County and the State of Texas as a whole. It bears noting that the current interim Medical Director of the Harris County Psychiatric Center of the University of Texas Health Science Center at Houston, as well as one of its forensic psychiatrists, are both DOs. In addition, we understand that Oceans Behavioral Hospital (a geropsychiatric facility) in Katy, Texas, has only two staff physicians, one of whom is a DO. To disallow DOs from signing the aforementioned Certificates would severely affect these facilities, as well as others, from serving their constituencies and to promote public health. In fact, your directive would have a substantial impact on the administration of public health services to those who truly need them.

We trust that the foregoing sufficiently supports your reconsideration of your directive. Accordingly, we urge you to rescind your directive and permit the submission of Certificates signed by DOs as is intended by the statute.

Respectfully submitted,



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and Professor of Family Medicine
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The Honorable Rory R. Olsen
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