

BILL ANALYSIS

C.S.S.B. 104
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas State Board of Medical Examiners (board) currently licenses and enforces licensure requirements of physicians in Texas. The board's mission is to protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of excellence used in the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline and education. In response to a growing crisis in the cost and availability of medical liability insurance for physicians, efforts were begun to improve the quality of medical care provided in Texas. In May of 2002, the Office of the Governor Trusteed Programs made an emergency appropriation to the board of \$200,000 to improve the investigation and resolution of medical malpractice claims and to reorganize and improve the medical malpractice claims division. Additionally, the board began implementing improvements to their licensure, business practices, investigations, and discipline procedures. This legislation is in response to concerns raised by the board and stakeholders regarding physician licensure and discipline procedures.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly modified or granted to the Texas State Board of Medical Examiners in SECTION 4 (Section 154.056(a) and (e), Occupations Code), SECTION 7 (Section 156.001(c)(3), Occupations Code), SECTION 8 (Section 156.002 (b), Occupations Code), SECTION 9 (Section 156.003 (a), Occupations Code), SECTION 19 (Section 164.001(f), Occupations Code), SECTION 20 (Section 164.003(b), Occupations Code) of this bill.

ANALYSIS

C.S.S.B 104 changes the licensure for physicians from an annual process to a biennial process. The bill makes changes to the fee schedule, the registration and the renewal processes to reflect the biennial licensure process. The bill also clarifies that the registration renewal application can only be issued if, in addition to holding a current license, the license holder has met current continuing medical education requirements and has filed a physician profile with the board.

The bill establishes a new registration permit surcharge of \$30 which shall be used to strengthen the board's enforcement division and for the expert panels.

The bill increases the penalty and renewal fees for physicians who are renewing their license after their current license has expired.

The bill requires the board to prioritize complaints involving sexual misconduct, quality of care, and impaired physicians. Additionally, the board is required to advise the license holder who was the subject of the complaint by explaining the action taken on the complaint.

The bill authorizes the creation of an expert panel of physicians of a same or similar specialty to assist with reviewing complaints relating to medical competency. The board by rule shall describe the composition, responsibilities, and qualifications for the expert panel. The expert panel is required to prepare a report regarding the facts of the case and the panel's determination of the case.

The bill updates the qualifying specialty board certifications that can be approved by the board to reflect changes to the name and organization of those specialty boards.

The bill requires that the board by rule shall adopt a schedule of disciplinary sanctions appropriate to the severity of the actions.

The bill requires the board to conduct the informal proceedings within 180 days, unless the board can show good cause for delay, and requires the board to provide 30 days notice of those proceedings to the physician. Additionally, the bill clarifies the rights of the license holder participating during the informal proceedings. The bill clarifies the information required to be provided to the license holder during the informal proceedings. Proceedings for license holders previously disciplined are expedited.

The bill establishes the process for the board to dismiss a baseless complaint and to record that dismissal in the license holder's record.

The bill clarifies that the due process requirements of the board include providing the license holder with a statement of the allegation of the standard of care violated by the physician and other information required to be provided to the license holder during the due process requirements.

The bill requires that the board immediately investigate license holders who violate disciplinary orders or have an additional complaint filed when under a disciplinary order.

The bill clarifies the board's responsibility and the judicial process when a license holder is found to be a danger to the public.

The bill allows the board the ability to refuse to issue a license to a person who is convicted of, or is placed on deferred adjudication community supervision, or deferred disposition of certain offenses.

The bill requires the board to revoke the license of a license holder who has had his license revoked in another state.

The bill includes in the definition of unprofessional or dishonorable conduct the violation of any state or federal law.

The bill requires the board to revoke the license of a license holder who has been convicted of a misdemeanor under Chapter 22, of the Penal Code, other than an offense punishable by a fine only. The bill clarifies that the board shall adopt guidelines for use in issuing a temporary suspension of a license when it is determined that a physician's continuing practice presents a real danger to the physician's patients. Additionally, the bill directs the board and the State Office of Administrative Hearings to expedite the due process requirements once a license has been temporarily suspended. The bill also clarifies that the board, when seeking a temporary suspension, must have new information if the first attempt at temporary suspension has failed.

The bill allows the board to receive information about the violation of a workers' compensation law by a license holder.

EFFECTIVE DATE

This act has immediate effect if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by redefining the standard for temporary suspensions. The substitute changes the day of the license fee update from the last day to the first day of the birth month. The substitute differs from the original by removing the requirement that board update physician profiles when a jury makes an award against a physician. The substitute removes language from the original requiring the board to report aggregate complaint information. The substitute differs from the original by removing language requiring the release of complaint reports to instances when there is a negative finding. The substitute differs from the original by removing language requiring the board to review the National Practitioners Data Bank for reports of disciplinary actions taken against the physician. The substitute removes language requiring the board to send a letter to patients explaining why the board did not take action on a complaint. The substitute differs from the original by removing language that requires the board to collect copies of 4590i expert reports from insurers. The substitute differs from the original by removing language that requires the board consider more severe sanctions against repeat offenders. The substitute differs from the original by removing language dealing with disclosure exemptions for peer review. The substitute differs from the original by redefining what constitutes confidential board work product during an investigation. The substitute differs from the original by removing language requiring that a formal complaint be filed against physicians who have had three expert reports filed by insurers at the board. The substitute differs from the original by removing language that requires that the board investigate physicians who have had three or more expert reports filed against them in a five year period. The substitute differs from the original by adding certain misdemeanor crimes under Chapter 22 of the Penal Code as grounds for license revocation. The substitute differs from the original by changing the requirement that the board schedule a disciplinary panel within 10 days of notice of temporary suspension to 14 days of notice.