

# **Executive Council of Physical Therapy and Occupational Therapy Examiners Act**

**TITLE 3, SUBTITLE H, Chapter 452**



**Executive Council of Physical Therapy and  
Occupational Therapy Examiners  
Austin, Texas**

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As amended by the 85th Legislature, Regular Session, effective September 1, 2017, and subject to change by future legislative action.

# Executive Council of Physical Therapy and Occupational Therapy Examiners Act

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# Executive Council of Physical Therapy and Occupational Therapy Examiners Act

## OCCUPATIONS CODE

### TITLE 3. HEALTH PROFESSIONS

#### SUBTITLE H. PROFESSIONS RELATED TO CERTAIN TYPES OF THERAPY

#### CHAPTER 452. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

### SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 452.001. DEFINITIONS.** In this chapter:

(1) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(2) "Occupational therapy board" means the Texas Board of Occupational Therapy Examiners.

(3) "Physical therapy board" means the Texas Board of Physical Therapy Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.002. APPLICATION OF SUNSET ACT.** The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2029:

(1) this chapter;

(2) Chapter 453; and

(3) Chapter 454.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.06, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.05, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.07, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.01, eff. September 1, 2017.

### SUBCHAPTER B. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

**Sec. 452.051. APPOINTMENT OF EXECUTIVE COUNCIL.** (a) The Executive Council of Physical Therapy and Occupational Therapy Examiners consists of:

(1) an occupational therapist member of the occupational therapy board appointed by that board;

(2) a public member of the occupational therapy board appointed by that board;

(3) a physical therapist member of the physical therapy board appointed by that board;

(4) a public member of the physical therapy board appointed by that board; and

(5) a public member appointed by the governor.

(b) The occupational therapy board and the physical therapy board may designate an alternate to attend an executive council meeting if a member appointed by that board cannot attend. The alternate has the same powers and duties and is subject to the same qualifications as the appointed member.

(c) Appointments to the executive council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.052. ELIGIBILITY OF PUBLIC MEMBER APPOINTED BY GOVERNOR.** A person is not eligible for appointment by the governor as a public member of the executive council if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;  
(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the executive council, the occupational therapy board, or the physical therapy board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the executive council, the occupational therapy board, or the physical therapy board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council, the occupational therapy board, or the physical therapy board, other than compensation or reimbursement authorized by law for executive council, occupational therapy board, or physical therapy board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.** (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the executive council and may not be an employee of the executive council employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not serve as a member of the executive council or act as the general counsel to the executive council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council, the occupational therapy board, or the physical therapy board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.02, eff. September 1, 2017.

**Sec. 452.054. TERMS; VACANCY.** (a) Members of the executive council are appointed for two-year terms that expire on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy holds office for the unexpired portion of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.055. PRESIDING OFFICER.** The member appointed by the governor is the presiding officer of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.056. GROUNDS FOR REMOVAL.** (a) It is a ground for removal from the executive council that a

member:

- (1) does not have at the time of taking office the qualifications required by Section 452.051;
- (2) does not maintain during service on the executive council the qualifications required by Section 452.051;
- (3) is ineligible for membership under Section 452.052 or 452.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled executive council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the executive council.

(b) The validity of an action of the executive council is not affected by the fact that it is taken when a ground for removal of an executive council member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the executive council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the executive council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.03, eff. September 1, 2017.

**Sec. 452.057. COMPENSATION; REIMBURSEMENT.** (a) The presiding officer of the executive council is entitled to a per diem as provided by the General Appropriations Act for each day that the presiding officer engages in the business of the executive council.

(b) A member of the executive council, other than the presiding officer, may not receive compensation for service on the executive council. A member may receive reimbursement for transportation expenses as provided by the General Appropriations Act. A member may not receive reimbursement for any other travel expenses, including expenses for meals and lodging.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.058. MEETINGS; QUORUM.** (a) The executive council shall hold at least two regular meetings each year.

(b) The executive council may hold additional meetings on the request of the presiding officer or on the written request of three members of the executive council.

(c) A quorum of the executive council exists if both therapist members and one public member are present.  
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.059. TRAINING.** (a) A person who is appointed to and qualifies for office as a member of the executive council may not vote, deliberate, or be counted as a member in attendance at a meeting of the executive council until the person completes a training program that complies with this section.

- (b) The training program required under this section must provide the person with information regarding:
- (1) the law governing the operations of the executive council, physical therapy board, and occupational therapy board;
  - (2) the programs, functions, rules, and budgets of the executive council, physical therapy board, and occupational therapy board;
  - (3) the scope of and limitations on the rulemaking authority of the executive council, physical therapy board, and occupational therapy board;

(4) the types of executive council, physical therapy board, and occupational therapy board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board;

(B) restrict advertising by persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board;

(C) affect the price of goods or services provided by persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board; or

(D) restrict participation in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board;

(5) the results of the most recent formal audit of the executive council, physical therapy board, and occupational therapy board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the executive council, physical therapy board, and occupational therapy board in performing their duties; and

(7) any applicable ethics policies adopted by the executive council or the Texas Ethics Commission.

(c) A person appointed to the executive council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the person's attendance at the program occurs before or after the person qualifies for office.

(d) The director of the executive council shall create a training manual that includes the information required by Subsection (b). The director shall distribute a copy of the training manual annually to each member of the executive council. On receipt of the training manual, each member of the executive council shall sign and submit to the director a statement acknowledging receipt of the training manual.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.04, eff. September 1, 2017.

## **SUBCHAPTER C. DIRECTOR AND OTHER EXECUTIVE COUNCIL PERSONNEL**

**Sec. 452.101. DIRECTOR; PERSONNEL.** (a) The executive council shall employ a director and administrative and clerical employees as necessary to carry out the functions of the executive council, the occupational therapy board, and the physical therapy board.

(b) The director shall employ a coordinator of occupational therapy programs and a coordinator of physical therapy programs to carry out the functions of the respective boards. The coordinators may request the executive council to assign additional employees to carry out the duties of the coordinators.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.102. DIVISION OF RESPONSIBILITIES.** The executive council shall develop and implement policies that clearly separate the policymaking responsibilities of the executive council and the management responsibilities of the director and the staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.05, eff. September 1, 2017.

**Sec. 452.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.** (a) The director or the director's

designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The director or the director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for executive council employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.** (a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;
- (2) a comprehensive analysis of the executive council workforce that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underuse in the executive council workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;
- (2) be updated annually;
- (3) be reviewed by the Texas Commission on Human Rights for compliance with Subsection (a)(1); and
- (4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **SUBCHAPTER D. POWERS AND DUTIES**

**Sec. 452.151. GENERAL POWERS AND DUTIES.** (a) Except as otherwise provided by this chapter, the executive council shall administer and enforce Chapters 453 and 454.

(b) The executive council shall:

- (1) develop and prepare a budget for the executive council, the occupational therapy board, and the physical therapy board; and
- (2) manage all physical property used by the executive council, the occupational therapy board, or the physical therapy board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.152. ADMINISTRATIVE FUNCTIONS.** (a) In administering Chapters 453 and 454, the executive council shall:

- (1) perform data processing functions; and
- (2) administer records relating to payroll, personnel files, and employee leave, benefits, and applications.

(b) The executive council shall perform the administrative functions relating to issuing and renewing licenses, including the ministerial functions of preparing and delivering licenses, obtaining material and information in connection with the renewal of a license, and receiving and forwarding complaints to the appropriate board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.06, eff. September 1, 2017.

**Sec. 452.153. LIMITATION ON EXECUTIVE COUNCIL AUTHORITY.** The executive council may not exercise discretionary authority in the review of an applicant's qualifications for a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.154. FEES.** The executive council shall set all fees for a license issued or service performed by a board represented on the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.155. RULES.** Subject to Section 452.156, the appropriate professional board shall adopt rules concerning the qualifications, licensing, regulation, or practice of a profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.156. REVIEW OF RULES.** (a) Before submitting a rule for publication in the Texas Register, a board represented on the executive council shall forward the proposed rule to the executive council for review.

(b) The executive council may review the rule and shall approve the rule for submission for publication unless the rule exceeds the rulemaking authority of the board.

(c) If the executive council fails to approve a rule, it shall return the rule to the board with an explanation of the reasons for the denial.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.157. REVIEW OF BOARDS.** (a) The executive council shall routinely examine and evaluate the operations of the boards represented on the executive council.

(b) The executive council may structure the examination in a manner that the executive council considers appropriate to produce an efficient and thorough review.

(c) Each board represented on the executive council shall cooperate with the examination conducted by the executive council under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.158. DISBURSEMENT OF FUNDS.** The executive council may authorize from its appropriated funds all necessary disbursements to carry out:

- (1) this chapter;
- (2) Chapter 453; and
- (3) Chapter 454.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.159. BIENNIAL REPORT.** (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(144), eff. June 17, 2011.

(b) The executive council shall prepare a report of its activities and file the report before January 1 of each odd-numbered year with the presiding officer of each house of the legislature, the governor, and the Legislative Budget Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(144), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.002, eff. September 1, 2013.

**Sec. 452.160. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION.** (a) The executive council shall develop a policy to encourage the use of:

(1) negotiated rulemaking under Chapter 2008, Government Code, for the adoption of rules by the executive council or the occupational therapy or physical therapy boards; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the executive council's jurisdiction.

(b) The executive council's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The executive council shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.07, eff. September 1, 2017.

## **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

**Sec. 452.201. PUBLIC INTEREST INFORMATION.** (a) The executive council shall prepare information of public interest describing the functions of the executive council and the procedures by which complaints are filed with and resolved by the executive council, the occupational therapy board, or the physical therapy board.

(b) The executive council shall make the information available to the public and appropriate state agencies.  
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.202. COMPLAINTS.** (a) The executive council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the executive council for the purpose of directing complaints to the executive council. The executive council may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the executive council, the occupational therapy board, or the physical therapy board;

(2) on a sign prominently displayed in the place of business of each person regulated by the executive council, the occupational therapy board, or the physical therapy board; or

(3) in a bill for service provided by a person regulated by the executive council, the occupational therapy board, or the physical therapy board.

(b) The executive council shall list with its regular telephone number any toll-free telephone number established under other state law for presenting a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 452.203. PUBLIC PARTICIPATION.** (a) The executive council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive council and to speak on any issue under the jurisdiction of the executive council.

(b) The executive council shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the executive council's programs and services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.