

By: Nelson, et al.

S.B. No. 104

Substitute the following for S.B. No. 104:

By: Laubenberg

C.S.S.B. No. 104

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and enforcement of the practice of
medicine by the Texas State Board of Medical Examiners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 153.051(d), Occupations Code, is amended
to read as follows:

(d) The board may not set, charge, collect, receive, or
deposit any of the following fees in excess of:

(1) \$900 for a license;

(2) \$400 [~~\$200~~] for a first [~~annual~~] registration
permit;

(3) \$200 for a temporary license;

(4) \$400 [~~\$200~~] for renewal of a [~~an annual~~]
registration permit;

(5) \$200 for a physician-in-training permit;

(6) \$600 [~~\$300~~] for the processing of an application
and the issuance of a [~~an annual~~] registration for anesthesia in an
outpatient setting;

(7) \$200 for an endorsement to other state medical
boards;

(8) \$200 for a duplicate license; or

(9) \$700 for a reinstated license after cancellation
for cause.

SECTION 2. Section 153.053, Occupations Code, is amended to

1 read as follows:

2 Sec. 153.053. SURCHARGE FOR CERTAIN FEES. (a) The board
3 shall collect a fee [~~an additional \$200~~] surcharge as follows [~~for~~
4 ~~each of the following fees~~]:

- 5 (1) \$200 for the license fee;
- 6 (2) \$400 for the first [~~annual~~] registration permit;
- 7 (3) \$400 for renewal of a [~~annual~~] registration
8 permit; and
- 9 (4) \$200 for reinstatement of a license after
10 cancellation for cause.

11 (b) Of each surcharge collected under Subsections (a)(1)
12 and (4), the board shall deposit \$50 to the credit of the foundation
13 school fund and \$150 to the credit of the general revenue fund.

14 (c) Of each surcharge collected under Subsections (a)(2)
15 and (3), the board shall deposit \$100 to the credit of the
16 foundation school fund and \$150 to the credit of the general revenue
17 fund.

18 SECTION 3. Subchapter B, Chapter 153, Occupations Code, is
19 amended by adding Section 153.0535 to read as follows:

20 Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) The
21 board shall collect an additional \$30 surcharge for each of the
22 following fees:

- 23 (1) first registration permit; and
- 24 (2) renewal of a registration permit.

25 (b) The board shall deposit each surcharge collected to the
26 credit of the public assurance account. The public assurance
27 account is an account in the general revenue fund that shall be

1 appropriated only to the board to pay for the board's enforcement
2 program, including the expert physician panel.

3 SECTION 4. Section 154.056, Occupations Code, is amended by
4 amending Subsection (a) and adding Subsection (e) to read as
5 follows:

6 (a) The board shall adopt rules concerning the
7 investigation and review of a complaint filed with the board. The
8 rules adopted under this section must:

9 (1) distinguish among categories of complaints and
10 give priority to complaints that involve sexual misconduct, quality
11 of care, and impaired physician issues;

12 (2) ensure that a complaint is not dismissed without
13 appropriate consideration;

14 (3) require that the board be advised of the dismissal
15 of a complaint and that a letter be sent to the person who filed the
16 complaint and to the physician who was the subject of the complaint
17 explaining the action taken on the complaint;

18 (4) ensure that a person who files a complaint has an
19 opportunity to explain the allegations made in the complaint;
20 [~~and~~]

21 (5) prescribe guidelines concerning the categories of
22 complaints that require the use of a private investigator and the
23 procedures for the board to obtain the services of a private
24 investigator; and

25 (6) provide for an expert physician panel authorized
26 under Subsection (e) to assist with complaints and investigations
27 relating to medical competency.

1 (e) The board by rule shall provide for an expert physician
2 panel appointed by the board to assist with complaints and
3 investigations relating to medical competency. Each member of an
4 expert physician panel must be licensed to practice medicine in
5 this state. The rules adopted under this subsection must include
6 provisions governing the composition of the panel, qualifications
7 for membership on the panel, and the duties to be performed by the
8 panel.

9 SECTION 5. Section 154.058, Occupations Code, is amended to
10 read as follows:

11 Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY. (a)
12 Each complaint against a physician that requires a determination of
13 medical competency shall be reviewed initially by a board member,
14 consultant, or employee with a medical background considered
15 sufficient by the board.

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

23 (c) The expert physician panel shall report in writing the
24 panel's determinations based on the review of the complaint under
25 Subsection (b). The report must specify the standard of care that
26 applies to the facts that are the basis of the complaint and the
27 clinical basis for the panel's determinations, including any

1 reliance on peer-reviewed journals, studies, or reports.

2 SECTION 6. The heading to Chapter 156, Occupations Code, is
3 amended to read as follows:

4 CHAPTER 156. REGISTRATION OF PHYSICIANS [~~LICENSE RENEWAL~~]

5 SECTION 7. Section 156.001, Occupations Code, is amended to
6 read as follows:

7 Sec. 156.001. [~~ANNUAL~~] REGISTRATION REQUIREMENTS AND
8 PROCEDURES [~~REQUIRED; REGISTRATION PROCEDURE~~]. (a) Each person
9 licensed to practice medicine in this state must register with the
10 board every two years [~~annually~~]. The initial [~~annual~~]
11 registration permit shall be issued with the license and expires on
12 the first day of the birth month of the license holder.

13 (b) Except as provided by Section 156.002, the application
14 for registration must be accompanied by a [~~an annual~~] registration
15 permit fee in an amount set by the board regardless of whether the
16 person is practicing medicine in this state.

17 (c) A license holder may renew the [~~annual~~] registration
18 permit by submitting to the board, on or before the expiration date
19 of the [~~annual~~] registration permit, the required renewal
20 application and registration renewal fee. Each [~~annual~~]
21 registration permit renewal application must include:

22 (1) the license holder's name, [~~and~~] mailing address,
23 and address for receipt of electronic mail;

24 (2) the primary place [~~or places~~] at which the license
25 holder is engaged in the practice of medicine; and

26 (3) other necessary information as prescribed by [~~the~~]
27 board rule.

1 (d) If the license holder [~~person~~] is licensed to practice
2 medicine by another state or country or by the uniformed services of
3 the United States, the registration renewal application must
4 include a description of any investigation the license holder
5 [~~person~~] knows is in progress and any sanction imposed by or
6 disciplinary matter pending in the state, country, or service
7 regarding the license holder [~~person~~].

8 SECTION 8. Section 156.002, Occupations Code, is amended to
9 read as follows:

10 Sec. 156.002. EXEMPTION FOR CERTAIN PHYSICIANS. (a) The
11 board by rule may exempt a retired physician from the [~~annual~~]
12 registration permit fee requirement.

13 (b) A physician licensed by the board whose only practice is
14 voluntary charity care, as defined by board rule, is exempt from the
15 [~~annual~~] registration permit fee requirement.

16 SECTION 9. Section 156.003, Occupations Code, is amended to
17 read as follows:

18 Sec. 156.003. STAGGERED RENEWAL SYSTEM. (a) The board by
19 rule may adopt a system under which [~~annual~~] registration permits
20 expire on various dates during the two-year registration period
21 [~~year~~].

22 (b) For the registration period [~~year~~] in which the
23 expiration date is changed, [~~annual~~] registration permit fees shall
24 be prorated. On renewal of the registration on the new expiration
25 date, the total [~~annual~~] registration permit fee is payable.

26 SECTION 10. Section 156.004, Occupations Code, is amended
27 to read as follows:

1 Sec. 156.004. NOTICE OF EXPIRATION. The board shall send a
2 ~~[mail an annual]~~ registration permit renewal application notice to
3 each physician at the physician's last known address according to
4 the board's records at least 30 days before the expiration date of
5 the ~~[annual]~~ registration permit. The board shall provide for a
6 30-day grace period for renewing the ~~[annual]~~ registration permit
7 from the date of the expiration of the permit.

8 SECTION 11. Section 156.005, Occupations Code, is amended
9 to read as follows:

10 Sec. 156.005. RENEWAL OF CERTAIN REGISTRATION PERMITS. (a)
11 If a person's ~~[annual]~~ registration permit has been expired for 90
12 days or less, the person may renew the permit by submitting to the
13 board the required registration renewal application, the
14 registration renewal fee, and a \$75 ~~[\$50]~~ penalty fee.

15 (b) If the person's ~~[annual]~~ registration permit has been
16 expired for longer than 90 days but less than one year, the person
17 may renew the permit by submitting to the board the required
18 registration renewal application, the registration renewal fee,
19 and a \$150 ~~[\$100]~~ penalty fee.

20 (c) If the person's ~~[annual]~~ registration permit has been
21 expired for one year or longer, the person's license is
22 automatically ~~[considered to have been]~~ canceled, unless an
23 investigation is pending, and the person may not renew the ~~[annual]~~
24 registration permit.

25 (d) A physician whose license is automatically ~~[considered]~~
26 canceled may obtain a new license by ~~[submitting to reexamination~~
27 ~~and]~~ complying with the requirements, fees, and procedures for

1 obtaining a new license. The board may issue a new license without
2 examination to a person whose license is automatically [~~considered~~]
3 canceled for less than two years.

4 SECTION 12. Section 156.007, Occupations Code, is amended
5 to read as follows:

6 Sec. 156.007. ISSUANCE OF [~~ANNUAL~~] REGISTRATION PERMIT.

7 (a) On receipt of a registration renewal application and all
8 required fees, the board, after ascertaining from the records of
9 the board or from other sources considered reliable by the board
10 that the applicant is an eligible [~~a~~] physician in this state and
11 meets all other requirements for registration, shall issue to the
12 applicant a [~~an annual~~] registration permit certifying that the
13 applicant has filed the application, has paid the [~~annual~~]
14 registration permit fee for the registration period [~~year~~], and has
15 completed the requirements for [~~annual~~] registration.

16 (b) The filing of the registration renewal application, the
17 payment of the required fees, and the issuance of the permit do
18 [~~does~~] not entitle the permit holder to practice medicine in this
19 state unless:

20 (1) the permit holder has been previously licensed as
21 a physician by the board, as prescribed by law; [~~and~~]

22 (2) the license to practice medicine is in effect;

23 (3) the permit holder has met the continuing medical
24 education requirements; and

25 (4) the permit holder has submitted a current complete
26 physician profile.

27 SECTION 13. Section 156.008, Occupations Code, is amended

1 to read as follows:

2 Sec. 156.008. PRACTICING MEDICINE WITHOUT ~~[ANNUAL]~~
3 REGISTRATION PROHIBITED. (a) Practicing medicine after the
4 expiration of the 30-day grace period under Section 156.004
5 following expiration of a ~~[an annual]~~ registration permit that has
6 not been renewed for the current registration period ~~[year]~~ as
7 provided by this subchapter has the same effect as, and is subject
8 to all penalties of, practicing medicine without a license.

9 (b) In a prosecution for the unlawful practice of medicine,
10 the receipt showing payment of the ~~[annual]~~ registration fee
11 required by this chapter does not constitute evidence that the
12 receipt holder is lawfully entitled to practice medicine.

13 SECTION 14. Section 156.009, Occupations Code, is amended
14 to read as follows:

15 Sec. 156.009. INACTIVE STATUS. The board may adopt rules
16 and set reasonable fees relating to placing license holders on
17 inactive status. ~~[The board by rule shall set a time limit for the~~
18 ~~period during which a license holder may remain on inactive~~
19 ~~status.]~~

20 SECTION 15. Sections 156.051(a) and (d), Occupations Code,
21 are amended to read as follows:

22 (a) The board by rule shall adopt, monitor, and enforce a
23 reporting program for the continuing medical education of license
24 holders. The board shall adopt and administer rules that:

25 (1) establish the number of hours of continuing
26 medical education the board determines appropriate as a
27 prerequisite to the ~~[annual]~~ registration of a license under this

1 subtitle;

2 (2) require at least one-half of the hours of
3 continuing medical education established under Subdivision (1) to
4 be board approved; and

5 (3) adopt a process to assess a license holder's
6 participation in continuing medical education courses.

7 (d) This section does not apply to a license holder who is
8 ~~[retired and is]~~ exempt by rule from paying the ~~[annual]~~
9 registration fee under Section 156.002(a).

10 SECTION 16. Section 156.052, Occupations Code, is amended
11 to read as follows:

12 Sec. 156.052. PRESUMPTION OF COMPLIANCE FOR CERTAIN LICENSE
13 HOLDERS. A license holder is presumed to be in compliance with the
14 requirements of this subchapter if, during the 36 months preceding
15 the date of the required ~~[annual]~~ registration, the license holder
16 becomes board certified or recertified by ~~[in]~~ a ~~[medical]~~
17 specialty board approved by ~~[and that medical specialty program~~
18 ~~considers the standards of:~~

19 ~~[(1)]~~ the American Board of Medical Specialties~~;~~

20 ~~[(2)] the American Medical Association;~~

21 ~~[(3)] the Advisory Board for Osteopathic Specialists~~
22 ~~and Boards of Certification;~~ or

23 ~~[(4)]~~ the American Osteopathic Association Bureau of
24 Osteopathic Specialists.

25 SECTION 17. Section 156.053, Occupations Code, is amended
26 to read as follows:

27 Sec. 156.053. TEMPORARY EXEMPTION. (a) The board may

1 temporarily exempt a license holder from the continuing medical
2 education requirement on the basis of [~~for~~]:

3 (1) catastrophic illness;

4 (2) military service outside this state for longer
5 than one year;

6 (3) medical practice and residence outside the United
7 States for longer than one year; or

8 (4) good cause shown on the written application of the
9 license holder that provides evidence satisfactory to the board
10 that the license holder is unable to comply with the requirement.

11 (b) A temporary exemption granted under Subsection (a) may
12 not exceed one year but may be renewed [~~annually~~].

13 SECTION 18. Section 162.104(a), Occupations Code, is
14 amended to read as follows:

15 (a) The board shall require each physician who administers
16 anesthesia or performs a surgical procedure for which anesthesia
17 services are provided in an outpatient setting to [~~annually~~]
18 register with the board on a form prescribed by the board and to pay
19 a fee to the board in an amount established by the board.

20 SECTION 19. Section 164.001, Occupations Code, is amended
21 by adding Subsection (f) to read as follows:

22 (f) The board by rule shall adopt a schedule of the
23 disciplinary sanctions that the board may impose under this
24 subchapter. In adopting the schedule of sanctions, the board shall
25 ensure that the severity of the sanction imposed is appropriate to
26 the type of violation or conduct that is the basis for disciplinary
27 action.

1 SECTION 20. Section 164.003, Occupations Code, is amended
2 by amending Subsections (b) and (c) and adding Subsections (e) and
3 (f) to read as follows:

4 (b) Rules adopted under this section must require that:

5 (1) an informal meeting in compliance with Section
6 2001.054, Government Code, be scheduled not later than the 180th
7 day after the date the complaint is filed with the board under
8 Section 154.051, unless good cause is shown by the board for
9 scheduling the informal meeting after that date;

10 (2) the board give notice to the license holder of the
11 time and place of the meeting not later than the 30th day before the
12 date the meeting is held;

13 (3) the complainant and the license holder be provided
14 an opportunity to be heard;

15 (4) ~~(2)~~ the board's legal counsel or a
16 representative of the attorney general be present to advise the
17 board or the board's staff; and

18 (5) ~~(3)~~ a member of the board's staff at the meeting
19 present to the board's representative the facts the staff
20 reasonably believes it could prove by competent evidence or
21 qualified witnesses at a hearing.

22 (c) An affected physician is entitled to:

23 (1) reply to the staff's presentation; ~~and~~

24 (2) present the facts the physician reasonably
25 believes the physician could prove by competent evidence or
26 qualified witnesses at a hearing;

27 (3) be present in person or through an attorney at the

1 entire meeting with the board's representative, except for
2 deliberations as to the disposition of the complaint;

3 (4) receive, with the required notice of the meeting,
4 a complete copy of any exculpatory evidence, reports, or
5 information in the possession or control of the board or the board's
6 staff;

7 (5) receive, at least 10 days before the date of the
8 meeting, a complete copy of any information, including reports,
9 summaries, and clinical records provided to the board's
10 representative by the board's staff; and

11 (6) if applicable, a statement and explanation of the
12 standard of care the physician is alleged to have violated,
13 including any reports of an expert physician panel and clinical
14 peer-reviewed information used by the board to establish the
15 existence of the alleged violation.

16 (e) For purposes of Subsections (c)(4), (5), and (6), the
17 information provided by the board to the physician must include the
18 facts of the case as known to the board and any expert physician
19 panel report. The board is not required under those subdivisions to
20 provide the following information:

21 (1) a board investigative report or memorandum, unless
22 the report or memorandum contains exculpatory evidence or
23 information;

24 (2) the identity of a nontestifying complainant; or

25 (3) attorney-client communications, attorney work
26 product, or other materials covered by a privilege recognized by
27 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

1 (f) If the license holder has previously been the subject of
2 disciplinary action by the board, the board shall schedule the
3 informal meeting as soon as practicable but not later than the
4 deadline prescribed by Subsection (b)(1).

5 SECTION 21. Subchapter A, Chapter 164, Occupations Code, is
6 amended by adding Section 164.0035 to read as follows:

7 Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. If, during
8 the 180-day period prescribed by Section 164.003(b)(1), the board
9 determines that the complaint is a baseless or unfounded complaint,
10 the board shall dismiss the complaint and include a statement in the
11 records of the complaint that the reason for the dismissal is
12 because the complaint was baseless or unfounded.

13 SECTION 22. Section 164.004, Occupations Code, is amended
14 by amending Subsection (a) and adding Subsection (c) to read as
15 follows:

16 (a) Except in the case of a suspension under Section 164.059
17 or under the terms of an agreement between the board and a license
18 holder, a revocation, suspension, involuntary modification, or
19 other disciplinary action relating to a license is not effective
20 unless, before board proceedings are instituted:

21 (1) the board gives notice, in a manner consistent
22 with the notice requirements under Section 154.053, to the affected
23 license holder of the facts or conduct alleged to warrant the
24 intended action, including, if appropriate, a statement and
25 explanation of the standard of care allegedly violated by the
26 license holder; ~~and~~

27 (2) the license holder is provided with any

1 exculpatory evidence, reports, or information in the possession or
2 control of the board; and

3 (3) the license holder is given an opportunity to show
4 compliance with all requirements of law for the retention of the
5 license, at the license holder's option, either in writing or
6 through personal appearance at an informal meeting with one or more
7 representatives of the board.

8 (c) For purposes of Subsection (a), the information
9 provided by the board to the physician must include the facts of the
10 case as known to the board and any expert physician panel report.
11 The board is not required under that subsection to provide the
12 following information:

13 (1) a board investigative report or memorandum, unless
14 the report or memorandum contains exculpatory evidence or
15 information;

16 (2) the identity of a nontestifying complainant; or

17 (3) attorney-client communications, attorney work
18 product, or other materials covered by a privilege recognized by
19 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

20 SECTION 23. Section 164.010, Occupations Code, is amended
21 by adding Subsection (c) to read as follows:

22 (c) The board shall immediately investigate:

23 (1) a violation of a disciplinary order by a license
24 holder described by Subsection (a); or

25 (2) a complaint filed against a license holder
26 described by Subsection (a).

27 SECTION 24. Section 164.011(c), Occupations Code, is

1 amended to read as follows:

2 (c) A stay or injunction may not be granted if the license
3 holder's continued practice presents a danger to the public. A stay
4 or injunction may not be granted for a term that exceeds 120 days.

5 SECTION 25. Section 164.051, Occupations Code, is amended
6 by amending Subsections (a) and (c) and adding Subsection (d) to
7 read as follows:

8 (a) The board may refuse to admit a person to its
9 examination or refuse to issue a license to practice medicine and
10 may take disciplinary action against a person if the person:

11 (1) commits an act prohibited under Section 164.052;

12 (2) is convicted of, or is placed on deferred
13 adjudication community supervision or deferred disposition for:

14 (A) a felony; or

15 (B) a misdemeanor involving moral turpitude;

16 (3) commits or attempts to commit a direct or indirect
17 violation of a rule adopted under this subtitle, either as a
18 principal, accessory, or accomplice;

19 (4) is unable to practice medicine with reasonable
20 skill and safety to patients because of:

21 (A) illness;

22 (B) drunkenness;

23 (C) excessive use of drugs, narcotics,
24 chemicals, or another substance; or

25 (D) a mental or physical condition;

26 (5) is found by a court judgment to be of unsound mind;

27 (6) fails to practice medicine in an acceptable

1 professional manner consistent with public health and welfare;

2 (7) is removed, suspended, or is subject to
3 disciplinary action taken by the person's peers in a local,
4 regional, state, or national professional medical association or
5 society, or is disciplined by a licensed hospital or medical staff
6 of a hospital, including removal, suspension, limitation of
7 hospital privileges, or other disciplinary action, if the board
8 finds that the action:

9 (A) was based on unprofessional conduct or
10 professional incompetence that was likely to harm the public; and

11 (B) was appropriate and reasonably supported by
12 evidence submitted to the board;

13 (8) is subject to repeated or recurring meritorious
14 health care liability claims that in the board's opinion evidence
15 professional incompetence likely to injure the public; or

16 (9) except as provided by Subsection (d), holds a
17 license to practice medicine subject to disciplinary action by
18 another state, or subject to disciplinary action by the uniformed
19 services of the United States, based on acts by the person that are
20 prohibited under Section 164.052 or are similar to acts described
21 by this subsection.

22 (c) A certified copy of the record of another state that
23 takes action described by Subsection (a)(9) or (d) is conclusive
24 evidence of that action.

25 (d) The board shall revoke a license issued under this
26 subtitle if the license holder held a license to practice medicine
27 in another state that has been revoked by the licensing authority in

1 that state.

2 SECTION 26. Section 164.053(a), Occupations Code, is
3 amended to read as follows:

4 (a) For purposes of Section 164.052(a)(5), unprofessional
5 or dishonorable conduct likely to deceive or defraud the public
6 includes conduct in which a physician:

7 (1) commits an act that violates any ~~[the laws of this]~~
8 state or federal law if the act is connected with the physician's
9 practice of medicine;

10 (2) fails to keep complete and accurate records of
11 purchases and disposals of:

12 (A) drugs listed in Chapter 481, Health and
13 Safety Code; or

14 (B) controlled substances scheduled in the
15 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
16 U.S.C. Section 801 et seq.);

17 (3) writes prescriptions for or dispenses to a person
18 who:

19 (A) is known to be an abuser of narcotic drugs,
20 controlled substances, or dangerous drugs; or

21 (B) the physician should have known was an abuser
22 of narcotic drugs, controlled substances, or dangerous drugs;

23 (4) writes false or fictitious prescriptions for:

24 (A) dangerous drugs as defined by Chapter 483,
25 Health and Safety Code; or

26 (B) controlled substances scheduled in Chapter
27 481, Health and Safety Code, or the Comprehensive Drug Abuse

1 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

2 (5) prescribes or administers a drug or treatment that
3 is nontherapeutic in nature or nontherapeutic in the manner the
4 drug or treatment is administered or prescribed;

5 (6) prescribes, administers, or dispenses in a manner
6 inconsistent with public health and welfare:

7 (A) dangerous drugs as defined by Chapter 483,
8 Health and Safety Code; or

9 (B) controlled substances scheduled in Chapter
10 481, Health and Safety Code, or the Comprehensive Drug Abuse
11 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

12 (7) violates Section 311.0025, Health and Safety Code;

13 (8) fails to supervise adequately the activities of
14 those acting under the supervision of the physician; or

15 (9) delegates professional medical responsibility or
16 acts to a person if the delegating physician knows or has reason to
17 know that the person is not qualified by training, experience, or
18 licensure to perform the responsibility or acts.

19 SECTION 27. Section 164.057, Occupations Code, is amended
20 to read as follows:

21 Sec. 164.057. REQUIRED SUSPENSION OR REVOCATION OF LICENSE
22 FOR CERTAIN [~~FELONY~~] OFFENSES. (a) The board shall suspend a
23 physician's license on proof that the physician has been:

24 (1) initially convicted of:

25 (A) a felony; or

26 (B) a misdemeanor under Chapter 22, Penal Code,
27 other than a misdemeanor punishable by fine only; or

1 (2) subject to an initial finding by the trier of fact
2 of guilt of a felony under:

3 (A) [~~(1)~~] Chapter 481 or 483, Health and Safety
4 Code;

5 (B) [~~(2)~~] Section 485.033, Health and Safety
6 Code; or

7 (C) [~~(3)~~] the Comprehensive Drug Abuse
8 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

9 (b) On final conviction for an offense [~~a felony~~] described
10 by Subsection (a), the board shall revoke the physician's license.

11 SECTION 28. Section 164.059, Occupations Code, is amended
12 to read as follows:

13 Sec. 164.059. TEMPORARY SUSPENSION OR RESTRICTION OF
14 LICENSE. (a) The president of the board [~~, with board approval,~~]
15 shall appoint a three-member disciplinary panel consisting of board
16 members to determine whether a person's license to practice
17 medicine should be temporarily suspended or restricted.

18 (b) If the disciplinary panel determines from the evidence
19 [~~or information~~] presented to the panel that a person licensed to
20 practice medicine would, by the person's continuation in
21 unrestricted practice, constitute a real danger to the health or
22 safety of the person's patients [~~continuing threat to the public~~
23 ~~welfare~~], the disciplinary panel shall temporarily suspend or
24 restrict the license of that person.

25 (c) A license may be suspended or restricted by a
26 disciplinary panel under this section without notice or hearing [~~on~~
27 ~~the complaint~~] if:

1 (1) the board immediately provides notice of the
2 suspension or restriction to the license holder;

3 (2) ~~[institution of proceedings for]~~ a hearing on the
4 temporary suspension or restriction before a disciplinary panel of
5 the board is scheduled for a date not sooner than the 14th day after
6 the date of the notice of ~~[initiated simultaneously with]~~ the
7 temporary suspension or restriction; and

8 (3) the license holder receives at least 10 days'
9 notice before the date of the hearing on the suspension or
10 restriction ~~[(2) a hearing is held under Chapter 2001, Government~~
11 ~~Code, and this subtitle as soon as possible].~~

12 (d) Notwithstanding Chapter 551, Government Code, the
13 disciplinary panel may hold a meeting by telephone conference call
14 if immediate action is required and convening of the panel at one
15 location is inconvenient for any member of the disciplinary panel.

16 (e) After the hearing before the disciplinary panel
17 described by Subsection (c), if the disciplinary panel affirms the
18 temporary suspension or restriction of the license holder's
19 license, the board shall schedule an informal compliance meeting
20 that meets the requirements of Section 2001.054(c), Government
21 Code, and Section 164.004 of this code to be held as soon as
22 practicable, unless the license holder waives the informal meeting
23 or an informal meeting has already been held with regard to the
24 issues that are the basis for the temporary suspension or
25 restriction.

26 (f) If the license holder is unable to show compliance at
27 the informal meeting described by Subsection (e) regarding the

1 the informal meeting described by Subsection (e) regarding the
2 issues that are the basis for the temporary suspension or
3 restriction, a board representative shall file a formal complaint
4 under Section 164.005 as soon as practicable.

5 (g) If, after the hearing described by Subsection (c), the
6 disciplinary panel does not temporarily suspend or restrict the
7 license holder's license, the facts that were the basis for the
8 temporary suspension or restriction may not be the sole basis of
9 another proceeding to temporarily suspend or restrict the license
10 holder's license. The board may use those same facts in a
11 subsequent investigation to obtain new information that may be the
12 basis for the temporary suspension or restriction of the license
13 holder's license. For purposes of this subsection, facts that are
14 the basis for the temporary suspension or restriction of a license
15 holder's license include facts presented to the disciplinary panel
16 and facts known to the board or a representative of the board at the
17 time evidence was presented to the disciplinary panel.

18 SECTION 29. Section 164.060(c), Occupations Code, is
19 amended to read as follows:

20 (c) If the board, during its review of a complaint against a
21 physician, discovers an act or omission that may constitute a
22 felony, a misdemeanor involving moral turpitude, a violation of
23 state or federal narcotics or controlled substance laws, ~~or~~ an
24 offense involving fraud or abuse under the Medicare or Medicaid
25 programs, or a violation of the workers' compensation laws under
26 Subtitle A, Title 5, Labor Code, the board shall immediately report
27 that act or omission to the appropriate prosecuting authority.

1 SECTION 30. (a) This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2003.

6 (b) The Texas State Board of Medical Examiners shall adopt
7 rules required by Section 164.001(f), Occupations Code, as added by
8 this Act, not later than January 1, 2004.

9 (c) The change in law made by this Act by the amendment of
10 Section 164.051, Occupations Code, applies to a physician whose
11 license to practice medicine in another state was revoked on,
12 before, or after the effective date of this Act.

13 (d) The change in law made by this Act by the amendment of
14 Section 164.057, Occupations Code, applies only to a person who is
15 initially convicted of an offense on or after the effective date of
16 this Act. A person initially convicted of an offense before that
17 date is governed by the law in effect on the date the conviction
18 occurred, and the former law is continued in effect for that
19 purpose.

20 SECTION 31. (a) The changes in law made by this Act
21 relating to the biennial registration of physicians apply to a
22 person who files with the Texas State Board of Medical Examiners an
23 application for registration under Chapter 156, Occupations Code,
24 as amended by this Act, on or after January 1, 2004. A person who
25 files an application before that date is governed by the law in
26 effect on the date the application was filed, and the former law is
27 continued in effect for that purpose.

1 (b) The Texas State Board of Medical Examiners may adopt a
2 staggered registration system as provided by Section 156.003,
3 Occupations Code, as amended by this Act, on or after September 1,
4 2004.

5 (c) The Texas State Board of Medical Examiners shall adopt
6 the rules required by Chapter 156, Occupations Code, as amended by
7 this Act, not later than December 1, 2003.

8 SECTION 32. The change in law made by this Act by the
9 enactment of Section 153.0535, Occupations Code, applies to a
10 registration permit fee that becomes due on or after January 1,
11 2004. A registration permit fee that becomes due before that date
12 is governed by the law in effect on the date the fee became due, and
13 the former law is continued in effect for that purpose.

14 SECTION 33. The change in law made by this Act relating to
15 the investigation and disposition of a complaint and any proceeding
16 begun as a result of a complaint investigation applies only to a
17 complaint filed with the Texas State Board of Medical Examiners on
18 or after the effective date of this Act. A complaint filed before
19 the effective date of this Act is governed by the law in effect on
20 the date the complaint was made, and the former law is continued in
21 effect for that purpose.