

# EXAM SPECIFICATIONS FOR HEALTH LAW

**PURPOSE OF THE EXAM.** The purpose of the certification exam is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in health law.

**EXAM FORMAT.** The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple choice questions (10 of which involve professional ethics) each worth 2 points. The required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLS.

**ESSAY QUESTIONS.** Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns will involve situations you would likely encounter in your practice. Essays typically involve operational issues of health care facilities, health care transactional issues, and regulatory issues in the health care area. Applicants should make sure to provide the specific information each question asks for and to communicate as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. In order to pass the exam, applicants must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

**MULTIPLE CHOICE QUESTIONS.** These questions are designed to test a breadth of issues in the specialty area and require an applicant to select the **best** available answer option.

**REQUIRED KNOWLEDGE, SKILLS AND ABILITIES.** An applicant in health law is expected to understand the laws and regulations pertaining to, and governing the relationships among, patients, health care providers, health care vendors and entities which pay for health care services. The knowledge, skills and abilities required of a health law applicant are set out below.

***NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM UNLESS OTHERWISE SPECIFIED.***

## **1. Licensing, Discipline, Credentialing, and Peer Review of Health Care Professionals**

- a. Physicians and physician assistants
- b. Nurses, including advanced practice registered nurses
- c. Multi-disciplinary entities

## **2. Hospitals and other Health Care Entities**

- a. Licensing and certification
- b. Accreditation
- c. Medical staff issues (including peer review processes)
- d. Compliance programs
- e. Operations and patient safety (other than patient care issues)
- f. Accountable Care Organizations

### **3. Patient Care Issues**

- a. Patient rights, including consent to treatment and advance directives
- b. Confidentiality of patient information, including HIPAA and applicable Texas law, and electronic health records
- c. Hospital transfers and emergency services
- d. Mental health
- e. Clinical research
- f. Abuse and neglect
- g. Theories of civil liability for services furnished to patients

### **4. Financial Aspects of Health Care Services**

- a. Managed care contracting, networks, and billing
- b. Medicare/Medicaid eligibility, reimbursement, and related issues
- c. Antitrust issues in IPAs (including clinical integration) and boycotts
- d. Corporate practice of medicine/physician practice structures and contracting
- e. Patient payment for medical services, including Medicare/private insurance opt-out and direct payment, concierge, and related practice models
- f. Health Care Insurance Exchanges

### **5. Health Care Transactional Issues**

- a. Federal and Texas anti-kickback laws
- b. Federal and Texas restrictions on physician referrals to entities with which the physician has a financial relationship (including the federal “Stark” law)
- c. Acquisition and sale of health care entities (i.e., physician practices, ownership transactions in ASCs, imaging centers and specialty hospitals)
- d. Joint ventures
- e. Restrictive covenants (i.e., non-compete, non-solicit, non-hire, confidentiality/non-disclosure of proprietary information)
- f. Tax-exempt issues
- g. Charity care

**6. The Texas Disciplinary Rules of Professional Conduct.** The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

## **SKILLS.**

An applicant must demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel and courts
- Develop and evaluate strategies for solving a problem or accomplishing an objective
- Analyze and apply legal rules and principles
- Analyze, sort and use facts; plan and direct factual investigations
- Organize and manage a legal task efficiently within time constraints
- Represent a client consistent with applicable ethical standards
- Invoke and utilize the procedures normally required in the specialty area, including pleadings and filings

**SUGGESTED STUDY MATERIALS.** There are no preparatory courses provided by TBLS. Past exams are not available for review. The following resources are some suggested materials to use for study; however, these resources are not intended to be definitive, but rather provide resources that cover many topics in health care. References to statutes should be understood to include pertinent rules, regulations, and case law.

- Past conference materials from the spring UT and fall THA/SBOT Health Law programs
- “Fundamentals in Health Law” (5<sup>th</sup> edition- AHLA)
- AHLA conference materials from the Fundamentals in Health Law program (which are not coordinated with the book)
- Texas Medical Practice Act. *See, e.g.*, Tex. Occ. Code §§151-168
- Texas Nursing Practice Act. *See, e.g.*, Tex. Occ. Code §§301-305
- The Joint Commission deemed status for purposes of Medicare and sentinel event/root cause analysis. *See* The Joint Commission website (purchase of Hospital Accreditation Standards not necessary):
  - [http://www.jointcommission.org/facts\\_about\\_federal\\_deemed\\_status\\_and\\_state\\_recognition/](http://www.jointcommission.org/facts_about_federal_deemed_status_and_state_recognition/), and
  - [http://www.jointcommission.org/sentinel\\_event.aspx](http://www.jointcommission.org/sentinel_event.aspx), and
  - [http://www.jointcommission.org/Sentinel\\_Event\\_Policy\\_and\\_Procedures/](http://www.jointcommission.org/Sentinel_Event_Policy_and_Procedures/)
- Credentialing and professional peer review. *See, e.g.*, the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. §§ 11101-11152; 45 C.F.R. Part 60, and Chs. A-E of NPDB Guidebook (*see* <http://www.npdb-hipdb.hrsa.gov/resources/aboutGuidebooks.jsp>); Tex. Health & Safety Code §§241.101-105; Texas Medical Practice Act, Tex. Occ. Code §§160.001-.015; Texas Nursing Practice Act, Tex. Occ. Code §§301.401-419, Ch. 303, and 22 Tex. Admin. Code §§217.16, 217.19-.20; *St. Luke's Episcopal Hospital v. Agbor*, 952 S.W.2d 503 (Tex. 1997); *Poliner v. Texas Health Sys.*, No. Civ.A.3:00-CV-1007-P, 2006 WL 770425 (N.D. Tex. Mar. 27, 2006 and Nov. 17, 2006), *rev'd*, 537 F.3d 368 (5<sup>th</sup> Cir. 2008), *cert. denied*, 129 S. Ct. 1002, *reh'g denied*, 129 S. Ct. 1663 (2009); *Kadlec Medical Center v. Lakeview Anesthesia Associates*, 527 F.3d 412 (5<sup>th</sup> Cir. 2008), *cert. denied*, 129 S. Ct. 631 (2008); *Johnson v. Christus Spohn Health System*, 343 Fed.Appx. 673 No. C-06-138 (S.D. Tex. Feb. 8, 2008), *aff'd*, No. 08-40262 (5<sup>th</sup> Cir. June 23, 2009)
- Licensure and certification of hospitals and health care professionals. *See, e.g.*, Tex. Health & Safety Code, Ch. 241; Tex. Occ. Code, Title 3, Health Professions; relevant parts of 22 Tex. Admin. Code, including Part 9 (Texas Medical Board) and Part 11 (Texas Board of Nursing); and recent legislative changes to these statutes, including in particular SB 192 (2011) and SB 193 (2011)
- Requirements for patient transfers and for providing emergency services including 42 U.S.C. §1395dd; 42 C.F.R. §§489.20, 489.24; Tex. Health & Safety Code §§241.027-241.028 and 311.021-311.024; 25 Tex. Admin. Code §§133.44 and 133.61
- Ostensible Agency. *See, e.g.*, *Baptist Memorial Hosp. System v. Sampson*, 969 S.W.2d 945 (Tex. 1998); *St. Joseph Hospital v. Wolff*, 94 S.W.3d 513 (Tex. 2002)
- The acquisition or sale of health care facilities and products
- Antitrust, including U.S. Department of Justice & Federal Trade Commission, “Statements of Antitrust Enforcement Policy in Health Care” (1996) & “Improving Health Care: A Dose of Competition” (2004); *see also* *Heartland Surgical Specialty Hospital, LLC v. Midwest Division, Inc. d/b/a/ HCA Midwest Division*, 527 F. Supp. 2d 1257 (D. Kan. 2007)
- Federal and Texas anti-kickback laws and civil monetary penalties laws (including 42 U.S.C. §1320a-7b), the pertinent safe harbor regulations (including 42 CFR §1001.952) and OIG advisory opinions, fraud alerts, bulletins, open letters, and other OIG guidance. *See* [www.oig.hhs.gov](http://www.oig.hhs.gov); *see also* Tex. Occ. Code, Ch. 102 and §165.155

- Federal and Texas restrictions on a physician’s referrals to entities with which the physician has a financial relationship including the federal “Stark” law (section 1877 of the Social Security Act, codified at 42 U.S.C. § 1395nn, and section 1903(s) of the Social Security Act, codified at 42 U.S.C. §1396b) and Stark rules (42 CFR §§411.350-411.389)
- Federal False Claims Acts, Health Care Fraud Acts, and Mail and Wire Fraud Acts: 18 U.S.C. §§669, 1341, 1343, 3729-3733; 31 U.S.C. §§3729-3733; 42 U.S.C. §§1320a-7-1320a-7f (Social Security Act §§1128-1128F). Texas False Claims Act, Tex. Hum. Res. Code, Ch. 36; and HB 1 (2011) (pertaining to Medicaid fraud)
- Elements and guidelines of Compliance Programs, including their predicate under the Federal Sentencing Guidelines. *See* information on OIG website on compliance guidance for hospitals and an overview of corporate integrity agreements: [www.oig.hhs.gov/](http://www.oig.hhs.gov/)
- Choice of entity relating to the formation of medical groups and joint ventures among managed care organizations, hospitals, physicians, and other persons and entities including the various partnerships, corporations, and limited liability companies described in the Tex. Bus. Org. Code
- The certification of Texas non-profit healthcare organizations by the Texas Medical Board. *See* Tex. Occ. Code §162.001(b) and pertinent provisions of the Tex. Ins. Code, Ch. 844
- Covenants Not To Compete. *See* Tex. Bus. & Com. Code § 15.50 *et seq.*
- General business organization federal income tax issues especially with respect to public charities including inurement, private benefit, and Intermediate Sanctions. *See* 26 U.S.C. §4958; 26 U.S.C. §501(c)(3); *Redlands Surgical Services v. Comm’r of the Internal Revenue Service*, 113 T.C 47 (1999) *aff’d*, 242 F.3d 904 (9<sup>th</sup> Cir. 2001); *St. David’s Health Care Sys. v. United States*, 349 F.3d 232 (W.D. Tex. 2003)
- Texas Corporate Practice of Medicine doctrine. *See, e.g., Flynn Bros. v. First Medical Associates*, 715 S.W.2d 782 (Tex. App. - Dallas 1986); Tex. Occ. Code, Ch. 162; SB 894 (2011) to be codified at Tex. Health & Safety Code §281.0286
- Texas HMO Act. *See, e.g.,* Tex. Ins. Code, Ch. 1301 & 28 Tex. Admin. Code, Ch. 3, Subch. X, §§3.3701 *et seq.*
- Texas Preferred Provider Benefit Plan Laws. *See, e.g.,* Tex. Ins. Code, Ch. 1301 and 28 Tex. Admin. Code §§3.3701 *et seq.*
- Texas Third Party Administrator Act. *See* Tex. Ins. Code, Ch. 4151 and 28 Tex. Admin. Code, Ch. 7, Subch. P §§7.1601 *et seq.*
- Texas Utilization Review Agent and Independent Review Organizations. *See, e.g.,* Tex. Ins. Code, Chs. 4201 and 4202, and Tex. Admin. Code, Ch. 19, Subch. R §§19.1701 *et seq.* and Ch. 12
- Texas Prompt Pay Laws. *See, e.g.,* Tex. Ins. Code, Chs. 1301.101-1301.138, 843.336-843.346 and 542.051 and Tex. Admin. Code, Ch. 21, Subch. C §§21.20-21.205 and Subch. T §§21.2801-21.2826
- Delegated Networks. *See, e.g.,* Tex. Ins. Code, Ch. 1272 and 28 Tex. Admin. Code, Ch. 11, Subch. AA §§11.2601-11.2612
- Medicare and Medicaid Eligibility, Coverage, Payment, Reassignment, and Appeal Rights.
  - Eligibility: Social Security Act §§1811, 1818, 1818A, 1831, 1836, 1851, and 1902(a)(10); 42 U.S.C. §§1395c, 1395i-2 and 2A, 1395j, 1395o, 1395w-21, and 1396a(a)(10)
  - Coverage: Social Security Act §§1812, 1832, 1852(a) and (b), and 1862; 42 U.S.C. §§1395d, 1395k, 1395w-22(a) and (b), and 1395y
  - Payment: Social Security Act §§1813, 1814(a) and (b), 1833(t), 1842, 1848, 1853, 1886, 1895, and 1927; 42 U.S.C. §§1395e, 1395f(a) and (b), 1395l(t), 1395u, 1395w-4, 1395w-23, 1395ww, 1395fff, and 1396r-8
  - Reassignment: Social Security Act §§1815, 1842(b)(6), and 1902(a)(32); 42 U.S.C. §§1395g, 1395u(b)(6), and 1396e(a)(32)
  - Appeal Rights: Social Security Act §1852(g); 42 U.S.C. §1395w-22; 42 C.F.R. Part 505, Subparts H and R

- Advance Directives including Texas Advance Directives Act, Tex. Health & Safety Code, Ch. 166 and Texas Determination of Death Act, Tex. Health & Safety Code §671.001, Subchapter A; and Tex. Health & Safety Code §773.016
- Confidentiality and medical record privacy including the privacy rules of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas confidentiality laws. *See, e.g.*, 42 U.S.C. §§290dd-2, 1301 *et seq.*; 45 C.F.R. Parts 160, 162, and 164; [www.hhs.gov/ocr/privacy/](http://www.hhs.gov/ocr/privacy/); 42 C.F.R. Part 2 (substance abuse patient records); Tex. Health & Safety Code, Ch. 181, §§ 241.151-241.156, Ch. 595, Ch. 611; Tex. Occ. Code, Ch. 159; and HB 300 (2011). *See also* the concept of a physician's duty to warn third parties, *e.g.*, *Thapar v. Zezulka*, 994 S.W.2d 635 (Tex. 1999); *Providence Health Center v. Dowell*, 262 S.W.3d 324 (Tex. 2008)
- Consent to treatment. *See, e.g.*, Tex. Civ. Prac. & Rem. Code §§74.101-.107, 25 Tex. Admin. Code, Ch. 601, and Ch. 313. *See also* Tex. Fam. Code Ch. 32 (consent to treatment of child by nonparent or child); Tex. Health & Safety Code §§81.105-81.107 (HIV); Tex. Fam. Code, Ch. 33 (abortions), Tex. Health & Safety Code Ch. 171, Subch. B (abortions), and Tex. Occ. Code §164.052(a)(19) and 22 Tex. Admin. Code §165.6 (consent to abortion on unemancipated minor)
- Patient Rights. *See, e.g.*, 45 C.F.R. §§164.520-164.528, and 42 C.F.R. §482.13; Tex. Health & Safety Code, Ch. 576 (rights of mental health patients), Tex. Health & Safety Code §§242.501-242.505 (rights of nursing home residents), and any implementing regulations
- Abuse and neglect. *See, e.g.*, Tex. Fam. Code §§261.001 and 261.101-104 (children), Tex. Health & Safety Code §§242.121-242.124 (redesignated by SB 7 (2011) as §§260A.001-260A.004) (residents of nursing homes), Tex. Hum. Res. Code §§48.002 and 48.051-48.054 (elderly or disabled persons), Tex. Health & Safety Code §§161.131-161.137 (patients in healthcare facilities), and Tex. Civ. Prac. & Rem. Code, Ch. 81 (sexual exploitation by a mental health services provider)
- Indigent Care and Treatment Act. *See, e.g.*, Tex. Health & Safety Code, Ch. 61
- Texas Charity Care Statute. *See, e.g.*, Tex. Health & Safety Code §§311.041-.048
- Mental Health. *See, e.g.*, Tex. Health & Safety Code §§571.003, 571.004, 571.0066, 571.020 (selected general provisions); Ch. 572 (Voluntary Inpatient Mental Health Services); §§573.001, .002, .011, .021, .022 (as amended by HB 1829 (2011)), and .023 (selected provisions concerning Emergency Detention); §§574.004, 574.009, 574.011, 574.031, 574.032, 574.042; 574.101-110 (selected provisions concerning court-ordered mental health services); §575.014 (Private Hospital Transfer Law); Ch. 576 (Rights of Patients); §577.011; §577.012 (Private psychiatric hospital record requirements); Ch. 578 and 25 Tex. Admin. Code §601.7 (Electroconvulsive Therapy (ECT)); Ch. 611 (Confidentiality of Mental Health Records); and Tex. Civ. Prac. & Rem. Code, Ch.137 (Declaration for Mental Health Treatment)
- Federal protection of human subject of medical investigations. *See, e.g.*, 21 C.F.R. Parts 50, 54 and 56; and 45 C.F.R. Part 46
- Unapproved uses of approved drugs and devices. *See e.g.*, Food and Drug Administration Information Sheet Guidance: [www.fda.gov/oc/ohrt/irbs](http://www.fda.gov/oc/ohrt/irbs)
- Federal Patient Safety and Quality Improvement Act of 2005 and regulations. *See* 42 U.S.C. §§299b-21 to 26; 42 C.F.R. Part 3; <http://www.hhs.gov/ocr/privacy>
- Nurse staffing requirements for hospitals and psychiatric hospitals. *See* Tex. Health & Safety Code Ch. 257
- Health Information Technology for Economic and Clinical Health Act (HITECH Act) (Title XIII of American Recovery and Reinvestment Act of 2009), Pub. L. No. 111-5 (2009)