

BILL ANALYSIS

Senate Research Center

S.B. 104
By: Nelson
Health & Human Services
8/18/2003
Enrolled

DIGEST AND PURPOSE

Currently, the Texas State Board of Medical Examiners (TSBME) has limited authority relating to the regulation and enforcement of the practice of medicine in this state. S.B. 104 grants more authority to TSBME regarding physicians licenses in this state.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Medical Examiners in SECTION 9 (Section 154.056, Occupations Code), SECTION 12 (Section 156.001, Occupations Code), SECTION 13 (Section 156.002, Occupations Code), SECTION 26 (Section 164.001, Occupations Code), and SECTION 28 (Section 164.0035, Occupations Code) of this bill.

Rulemaking authority is modified in SECTION 9 (Section 154.056, Occupations Code), SECTION 14 (Section 156.03, Occupations Code), SECTION 19 (Section 156.009, Occupations Code), and SECTION 27 (Section 164.003, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.002(a)(2), Occupations Code, to redefine "continuing threat to the public welfare."

SECTION 2. Amends Section 153.051(d), Occupations Code, to increase from \$200 to \$400 a first registration permit, from \$200 to \$400 a renewal of a registration permit, and from \$300 to \$600 the processing of an application and the issuance of a registration for anesthesia in an outpatient setting, relating to the maximum fee amount the Texas State Board of Medical Examiners (TSBME) is allowed to set, charge, collect, receive, or deposit. Deletes existing text relating to annual fees. Makes nonsubstantive changes.

SECTION 3. Amends Section 153.053, Occupations Code, as follows:

- (a) Requires TSBME to collect a certain fee surcharge, rather than an additional \$200, relating to licenses and registration.
- (b) Makes a conforming change relating to the changes in Subsections (a)(1) and (4).
- (c) Requires TSBME to deposit \$100 to the credit of the foundation school fund and \$300 to the credit of the general revenue fund, of each surcharge collected under Subsections (a)(2) and (3).

SECTION 4. Amends Subchapter B, Chapter 153, Occupations Code, by adding Section 153.0535, as follows:

Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) Requires TSBME to collect an additional \$80 surcharge for certain fees relating to registration permits.

- (b) Requires TSBME to deposit each surcharge collected to the credit of the public assurance account. Requires the public assurance account to be an account in the general revenue fund that is to be appropriated only to TSBME to pay for TSBME's enforcement program, including the expert physician panel.

SECTION 5. Amends Subchapter B, Chapter 153, Occupations Code, by adding Section 153.056, as follows:

Sec. 153.056. REPORT ON PENDING COMPLAINTS. Requires TSBME to include with its annual financial report information regarding any investigations that remain pending after one year, including the reasons the investigations remain pending. Prohibits information in the report under this section from identifying a patient for any purpose unless proper consent to the release is given by the patient.

SECTION 6. Amends Section 154.002(a), Occupations Code, to require TSBME to prepare certain products, including a statistical report each fiscal year to the legislature and the public that provides aggregate information about all complaints received by TSBME categorized by type of complaint, including administrative, quality of care, medical error, substance abuse, other criminal behavior, and the disposition of those complaints by category. Makes nonsubstantive changes.

SECTION 7. Amends Section 154.006, Occupations Code, by amending Subsections (a), (b), and (g) and adding Subsections (i) and (j), as follows:

(a) Requires TSBME-required physician profile, of each physician licensed under this subtitle, to include the information required by Subsection (b) and to be compiled in a format that makes, rather than permits the board to make, the information contained in the profile easily available to the public.

(b) Requires a profile to contain certain information on each physician, including a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal. Deletes the requirement that information regarding any convictions, charges, or disciplinary action against a physician cover the ten years preceding the date of the profile. Makes nonsubstantive changes.

(g) Requires TSBME to update the information contained in a physician's profile annually, except requires that information provided under Subsection (i) be updated not later than the 10th working day after the date the formal complaint is filed or TSBME's order is issued.

(i) Requires a profile, in addition to the information required by Subsection (b), to contain the text of a formal complaint filed under Section 164.005 against the physician or of a TSBME order related to the formal complaint.

(j) Prohibits information included in a physician's profile under Subsections (b) and (i) from including any patient identifying information.

SECTION 8. Amends Section 154.054, Occupations Code, to require TSBME, on written request, provide information to a health care entity regarding the basis of and current status of any complaint under active investigation that has been assigned by the executive director to a person authorized by TSBME to pursue legal action, as well as certain additional information.

SECTION 9. Amends Section 154.056, Occupations Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires TSBME to adopt rules concerning the investigations and review of a complaint filed with TSBME. Includes in the requirements of the rules adopted under this section, that priority be given to complaints that involve sexual misconduct, quality of care, and impaired physician issues; that a letter be sent to the physician who was subject of the complaint if dismissed; that provision be made for an expert physician panel authorized under Subsection (e) to assist with complaints and investigations relating to medical competency; and that require the review of reports filed with the

National Practitioner Data Bank for any report of the termination, limitation, suspension, limitation in scope of practice, or probation of clinical or hospital staff privileges of a physician by certain entities.

(e) Requires TSBME, by rule, to provide for an expert physician panel appointed by TSBME to assist with complaints and investigations relating to medical competency. Requires each member of an expert physician panel to be licensed to practice medicine in this state. Requires the rules adopted under this subsection to include provisions governing the composition of the panel, qualifications for membership on the panel, and the duties to be performed by the panel.

(f) Requires TSBME, by rule, to require that the letter informing the person who filed the complaint of the dismissal of the complaint include an explanation of the reason the complaint was dismissed.

SECTION 10. Amends Section 154.058, Occupations Code, as follows:

(a) Requires each complaint against a physician that requires a determination of medical competency to be reviewed initially by certain persons with a medical background considered sufficient by TSBME.

(b) Requires the complaint, if the initial review under Subsection (a) indicates that an act by a physician falls below an acceptable standard of care, to be reviewed by an expert physician panel authorized under Section 154.056(e) consisting of physicians who practice in the same specialty as the physician who is the subject of the complaint or in another specialty that is similar to the physician's specialty.

(c) Requires the expert physician panel to report in writing the panel's determinations based on the review of the complaint under Subsection (b). Requires the report to specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

SECTION 11. Amends the heading to Chapter 156, Occupations Code, to read as follows:

CHAPTER 156. REGISTRATION OF PHYSICIANS

SECTION 12. Amends Section 156.001, Occupations Code, as follows:

Sec. 156.001. New heading: REGISTRATION REQUIREMENTS AND PROCEDURES. (a) Requires each person licensed to practice medicine in this state to register with TSBME every two years, rather than annually. Deletes existing text relating to annual license registration. Requires the initial registration permit to be issued with the license and expire on the last day of the birth month of the license holder.

(b) Makes a conforming change to delete existing text "annual" relating to license registration.

(c) Authorizes a license holder to renew the registration permit by submitting to TSBME, on or before the expiration date of the registration permit, the required renewal application and registration renewal fee. Makes conforming changes to delete existing text "annual" relating to license registration. Requires each registration permit renewal application to include certain personal information relating to the license holder and other necessary information as prescribed by board rule.

(d) Changes existing term "person" to license holder. Adds registration to the term "renewal application." Makes conforming changes.

SECTION 13. Amends Section 156.002, Occupations Code, as follows:

(a) Makes a conforming change to delete existing text “annual” relating to license registration.

(b) Provides that a physician licensed by TSBME whose only practice is voluntary charity care, as defined by board rule, is exempt from the registration permit fee requirement. Makes a conforming change to delete existing text “annual” relating to license registration.

SECTION 14. Amends Section 156.003, Occupations Code, to authorize TSBME, by rule, to adopt a system under which registration permits expire on various dates during the two-year registration period, rather than the year. Makes conforming changes relating to replacing the year with the registration period and deleting existing text “annual.”

SECTION 15. Amends Section 156.004, Occupations Code, to require TSBME to send a, rather than mail an annual, registration permit renewal application notice to each physician. Makes a conforming change to delete existing text annual relating to license registration.

SECTION 16. Amends Section 156.005, Occupations Code, as follow:

(a) Makes conforming changes relating to deleting existing text “annual” and adding the term registration to existing text “renewal application” and “renewal fee.” Increases a certain penalty fee from \$50 to \$75.

(b) Makes conforming changes relating to deleting existing text “annual” and adding the term registration to existing text “renewal application” and “renewal fee.” Increases a certain penalty fee from \$100 to \$150.

(c) Makes conforming changes relating to the deleting of existing text “annual.” Sets forth that a person’s license is automatically, rather than considered to have been, canceled if expired for one year or longer.

(d) Deletes existing text “submitted to reexamination” relating to a canceled license. Makes conforming changes replacing existing text “considered” with “automatically.” Adds “new” to existing text “license” relating to a physician with a canceled license.

SECTION 17. Amends Section 156.007, Occupations Code, as follows:

Sec. 156.007. New heading: ISSUANCE OF REGISTRATION PERMIT. Deletes existing text “annual” from heading. (a) Makes conforming changes to delete existing text “annual.” Requires a physician to meet all other requirements for registration before TSBME is required to issue a registration permit. Deletes existing text “year” and replaces with “registration period.”

(b) Makes conforming changes. Includes the requirement that the permit holder has met the continuing medical education requirements and submitted a current complete physician profile in the list of requirements for a permit holder to practice medicine in this state.

SECTION 18. Amends Section 156.008, Occupations Code, to make conforming changes.

SECTION 19. Amends Section 156.009, Occupations Code, to delete existing text relating to requiring TSBME, by rule, to set a time limit for the period during which a license holder is authorized to remain on inactive status.

SECTION 20. Amends Sections 156.051(a) and (d), Occupations Code, as follows:

(a) Makes a conforming change.

(d) Makes a conforming change relating to Section 156.002(a). Deletes existing text

which states this section does not apply to retire license holders.

SECTION 21. Amends Section 156.052, Occupations Code, to make conforming and nonsubstantive changes. Provides that a license holder is presumed to be in compliance with the requirements of this subchapter if, during the 36 months proceeding the date of the required registration, the license holder becomes TSBME certified or recertified by a specialty board, rather than medical board, approved by certain medical entities. Deletes the American Medical Association and the Advisory Board for Osteopathic Specialists and Boards of Certification from the list of medical entities.

SECTION 22. Amends Section 156.053, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 23. Amends Section 160.052(a), Occupations Code, to require the insurer to provide the report or information with respect to settlement of a claim without the filing of a lawsuit or settlement of a lawsuit made on behalf of the insured involving damages relating to the insured's conduct in providing or failing to provide a medical or health care service. Deletes the requirement that information be included regarding a notice of claim letter.

SECTION 24. Amends Section 160.053, Occupations Code, as follows:

Sec. 160.053. CONTENTS OF REPORT; ADDITIONAL INFORMATION. (a) Requires the insurer, not later than the 30th day after the date an insurer receives from an insured a complaint filed in a lawsuit, a settlement of a claim without the filing of a lawsuit, or a settlement of a lawsuit against the insured, to furnish to TSBME certain information, including a copy of the complaint or settlement and a copy of any expert report filed under Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i (Medical Liability and Insurance Improvement Act), V.T.C.S.). Makes conforming and nonsubstantive changes.

(b) Requires the rules adopted by TSBME under this subsection to require, rather than authorize, that the certain additional information be reported, including the date of a judgment, dismissal, or settlement; whether an appeal has been taken and by which party; and the amount of the settlement or judgment against the insured.

SECTION 25. Amends Section 162.104(a), Occupations Code, to make a conforming change.

SECTION 26. Amends Section 164.001, Occupations Code, by adding Subsections (f) - (i), as follows:

(f) Requires TSBME, by rule, to adopt a schedule of the disciplinary sanctions that TSBME is authorized to impose under this subchapter. Requires TSBME, in adopting the schedule of sanctions, to ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(g) Requires TSBME, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, to consider whether the person is being disciplined for multiple violations of this subtitle or a rule or order adopted under this subtitle or has previously been the subject of disciplinary action by TSBME.

(h) Requires TSBME, in the case of a person described by Subsection (g)(1) to consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by Subsection (g)(2), to consider revoking the person's license if the person has repeatedly been the subject of disciplinary action by TSBME.

(i) Requires TSBME, if TSBME chooses not to revoke the license of a person described by Subsection (g)(2), to consider taking a more severe disciplinary action than the disciplinary action previously taken.

SECTION 27. Amends Section 164.003, Occupations Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Adds two requirements of rules adopted under this section relating to details of an informal meeting between TSBME and a license holder. Creates new Subdivision (3). Redesignates Subdivisions (2) and (3) as (4) and (5).

(e) Requires TSBME, if the license holder has previously been the subject of disciplinary action by TSBME, to schedule the informal meeting as soon practicable but not later than the deadline prescribed by Subsection (b)(1).

SECTION 28. Amends Subchapter A, Chapter 164, Occupations Code, by adding Section 164.0035, as follows:

Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. Requires TSBME, if, during the 180-day period prescribed by Section 164.003(b)(1), TSBME determines that the complaint is a baseless or unfounded complaint, to dismiss the complaint and include a statement in the records of the complaint that the reason for the dismissal is because the complaint was baseless or unfounded. Requires TSBME to adopt rules that establish criteria for determining that a complaint is baseless or unfounded.

SECTION 29. Amends Section 164.010, Occupations Code, by adding Subsection (c), to require TSBME to immediately investigate a certain violation or complaint relating to a license holder.

SECTION 30. Amends Section 164.011(c), Occupations Code, to include an injunction to a list of actions which are prohibited from being granted if a license holder's continued practice presents a danger to the public. Prohibits an injunction from being granted for a term that exceeds 120 days.

SECTION 31. Amends Section 164.051, Occupations Code, by amending Subsections (a), and (c), and adding Subsection (d), as follows:

(a) Includes in the list of reasons TSBME is authorized to refuse to admit a person to its examination or refuse to issue a license to practice medicine and is authorized to take disciplinary action against a person, if that person is placed on deferred adjudication community supervision or deferred disposition for certain crimes. Makes a conforming change relating to Subsection (d).

(c) Makes a conforming change relating to Subsection (d).

(d) Requires TSBME to revoke a license issued under this subtitle if the license holder held a license to practice medicine in another state that has been revoked by the licensing authority in that state.

SECTION 32. Amends Section 164.053(a), Occupations Code, to include acts which violate federal law in the list of physician conduct considered unprofessional or dishonorable likely to deceive or defraud the public.

SECTION 33. Amends Section 164.057, Occupations Code, as follows:

Sec. 164.057. New heading: REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. Deletes "felony" from the heading.

(a) Includes certain misdemeanors in the list of initial convictions which would require TSBME to suspend a physician's license. Makes conforming and nonsubstantive changes.

(b) Makes a conforming change.

SECTION 34. Amends Section 164.059, Occupations Code, as follows:

Sec. 164.059. New heading: TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE. (a) Deletes existing text relating to TSBME approval of the president of TSBME's appointment of a disciplinary panel. Makes a conforming change relating to a license being suspended or restricted.

(b) Requires the disciplinary panel, if the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice medicine would, by the person's continuation in unrestricted practice, constitute a continuing threat to the public welfare, to temporarily suspend or restrict the license of that person.

(c) Authorizes a license to be suspended or restricted by a disciplinary panel under this section without notice or hearing if certain conditions apply. Makes a nonsubstantive change.

(d) No change to this subsection.

(e) Requires TSBME, if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, after the hearing before the disciplinary panel described by Subsection (c), to schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code (Licenses), and Section 164.004 of this code to be held as soon as practicable, unless the license holder waives the informal meeting or an informal meeting has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) Requires a TSBME representative, if the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension or restriction, to file a formal complaint under Section 164.005 as soon as practicable.

(g) Prohibits the facts that were the basis for the temporary suspension or restriction from being the sole basis of another proceeding to temporarily suspend or restrict the license holder's license, if, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend or restrict the license holder's license. Authorizes TSBME to use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by TSBME or a TSBME representative at the time evidence was presented to the disciplinary panel.

SECTION 35. Amends Section 164.060(c), Occupations Code, to include a violation of the workers' compensation laws under Title 5A, Labor Code, among the violations TSBME is required to immediately report to the appropriate prosecuting and regulatory authorities if discovered.

SECTION 36. Amends Section 164.201, Occupations Code, to require TSBME to review the medical competency of a physician against whom three or more expert reports under Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), have been filed in three separate lawsuits within a five-year period in the same manner as if a complaint against the physician had been made to the board under Section 154.051. Deletes the requirement to review information relating to a physician against whom three or more malpractice claims have been reported within a five-year period.

SECTION 37. Amends Section 165.152(c), Occupations Code, to provide that an offense under Subsection (a) is a third-degree felony. Deletes text specifying that an offense under Subsection (a) is a Class A misdemeanor, except that if it is shown in the trial of the offense that the defendant has previously been convicted under Subsection (a), the offense is a third-degree

felony.

SECTION 38. Amends Subchapter B, Chapter 408, Labor Code, by adding Section 408.030, as follows:

Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. Requires the Texas Workers Compensation Commission (TWCC), if it discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of a state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, to immediately report that act or omission to TSBME.

SECTION 39. (a) Effective date: upon passage or September 1, 2003.

(b) Requires TSBME to adopt rules as required by Section 164.001(f), Occupations Code, as added by this Act, not later than January 1, 2004.

(c) Makes application of Section 164.051, Occupations Code, retroactive.

(d) Makes application of Section 164.057, Occupations Code, prospective.

SECTION 40. (a) Makes application of this Act relating to biennial registration of physicians under Chapter 156, Occupations Code, prospective to January 1, 2005.

(b) Makes the application of Section 156.003, Occupations Code, relating to TSBME being authorized to adopt a staggered registration system, prospective to September 1, 2004.

(c) Requires TSBME to adopt rules required by Chapter 156, Occupations Code, as amended by this Act, not later than December 1, 2003.

SECTION 41. Makes applications of this Act by the enactment of Section 153.0535, Occupations Code, prospective to January 1, 2004.

SECTION 42. Makes application of this Act by the enactment of Section 160.052(a) and Section 160.053(a), Occupations Code, prospective.

SECTION 43. Makes application of this Act by the enactment of Section 165.152(c), Occupations Code, prospective.

SECTION 33. Makes application of this Act relating to investigation and disposition of a complaint and any proceeding begun as a result of a complaint investigation, prospective.