

Guide to Guns (and other weapons) in Hospitals

A topic that continues to generate questions from clients is the legality of carrying guns in hospitals. This article covers the laws governing guns in hospitals, as well as discussing new developments and areas that have been a source of confusion or controversy.

Prohibition of handguns in hospitals

Concealed and open carry of handguns is allowed in Texas by individuals who possess a valid license to carry a handgun. It is still illegal, however, to carry a handgun in certain locations regardless of whether the individual possess a handgun license. It is illegal to carry a handgun, either concealed or open, in a licensed hospital or nursing home, unless the person carrying has been given written permission to do so by the hospital or nursing home administration.¹ The prohibition on carrying handguns in hospitals and nursing homes is not applicable if the individual carrying the handgun was not given effective notice that handguns are not allowed in the facility.² As discussed in more detail below, effective notice is generally given by posting appropriate signs at entrances to the facility.

Written permission

Hospital and nursing facility administration may grant written authorization to individuals to carry a handgun in the facility if the individual has a license to carry.³ Hospitals and nursing homes have the discretion to decide who, if anyone, will get written authorization to carry a handgun on the premises. A facility's decision on this issue could range from not allowing anyone to carry a handgun within the facility, to granting written authorization to all handgun license holders. It is recommended that the decisions regarding whether to grant written permission, and the types or classes of individuals that will be granted such permission, should be made by the administrator in consultation with the hospital board of directors.

Handgun Signage

As discussed above, the prohibition in Tex. Penal Code 46.035 against carrying handguns in hospitals does not apply if the individual carrying does not have effective notice. One manner of giving effective notice is to post signs in compliance with Texas Penal Code Sections 30.06 and 30.07.⁴ Some hospitals have chosen not to post 30.06 or 30.07 signs, which makes the

¹ Tex. Penal Code 46.035(b)(4).

² Tex. Penal Code 46.035(i).

³ Tex. Penal Code 46.035(b)(4).

⁴ The following link has the required language from 30.06 and 30.07: <https://www.tml.org/p/DPS%20Sign%20Language.pdf>.

The signs must be posted in English and Spanish. These sections also require that the language on the signs appear in contrasting colors with block letters at least one inch in height. Section 30.06 requires that the sign be displayed in a "conspicuous manner clearly visible to the public" whereas 30.07 requires that the sign be displayed in a "conspicuous manner clearly visible to the public at each entrance to the property."

46.035 prohibition on carrying a handgun in the facility inapplicable. While most private businesses are free to choose whether or not to post signs prohibiting handguns, Texas law does not appear to give hospitals and nursing homes that option. Chapter 411 of the Texas Gov't Code states that a "hospital licensed under Chapter 241, Health and Safety Code, or a nursing home licensed under Chapter 242, Health and Safety Code, shall prominently display at each entrance to the hospital or nursing home, as appropriate, a sign that... give(s) notice in both English and Spanish that it is unlawful for a person licensed under this subchapter to carry a handgun on the premises."⁵ While this provision does not specifically require hospitals to use the language required by either 30.06 or 30.07 of the Penal Code, the most reasonable interpretation of Section 411.204 is that hospitals are required to post signs prohibiting the carrying of handguns on the premises. Therefore, unless and until Gov't Code Section 411.204 is repealed, or a court or the Attorney General's Office issues a contrary opinion regarding this section of the law, this firm's recommendation is that hospitals and nursing homes post signage prohibiting the carrying of handguns, and preferably signs that meet the requirements of Sections 30.06 and 30.07 of the Penal Code. Although there does not appear to be any regulatory penalty for a hospital's failure to post a notice prohibiting handguns, a hospital that does not post any notice appears to be in violation of the Government Code and is likely increasing its liability exposure in the event of an incident in the hospital involving a handgun. For hospitals that do not wish to completely prohibit the carrying of handguns on the premises, the recommended approach is to post one or both of the 30.06 and 30.07 signs and then grant written permission to carry to specific individuals. An alternative approach is to post the signage and then enact a policy granting written permission to carry to any individual who has a valid handgun license. A further step that can be taken by hospitals is to post an extra sign, in addition to signage prohibiting handguns, notifying the public that certain individuals have been granted written permission to carry handguns in the facility.

Governmental entities/clinics/governmental board meetings

Except for certain specific locations (such as hospitals and nursing homes), Texas law forbids the posting of signs prohibiting handguns in facilities owned or leased by state or local governmental entities.⁶ Governmental entities that post signs in violation of the law are subject to fines.⁷ This means that governmental entities, such as hospital districts, that own or lease medical clinics which are not located inside of a hospital cannot post signs prohibiting handguns in the clinics.⁸

Although governmental entities in Texas generally cannot ban handguns on their premises, it is illegal for an individual to carry a handgun into a posted open meeting of a governmental entity.⁹ This prohibition appears to apply even if the individual has been given written authorization to carry a handgun within a governmental hospital and the open meeting is held in the hospital.

⁵ Tex. Gov't Code Section 411.204(b) and (c).

⁶ See Tex. Gov't Code Section 411.209; Tex. Penal Code Sections 30.06(e) and 30.07(e).

⁷ Tex. Gov't Code Section 411.209(b)-(f).

⁸ One possible exception is that governmental clinics may be able to prohibit open carry (but not concealed carry) of a handgun while education activities sponsored by a college or university are being conducted in the clinic. See Texas Penal Code 46.03(a)(1).

⁹ Tex. Penal Code 46.035(c).

However, a recent Texas Attorney General's opinion ruled that, if the governmental entity does not post a notice prohibiting handguns outside of the meeting location, an individual cannot be prosecuted for carrying a handgun into the governmental board meeting.¹⁰ Based on this AG opinion, it appears that individuals who have received written authorization to carry a handgun within a governmental hospital or nursing home can legally carry a handgun into a governmental board meeting within the facility if a notice prohibiting handguns has not been posted outside of the meeting room.

Rights of Employers

Texas law gives governmental and private employers the right to prohibit their employees from carrying a handgun on the premises of the business.¹¹ Thus, both governmental and private hospitals can prohibit their employees from carrying handguns in their hospitals as well as in clinics and other facilities owned or leased by the hospital. However, neither governmental nor private employers are allowed to prohibit an employee who holds a license to carry a handgun, or who otherwise lawfully possesses a firearm or ammunition, from transporting or storing the firearm or ammunition in a locked, privately owned vehicle in a parking lot, parking garage, or other parking area the employer provides for employees.¹²

Other weapons

There are few restrictions in Texas on the possession and carry of rifles and shotguns. Open carry of rifles and shotguns is allowed in public without a license.¹³ However, it is illegal to display a firearm in public “in a manner calculated to alarm.”¹⁴ Both governmental and private health care facilities are allowed to prohibit a person carrying a rifle or shotgun from entering the facility. A bill passed in the 2017 Texas legislative session created a new legal category of weapon called a “location-restricted knife.” This new category includes any knife or similar weapon with a blade length of over 5 and one-half inches, and encompasses swords, machetes, etc.¹⁵ Prior to the passage of this bill, the carrying of long knives, swords, etc. in public was prohibited. This bill now allows persons 18 years of age and older to carry a location-restricted knife in public in Texas. The new law does prohibit carrying a location-restricted knife in certain places, including hospitals and nursing homes. The bill states that it is illegal to carry a location-restricted knife in hospitals or nursing homes without written authorization from administration.¹⁶

Handgun Policy

¹⁰ Tex. Atty. Gen. Op. No. KP-0167 (2017).

¹¹ Tex. Gov't Code Section 411.203; Tex. Atty. Gen. Op. No. DM-363 (1995).

¹² Tex. Labor Code Section 52.061.

¹³ See Tex. Penal Code Section 46.02.

¹⁴ Tex. Penal Code Section 42.01(8).

¹⁵ HB 1935, 85th RS; Tex. Penal Code 46.01(6)(7).

¹⁶ Tex. Penal Code Section 46.03.

It is recommended that hospitals enact a policy specifically addressing handguns in the hospital. The policy should be approved by the hospital's governing board. Topics addressed by the policy can include the following:

- Whether signs prohibiting handguns will be posted and, if so, which signs. As discussed above, based on the laws currently in place, this firm recommends that hospitals post signs prohibiting carrying of handguns under Penal Code Sections 30.06 and 30.07, and then grant written permission to those individuals who are allowed to carry.
- Whether written authorization to carry a handgun in the facility will be granted to any individual. If written authorization will be given, the policy may also address which categories or classes of individuals are eligible to be granted authorization. It is recommended that the policy clarify that the hospital administrator has the authority to decide which specific individuals will be given written authorization.
- The terms that will be included in any written authorizations, such as the duration of the authorization, whether it will automatically renew, the right of the administrator to revoke the authorization at any time, the obligation of the individual to have the authorization in his or her possession when carrying a handgun, and any other requirements for the individual.
- Whether or not any employees are authorized to use a handgun within the scope of their employment, i.e., for security reasons. If not, the policy might state that, while some employees may be given written permission to carry a handgun, use of the handgun by the employee is not a part of their regular job duties, and a handgun should only be used as a last resort in emergency situations.

This information is provided by the law firm of Jackson & Carter, PLLC (www.jackson-carter.com). Please contact Craig Carter with any additional questions (ccarter@jackson-carter.com).