

SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 217.9. *Refusal by Licensee to Submit to Medical or Psychological Examination.*

This proposed new rule would outline the process for determining whether a licensee had good cause to refuse to submit to a requested medical or psychological examination following submission of a refusal report from a law enforcement agency to TCOLE.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 217.9. *Denegación del Licenciario a Someterse a Examen Médico o Psicológico.*

Esta nueva regla propuesta describiría el proceso para determinar si un titular de licencia tiene una buena causa para negarse a someterse a un examen médico o psicológico solicitado luego de la presentación de un informe de rechazo de una agencia de aplicación de la ley a TCOLE.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §217.9, Refusal by Licensee to Submit to Medical or Psychological Examination. This proposed new rule conforms with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R). The proposed new rule outlines the process for determining whether a licensee had good cause to refuse to submit to a requested medical or psychological examination following submission of a refusal report from a law enforcement agency to the Commission.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.167 to establish standards and procedures for the medical and psychological examination of a licensee. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The new rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.167, Policy Regarding Examination of License Holder or Applicant. No other code, article, or statute is affected by this proposal.

The proposed new rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§217.9. Refusal by Licensee to Submit to Medical or Psychological Examination.

- (a) After receiving a report of a refusal by a licensee to submit to a requested medical or psychological examination, the commission shall issue a show cause order requiring the licensee to show cause for the refusal at a contested case hearing before SOAH.
- (b) The contested case hearing shall be scheduled not later than the 30th day after the date notice of the show cause order is served on the licensee, which shall be provided by personal service or by registered mail, return receipt requested.
- (c) The licensee may appear at the contested case hearing in person and by counsel and present evidence to justify the licensee's refusal to submit to the requested examination.
- (d) If it is determined that the licensee did not have good cause to refuse the medical or psychological examination, the commission shall issue an order suspending indefinitely or otherwise restricting the licensee's license until the licensee submits to the requested examination. If it is determined that the licensee did have good cause to refuse the medical or psychological examination, the commission shall issue an order withdrawing the request for the examination.
- (e) The commission's order is subject to judicial review under Chapter 2001, Government Code.
- (f) The effective date of this section is June 1, 2024.