On March 22, 2020, Governor Greg Abbott issued Executive Order GA-09 to increase health care and hospital capacity during the COVID-19 pandemic. The order states that “all licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who with 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.”

The Texas Medical Board (TMB) swiftly adopted emergency rules to enforce the order’s prohibition against all unnecessary medical procedures by amending the definition of “Continuing Threat to the Public Welfare,” to include specifically
prohibited actions in connection with surgeries and procedures deemed unnecessary.

Additionally, the Board amended the peer review and hospital reporting rule to sanction immediate reporting rather than utilize the peer review process. These amendments seek to minimize delays in reporting and allows immediate utilization of disciplinary authority granted to the Board under Texas Occupations Code, §164.059.

In addition the emergency rule adoption by the TMB, the Texas Attorney General, Ken Paxton clarified in a press release that the prohibition extends to routine dermatological, dental and ophthalmological procedures, orthopedic surgeries, as well as any type of abortion, unless the procedure is necessary to preserve the life or health of the mother. The order is in effect until April 21, 2020.

The Medical Board's Executive Committee adopted to amend the following under 22 TAC Chapters 187, Procedural Rules, Subchapter F, Temporary Suspension and Restriction Proceedings and 178, Complaints:

- 22 TAC §187.57(c), "Continuing Threat to the Public Welfare"
- 22 TAC §178.4(d), Complaint Initiation - Peer Review Reporting

The Board will provide further guidance and FAQs on the TMB website.

For more information about recommended steps, please contact your Foley relationship partner. For additional web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the CDC and the World Health Organization.

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