

1-1 By: Nelson, Lindsay S.B. No. 104
1-2 (In the Senate - Filed November 12, 2002; January 29, 2003,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; February 24, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 1;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 104 By: Zaffirini

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation and enforcement of the practice of
1-11 medicine by the Texas State Board of Medical Examiners.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (d), Section 153.051, Occupations
1-14 Code, is amended to read as follows:

1-15 (d) The board may not set, charge, collect, receive, or
1-16 deposit any of the following fees in excess of:

1-17 (1) \$900 for a license;

1-18 (2) \$400 [~~\$200~~] for a first [~~annual~~] registration
1-19 permit;

1-20 (3) \$200 for a temporary license;

1-21 (4) \$400 [~~\$200~~] for renewal of a [~~an annual~~]
1-22 registration permit;

1-23 (5) \$200 for a physician-in-training permit;

1-24 (6) \$600 [~~\$300~~] for the processing of an application
1-25 and the issuance of a [~~an annual~~] registration for anesthesia in an
1-26 outpatient setting;

1-27 (7) \$200 for an endorsement to other state medical
1-28 boards;

1-29 (8) \$200 for a duplicate license; or

1-30 (9) \$700 for a reinstated license after cancellation
1-31 for cause.

1-32 SECTION 2. Section 153.053, Occupations Code, is amended to
1-33 read as follows:

1-34 Sec. 153.053. SURCHARGE FOR CERTAIN FEES. (a) The board
1-35 shall collect a fee [~~an additional \$200~~] surcharge as follows [~~for~~
1-36 ~~each of the following fees~~]:

1-37 (1) \$200 for the license fee;

1-38 (2) \$400 for the first [~~annual~~] registration permit;

1-39 (3) \$400 for renewal of a [~~annual~~] registration
1-40 permit; and

1-41 (4) \$200 for reinstatement of a license after
1-42 cancellation for cause.

1-43 (b) Of each surcharge collected under Subsections (a)(1)
1-44 and (4), the board shall deposit \$50 to the credit of the foundation
1-45 school fund and \$150 to the credit of the general revenue fund.

1-46 (c) Of each surcharge collected under Subsections (a)(2)
1-47 and (3), the board shall deposit \$100 to the credit of the
1-48 foundation school fund and \$150 to the credit of the general revenue
1-49 fund.

1-50 SECTION 3. Subchapter B, Chapter 153, Occupations Code, is
1-51 amended by adding Section 153.0535 to read as follows:

1-52 Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) The
1-53 board shall collect an additional \$30 surcharge for each of the
1-54 following fees:

1-55 (1) first registration permit; and

1-56 (2) renewal of a registration permit.

1-57 (b) The board shall deposit each surcharge collected to the
1-58 credit of the public assurance account. The public assurance
1-59 account is an account in the general revenue fund that shall be
1-60 appropriated only to the board to pay for the board's enforcement
1-61 program, including the expert physician panel.

1-62 SECTION 4. Section 154.056, Occupations Code, is amended by
1-63 amending Subsection (a) and adding Subsection (e) to read as

2-1 follows:

2-2 (a) The board shall adopt rules concerning the
2-3 investigation and review of a complaint filed with the board. The
2-4 rules adopted under this section must:

2-5 (1) distinguish among categories of complaints and
2-6 give priority to complaints that involve sexual misconduct, quality
2-7 of care, and impaired physician issues;

2-8 (2) ensure that a complaint is not dismissed without
2-9 appropriate consideration;

2-10 (3) require that the board be advised of the dismissal
2-11 of a complaint and that a letter be sent to the person who filed the
2-12 complaint and to the physician who was the subject of the complaint
2-13 explaining the action taken on the complaint;

2-14 (4) ensure that a person who files a complaint has an
2-15 opportunity to explain the allegations made in the complaint; ~~and~~

2-16 (5) prescribe guidelines concerning the categories of
2-17 complaints that require the use of a private investigator and the
2-18 procedures for the board to obtain the services of a private
2-19 investigator; and

2-20 (6) provide for an expert physician panel authorized
2-21 under Subsection (e) to assist with complaints and investigations
2-22 relating to medical competency.

2-23 (e) The board by rule shall provide for an expert physician
2-24 panel appointed by the board to assist with complaints and
2-25 investigations relating to medical competency. Each member of an
2-26 expert physician panel must be licensed to practice medicine in
2-27 this state. The rules adopted under this subsection must include
2-28 provisions governing the composition of the panel, qualifications
2-29 for membership on the panel, and the duties to be performed by the
2-30 panel.

2-31 SECTION 5. Section 154.058, Occupations Code, is amended to
2-32 read as follows:

2-33 Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY.

2-34 (a) Each complaint against a physician that requires a
2-35 determination of medical competency shall be reviewed initially by
2-36 a board member, consultant, or employee with a medical background
2-37 considered sufficient by the board.

2-38 (b) If the initial review under Subsection (a) indicates
2-39 that an act by a physician falls below an acceptable standard of
2-40 care, the complaint shall be reviewed by an expert physician panel
2-41 authorized under Section 154.056(e) consisting of physicians who
2-42 practice in the same specialty as the physician who is the subject
2-43 of the complaint or in another specialty that is similar to the
2-44 physician's specialty.

2-45 (c) The expert physician panel shall report in writing the
2-46 panel's determinations based on the review of the complaint under
2-47 Subsection (b). The report must specify the standard of care that
2-48 applies to the facts that are the basis of the complaint and the
2-49 clinical basis for the panel's determinations, including any
2-50 reliance on peer-reviewed journals, studies, or reports.

2-51 SECTION 6. The heading to Chapter 156, Occupations Code, is
2-52 amended to read as follows:

2-53 CHAPTER 156. REGISTRATION OF PHYSICIANS [~~LICENSE RENEWAL~~]

2-54 SECTION 7. Section 156.001, Occupations Code, is amended to
2-55 read as follows:

2-56 Sec. 156.001. [~~ANNUAL~~] REGISTRATION REQUIREMENTS AND
2-57 PROCEDURES [~~REQUIRED, REGISTRATION PROCEDURE~~]. (a) Each person
2-58 licensed to practice medicine in this state must register with the
2-59 board every two years [~~annually~~]. The initial [~~annual~~]
2-60 registration permit shall be issued with the license and expires on
2-61 the first day of the birth month of the license holder.

2-62 (b) Except as provided by Section 156.002, the application
2-63 for registration must be accompanied by a [~~an annual~~] registration
2-64 permit fee in an amount set by the board regardless of whether the
2-65 person is practicing medicine in this state.

2-66 (c) An eligible [A] license holder, as determined by the
2-67 board, may renew the [~~annual~~] registration permit by submitting to
2-68 the board, on or before the expiration date of the [~~annual~~]
2-69 registration permit, the required renewal application and

3-1 registration renewal fee. Each [annual] registration permit
 3-2 renewal application must include:

3-3 (1) the license holder's name, ~~and~~ mailing address,
 3-4 and, if one is available, address for receipt of electronic mail;

3-5 (2) the primary place [or places] at which the license
 3-6 holder is engaged in the practice of medicine; and

3-7 (3) other necessary information as prescribed by ~~the~~
 3-8 board rule.

3-9 (d) If the license holder [person] is licensed to practice
 3-10 medicine by another state or country or by the uniformed services of
 3-11 the United States, the registration renewal application must
 3-12 include a description of any investigation the license holder
 3-13 [person] knows is in progress and any sanction imposed by or
 3-14 disciplinary matter pending in the state, country, or service
 3-15 regarding the license holder [person].

3-16 SECTION 8. Section 156.002, Occupations Code, is amended to
 3-17 read as follows:

3-18 Sec. 156.002. EXEMPTION FOR CERTAIN PHYSICIANS. (a) The
 3-19 board by rule may exempt a retired physician from the ~~[annual]~~
 3-20 registration permit fee requirement.

3-21 (b) A physician licensed by the board whose only practice is
 3-22 voluntary charity care, as defined by board rule, is exempt from the
 3-23 ~~[annual]~~ registration permit fee requirement.

3-24 SECTION 9. Section 156.003, Occupations Code, is amended to
 3-25 read as follows:

3-26 Sec. 156.003. STAGGERED RENEWAL SYSTEM. (a) The board by
 3-27 rule may adopt a system under which ~~[annual]~~ registration permits
 3-28 expire on various dates during the two-year registration period
 3-29 ~~[year].~~

3-30 (b) For the registration period [year] in which the
 3-31 expiration date is changed, ~~[annual]~~ registration permit fees shall
 3-32 be prorated. On renewal of the registration on the new expiration
 3-33 date, the total ~~[annual]~~ registration permit fee is payable.

3-34 SECTION 10. Section 156.004, Occupations Code, is amended
 3-35 to read as follows:

3-36 Sec. 156.004. NOTICE OF EXPIRATION. The board shall send a
 3-37 ~~[mail an annual]~~ registration permit renewal application notice to
 3-38 each physician at the physician's last known address according to
 3-39 the board's records at least 30 days before the expiration date of
 3-40 the ~~[annual]~~ registration permit. The board shall provide for a
 3-41 30-day grace period for renewing the ~~[annual]~~ registration permit
 3-42 from the date of the expiration of the permit.

3-43 SECTION 11. Section 156.005, Occupations Code, is amended
 3-44 to read as follows:

3-45 Sec. 156.005. RENEWAL OF CERTAIN REGISTRATION PERMITS.
 3-46 (a) If a person's ~~[annual]~~ registration permit has been expired
 3-47 for 90 days or less, the person may renew the permit by submitting
 3-48 to the board the required registration renewal application, the
 3-49 registration renewal fee, and a \$75 [\$50] penalty fee.

3-50 (b) If the person's ~~[annual]~~ registration permit has been
 3-51 expired for longer than 90 days but less than one year, the person
 3-52 may renew the permit by submitting to the board the required
 3-53 registration renewal application, the registration renewal fee,
 3-54 and a \$150 [\$100] penalty fee.

3-55 (c) If the person's ~~[annual]~~ registration permit has been
 3-56 expired for one year or longer, the person's license is
 3-57 automatically [considered to have been] canceled, unless an
 3-58 investigation is pending, and the person may not renew the ~~[annual]~~
 3-59 registration permit.

3-60 (d) A physician whose license is automatically [considered]
 3-61 canceled may obtain a new license by ~~[submitting to reexamination~~
 3-62 ~~and]~~ complying with the requirements, fees, and procedures for
 3-63 obtaining a new license. The board may issue a new license without
 3-64 examination to a person whose license is automatically [considered]
 3-65 canceled for less than two years.

3-66 SECTION 12. Section 156.007, Occupations Code, is amended
 3-67 to read as follows:

3-68 Sec. 156.007. ISSUANCE OF ~~[ANNUAL]~~ REGISTRATION PERMIT.

3-69 (a) On receipt of a registration renewal application and all

4-1 required fees, the board, after ascertaining from the records of
 4-2 the board or from other sources considered reliable by the board
 4-3 that the applicant is an eligible [a] physician in this state and
 4-4 meets all other requirements for registration, shall issue to the
 4-5 applicant a [an annual] registration permit certifying that the
 4-6 applicant has filed the application, has paid the [annual]
 4-7 registration permit fee for the registration period [year], and has
 4-8 completed the requirements for [annual] registration.

4-9 (b) The filing of the registration renewal application, the
 4-10 payment of the required fees, and the issuance of the permit do
 4-11 [does] not entitle the permit holder to practice medicine in this
 4-12 state unless:

4-13 (1) the permit holder has been previously licensed as
 4-14 a physician by the board, as prescribed by law; ~~and~~

4-15 (2) the license to practice medicine is in effect;

4-16 (3) the permit holder has met the continuing medical
 4-17 education requirements; and

4-18 (4) the permit holder has submitted a current complete
 4-19 physician profile.

4-20 SECTION 13. Section 156.008, Occupations Code, is amended
 4-21 to read as follows:

4-22 Sec. 156.008. PRACTICING MEDICINE WITHOUT [ANNUAL]
 4-23 REGISTRATION PROHIBITED. (a) Practicing medicine after the
 4-24 expiration of the 30-day grace period under Section 156.004
 4-25 following expiration of a ~~[an annual]~~ registration permit that has
 4-26 not been renewed for the current registration period [year] as
 4-27 provided by this subchapter has the same effect as, and is subject
 4-28 to all penalties of, practicing medicine without a license.

4-29 (b) In a prosecution for the unlawful practice of medicine,
 4-30 the receipt showing payment of the ~~[annual]~~ registration fee
 4-31 required by this chapter does not constitute evidence that the
 4-32 receipt holder is lawfully entitled to practice medicine.

4-33 SECTION 14. Section 156.009, Occupations Code, is amended
 4-34 to read as follows:

4-35 Sec. 156.009. INACTIVE STATUS. The board may adopt rules
 4-36 and set reasonable fees relating to placing license holders on
 4-37 inactive status. ~~[The board by rule shall set a time limit for the~~
 4-38 ~~period during which a license holder may remain on inactive~~
 4-39 ~~status.]~~

4-40 SECTION 15. Subsections (a) and (d), Section 156.051,
 4-41 Occupations Code, are amended to read as follows:

4-42 (a) The board by rule shall adopt, monitor, and enforce a
 4-43 reporting program for the continuing medical education of license
 4-44 holders. The board shall adopt and administer rules that:

4-45 (1) establish the number of hours of continuing
 4-46 medical education the board determines appropriate as a
 4-47 prerequisite to the ~~[annual]~~ registration of a license under this
 4-48 subtitle;

4-49 (2) require at least one-half of the hours of
 4-50 continuing medical education established under Subdivision (1) to
 4-51 be board approved; and

4-52 (3) adopt a process to assess a license holder's
 4-53 participation in continuing medical education courses.

4-54 (d) This section does not apply to a license holder who is
 4-55 ~~[retired and is]~~ exempt by rule from paying the ~~[annual]~~
 4-56 registration fee under Section 156.002(a).

4-57 SECTION 16. Section 156.052, Occupations Code, is amended
 4-58 to read as follows:

4-59 Sec. 156.052. PRESUMPTION OF COMPLIANCE FOR CERTAIN LICENSE
 4-60 HOLDERS. A license holder is presumed to be in compliance with the
 4-61 requirements of this subchapter if, during the 36 months preceding
 4-62 the date of the required ~~[annual]~~ registration, the license holder
 4-63 becomes board certified or recertified by ~~[in] a [medical]~~
 4-64 specialty board approved by [and that medical specialty program
 4-65 considers the standards of:

4-66 ~~[(1)] the American Board of Medical Specialties[+]~~

4-67 ~~[(2) the American Medical Association,~~

4-68 ~~[(3) the Advisory Board for Osteopathic Specialists~~
 4-69 ~~and Boards of Certification,] or~~

5-1 ~~[(4)]~~ the American Osteopathic Association Bureau of
5-2 Osteopathic Specialists.

5-3 SECTION 17. Section 156.053, Occupations Code, is amended
5-4 to read as follows:

5-5 Sec. 156.053. TEMPORARY EXEMPTION. (a) The board may
5-6 temporarily exempt a license holder from the continuing medical
5-7 education requirement on the basis of ~~for~~:

5-8 (1) catastrophic illness;
5-9 (2) military service outside this state for longer
5-10 than one year;

5-11 (3) medical practice and residence outside the United
5-12 States for longer than one year; or

5-13 (4) good cause shown on the written application of the
5-14 license holder that provides evidence satisfactory to the board
5-15 that the license holder is unable to comply with the requirement.

5-16 (b) A temporary exemption granted under Subsection (a) may
5-17 not exceed one year but may be renewed [annually].

5-18 SECTION 18. Subsection (a), Section 162.104, Occupations
5-19 Code, is amended to read as follows:

5-20 (a) The board shall require each physician who administers
5-21 anesthesia or performs a surgical procedure for which anesthesia
5-22 services are provided in an outpatient setting to [annually]
5-23 register with the board on a form prescribed by the board and to pay
5-24 a fee to the board in an amount established by the board.

5-25 SECTION 19. Section 164.001, Occupations Code, is amended
5-26 by adding Subsection (f) to read as follows:

5-27 (f) The board by rule shall adopt a schedule of the
5-28 disciplinary sanctions that the board may impose under this
5-29 subchapter. In adopting the schedule of sanctions, the board shall
5-30 ensure that the severity of the sanction imposed is appropriate to
5-31 the type of violation or conduct that is the basis for disciplinary
5-32 action.

5-33 SECTION 20. Section 164.003, Occupations Code, is amended
5-34 by amending Subsections (b) and (c) and adding Subsections (e) and
5-35 (f) to read as follows:

5-36 (b) Rules adopted under this section must require that:

5-37 (1) an informal meeting in compliance with Section
5-38 2001.054, Government Code, be scheduled not later than the 180th
5-39 day after the date the complaint is filed with the board under
5-40 Section 154.051, unless good cause is shown by the board for
5-41 scheduling the informal meeting after that date;

5-42 (2) the board give notice to the license holder of the
5-43 time and place of the meeting not later than the 30th day before the
5-44 date the meeting is held;

5-45 (3) the complainant and the license holder be provided
5-46 an opportunity to be heard;

5-47 (4) ~~[(2)]~~ the board's legal counsel or a
5-48 representative of the attorney general be present to advise the
5-49 board or the board's staff; and

5-50 (5) ~~[(3)]~~ a member of the board's staff at the meeting
5-51 present to the board's representative the facts the staff
5-52 reasonably believes it could prove by competent evidence or
5-53 qualified witnesses at a hearing.

5-54 (c) An affected physician is entitled to:

5-55 (1) reply to the staff's presentation; ~~and~~
5-56 (2) present the facts the physician reasonably
5-57 believes the physician could prove by competent evidence or
5-58 qualified witnesses at a hearing;

5-59 (3) be present in person or through an attorney at the
5-60 entire meeting with the board's representative, except for
5-61 deliberations as to the disposition of the complaint;

5-62 (4) receive, with the required notice of the meeting,
5-63 a complete copy of any exculpatory evidence, reports, or
5-64 information in the possession or control of the board or the board's
5-65 staff;

5-66 (5) receive, at least 10 days before the date of the
5-67 meeting, a complete copy of any information, including reports,
5-68 summaries, and clinical records provided to the board's
5-69 representative by the board's staff; and

6-1 (6) if applicable, a statement and explanation of the
 6-2 standard of care the physician is alleged to have violated,
 6-3 including any reports of an expert physician panel and clinical
 6-4 peer-reviewed information used by the board to establish the
 6-5 existence of the alleged violation.

6-6 (e) For purposes of Subsections (c)(4), (c)(5), and (c)(6),
 6-7 the information provided by the board to the physician must include
 6-8 the facts of the case as known to the board and any expert physician
 6-9 panel report. The board is not required under those subsections to
 6-10 provide the following information:

6-11 (1) a board investigative report or memorandum, unless
 6-12 the report or memorandum contains exculpatory evidence or
 6-13 information;

6-14 (2) the identity of a nontestifying complainant; or

6-15 (3) attorney-client communications, attorney work
 6-16 product, or other materials covered by a privilege recognized by
 6-17 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

6-18 (f) If the license holder has previously been the subject of
 6-19 disciplinary action by the board, the board shall schedule the
 6-20 informal meeting as soon as practicable but not later than the
 6-21 deadline prescribed by Subsection (b)(1).

6-22 SECTION 21. Subchapter A, Chapter 164, Occupations Code, is
 6-23 amended by adding Section 164.0035 to read as follows:

6-24 Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. If, during
 6-25 the 180-day period prescribed by Section 164.003(b)(1), the board
 6-26 determines that the complaint is a baseless or unfounded complaint,
 6-27 the board shall dismiss the complaint and include a statement in the
 6-28 records of the complaint that the reason for the dismissal is
 6-29 because the complaint was baseless or unfounded.

6-30 SECTION 22. Section 164.004, Occupations Code, is amended
 6-31 by amending Subsection (a) and adding Subsection (c) to read as
 6-32 follows:

6-33 (a) Except in the case of a suspension under Section 164.059
 6-34 or under the terms of an agreement between the board and a license
 6-35 holder, a revocation, suspension, involuntary modification, or
 6-36 other disciplinary action relating to a license is not effective
 6-37 unless, before board proceedings are instituted:

6-38 (1) the board gives notice, in a manner consistent
 6-39 with the notice requirements under Section 154.053, to the affected
 6-40 license holder of the facts or conduct alleged to warrant the
 6-41 intended action, including, if appropriate, a statement and
 6-42 explanation of the standard of care allegedly violated by the
 6-43 license holder; ~~and~~

6-44 (2) the license holder is provided with any
 6-45 exculpatory evidence, reports, or information in the possession or
 6-46 control of the board; and

6-47 (3) the license holder is given an opportunity to show
 6-48 compliance with all requirements of law for the retention of the
 6-49 license, at the license holder's option, either in writing or
 6-50 through personal appearance at an informal meeting with one or more
 6-51 representatives of the board.

6-52 (c) For purposes of Subsection (a), the information
 6-53 provided by the board to the physician must include the facts of the
 6-54 case as known to the board and any expert physician panel report.
 6-55 The board is not required under that subsection to provide the
 6-56 following information:

6-57 (1) a board investigative report or memorandum, unless
 6-58 the report or memorandum contains exculpatory evidence or
 6-59 information;

6-60 (2) the identity of a nontestifying complainant; or

6-61 (3) attorney-client communications, attorney work
 6-62 product, or other materials covered by a privilege recognized by
 6-63 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

6-64 SECTION 23. Section 164.010, Occupations Code, is amended
 6-65 by adding Subsection (c) to read as follows:

6-66 (c) The board shall immediately investigate:

6-67 (1) a violation of a disciplinary order by a license
 6-68 holder described by Subsection (a); or

6-69 (2) a complaint filed against a license holder

7-1 described by Subsection (a).

7-2 SECTION 24. Subsection (c), Section 164.011, Occupations
7-3 Code, is amended to read as follows:

7-4 (c) A stay or injunction may not be granted if the license
7-5 holder's continued practice presents a danger to the public. A stay
7-6 or injunction may not be granted for a term that exceeds 120 days.

7-7 SECTION 25. Section 164.051, Occupations Code, is amended
7-8 by amending Subsections (a) and (c) and adding Subsection (d) to
7-9 read as follows:

7-10 (a) The board may refuse to admit a person to its
7-11 examination or refuse to issue a license to practice medicine and
7-12 may take disciplinary action against a person if the person:

7-13 (1) commits an act prohibited under Section 164.052;

7-14 (2) is convicted of, or is placed on deferred
7-15 adjudication community supervision or deferred disposition for:

7-16 (A) a felony; or

7-17 (B) a misdemeanor involving moral turpitude;

7-18 (3) commits or attempts to commit a direct or indirect
7-19 violation of a rule adopted under this subtitle, either as a
7-20 principal, accessory, or accomplice;

7-21 (4) is unable to practice medicine with reasonable
7-22 skill and safety to patients because of:

7-23 (A) illness;

7-24 (B) drunkenness;

7-25 (C) excessive use of drugs, narcotics,
7-26 chemicals, or another substance; or

7-27 (D) a mental or physical condition;

7-28 (5) is found by a court judgment to be of unsound mind;

7-29 (6) fails to practice medicine in an acceptable
7-30 professional manner consistent with public health and welfare;

7-31 (7) is removed, suspended, or is subject to
7-32 disciplinary action taken by the person's peers in a local,
7-33 regional, state, or national professional medical association or
7-34 society, or is disciplined by a licensed hospital or medical staff
7-35 of a hospital, including removal, suspension, limitation of
7-36 hospital privileges, or other disciplinary action, if the board
7-37 finds that the action:

7-38 (A) was based on unprofessional conduct or
7-39 professional incompetence that was likely to harm the public; and

7-40 (B) was appropriate and reasonably supported by
7-41 evidence submitted to the board;

7-42 (8) is subject to repeated or recurring meritorious
7-43 health care liability claims that in the board's opinion evidence
7-44 professional incompetence likely to injure the public; or

7-45 (9) except as provided by Subsection (d), holds a
7-46 license to practice medicine subject to disciplinary action by
7-47 another state, or subject to disciplinary action by the uniformed
7-48 services of the United States, based on acts by the person that are
7-49 prohibited under Section 164.052 or are similar to acts described
7-50 by this subsection.

7-51 (c) A certified copy of the record of another state that
7-52 takes action described by Subsection (a)(9) or (d) is conclusive
7-53 evidence of that action.

7-54 (d) The board shall revoke a license issued under this
7-55 subtitle if the license holder held a license to practice medicine
7-56 in another state that has been revoked by the licensing authority in
7-57 that state.

7-58 SECTION 26. Subsection (a), Section 164.053, Occupations
7-59 Code, is amended to read as follows:

7-60 (a) For purposes of Section 164.052(a)(5), unprofessional
7-61 or dishonorable conduct likely to deceive or defraud the public
7-62 includes conduct in which a physician:

7-63 (1) commits an act that violates any ~~[the laws of this]~~
7-64 state or federal law if the act is connected with the physician's
7-65 practice of medicine;

7-66 (2) fails to keep complete and accurate records of
7-67 purchases and disposals of:

7-68 (A) drugs listed in Chapter 481, Health and
7-69 Safety Code; or

8-1 (B) controlled substances scheduled in the
8-2 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
8-3 U.S.C. Section 801 et seq.);

8-4 (3) writes prescriptions for or dispenses to a person
8-5 who:

8-6 (A) is known to be an abuser of narcotic drugs,
8-7 controlled substances, or dangerous drugs; or

8-8 (B) the physician should have known was an abuser
8-9 of narcotic drugs, controlled substances, or dangerous drugs;

8-10 (4) writes false or fictitious prescriptions for:

8-11 (A) dangerous drugs as defined by Chapter 483,
8-12 Health and Safety Code; or

8-13 (B) controlled substances scheduled in Chapter
8-14 481, Health and Safety Code, or the Comprehensive Drug Abuse
8-15 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

8-16 (5) prescribes or administers a drug or treatment that
8-17 is nontherapeutic in nature or nontherapeutic in the manner the
8-18 drug or treatment is administered or prescribed;

8-19 (6) prescribes, administers, or dispenses in a manner
8-20 inconsistent with public health and welfare:

8-21 (A) dangerous drugs as defined by Chapter 483,
8-22 Health and Safety Code; or

8-23 (B) controlled substances scheduled in Chapter
8-24 481, Health and Safety Code, or the Comprehensive Drug Abuse
8-25 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

8-26 (7) violates Section 311.0025, Health and Safety Code;

8-27 (8) fails to supervise adequately the activities of
8-28 those acting under the supervision of the physician; or

8-29 (9) delegates professional medical responsibility or
8-30 acts to a person if the delegating physician knows or has reason to
8-31 know that the person is not qualified by training, experience, or
8-32 licensure to perform the responsibility or acts.

8-33 SECTION 27. Section 164.057, Occupations Code, is amended
8-34 to read as follows:

8-35 Sec. 164.057. REQUIRED SUSPENSION OR REVOCATION OF LICENSE
8-36 FOR CERTAIN ~~FELONY~~ OFFENSES. (a) The board shall suspend a
8-37 physician's license on proof that the physician has been:

8-38 (1) initially convicted of:

8-39 (A) a felony; or

8-40 (B) a misdemeanor under Chapter 22, Penal Code,
8-41 other than a misdemeanor punishable by fine only; or

8-42 (2) subject to an initial finding by the trier of fact
8-43 of guilt of a felony under:

8-44 (A) ~~(1)~~ Chapter 481 or 483, Health and Safety
8-45 Code;

8-46 (B) ~~(2)~~ Section 485.033, Health and Safety
8-47 Code; or

8-48 (C) ~~(3)~~ the Comprehensive Drug Abuse
8-49 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

8-50 (b) On final conviction for an offense ~~a felony~~ described
8-51 by Subsection (a), the board shall revoke the physician's license.

8-52 SECTION 28. Section 164.059, Occupations Code, is amended
8-53 to read as follows:

8-54 Sec. 164.059. TEMPORARY SUSPENSION OR RESTRICTION OF
8-55 LICENSE. (a) The president of the board ~~[, with board approval,]~~
8-56 shall appoint a three-member disciplinary panel consisting of board
8-57 members to determine whether a person's license to practice
8-58 medicine should be temporarily suspended or restricted.

8-59 (b) If the disciplinary panel determines from the evidence
8-60 ~~[or information]~~ presented to the panel that a person licensed to
8-61 practice medicine would, by the person's continuation in
8-62 unrestricted practice, constitute a real danger to the health or
8-63 safety of the person's patients ~~[continuing threat to the public~~
8-64 ~~welfare]~~, the disciplinary panel shall temporarily suspend or
8-65 restrict the license of that person.

8-66 (c) A license may be suspended or restricted by a
8-67 disciplinary panel under this section without notice or hearing ~~[on~~
8-68 ~~the complaint]~~ if:

8-69 (1) the board immediately provides notice of the

9-1 suspension or restriction to the license holder; and

9-2 (2) [~~institution of proceedings for~~] a hearing on the
 9-3 temporary suspension or restriction before a disciplinary panel of
 9-4 the board is scheduled for the earliest possible date after 10 days'
 9-5 notice of hearing [~~initiated simultaneously with the temporary~~
 9-6 suspension; and

9-7 [(2) a hearing is held under Chapter 2001, Government
 9-8 Code, and this subtitle as soon as possible].

9-9 (d) Notwithstanding Chapter 551, Government Code, the
 9-10 disciplinary panel may hold a meeting by telephone conference call
 9-11 if immediate action is required and convening of the panel at one
 9-12 location is inconvenient for any member of the disciplinary panel.

9-13 (e) After the hearing before the disciplinary panel
 9-14 described by Subsection (c), if the disciplinary panel affirms the
 9-15 temporary suspension or restriction of the license holder's
 9-16 license, the board shall schedule an informal compliance meeting
 9-17 that meets the requirements of Section 2001.054(c), Government
 9-18 Code, and Section 164.004 of this code to be held as soon as
 9-19 practicable, unless the license holder waives the informal meeting
 9-20 or an informal meeting has already been held with regard to the
 9-21 issues that are the basis for the temporary suspension or
 9-22 restriction.

9-23 (f) If the license holder is unable to show compliance at
 9-24 the informal meeting described by Subsection (e) regarding the
 9-25 issues that are the basis for the temporary suspension or
 9-26 restriction, a board representative shall file a formal complaint
 9-27 under Section 164.005 as soon as practicable.

9-28 (g) If, after the hearing described by Subsection (c), the
 9-29 disciplinary panel does not temporarily suspend or restrict the
 9-30 license holder's license, the facts that were the basis for the
 9-31 temporary suspension or restriction may not be the sole basis of
 9-32 another proceeding to temporarily suspend or restrict the license
 9-33 holder's license. The board may use those same facts in a
 9-34 subsequent investigation to obtain new information that may be the
 9-35 basis for the temporary suspension or restriction of the license
 9-36 holder's license. For purposes of this subsection, facts that are
 9-37 the basis for the temporary suspension or restriction of a license
 9-38 holder's license include facts presented to the disciplinary panel
 9-39 and facts known to the board or a representative of the board at the
 9-40 time evidence was presented to the disciplinary panel.

9-41 SECTION 29. Subsection (c), Section 164.060, Occupations
 9-42 Code, is amended to read as follows:

9-43 (c) If the board, during its review of a complaint against a
 9-44 physician, discovers an act or omission that may constitute a
 9-45 felony, a misdemeanor involving moral turpitude, a violation of
 9-46 state or federal narcotics or controlled substance laws, ~~or~~ an
 9-47 offense involving fraud or abuse under the Medicare or Medicaid
 9-48 programs, or a violation of the workers' compensation laws under
 9-49 Subtitle A, Title 5, Labor Code, the board shall immediately report
 9-50 that act or omission to the appropriate prosecuting authority.

9-51 SECTION 30. (a) This Act takes effect immediately if it
 9-52 receives a vote of two-thirds of all the members elected to each
 9-53 house, as provided by Section 39, Article III, Texas Constitution.
 9-54 If this Act does not receive the vote necessary for immediate
 9-55 effect, this Act takes effect September 1, 2003.

9-56 (b) The Texas State Board of Medical Examiners shall adopt
 9-57 rules as required by Subsection (f), Section 164.001, Occupations
 9-58 Code, as added by this Act, not later than January 1, 2004.

9-59 (c) The change in law made by this Act by the amendment of
 9-60 Section 164.051, Occupations Code, applies to a physician whose
 9-61 license to practice medicine in another state was revoked on,
 9-62 before, or after the effective date of this Act.

9-63 (d) The change in law made by this Act by the amendment of
 9-64 Section 164.057, Occupations Code, applies only to a person who is
 9-65 initially convicted of an offense on or after the effective date of
 9-66 this Act. A person initially convicted of an offense before that
 9-67 date is governed by the law in effect on the date the conviction
 9-68 occurred, and the former law is continued in effect for that
 9-69 purpose.

10-1 SECTION 31. (a) The changes in law made by this Act
10-2 relating to the biennial registration of physicians apply to a
10-3 person who files with the Texas State Board of Medical Examiners an
10-4 application for registration under Chapter 156, Occupations Code,
10-5 as amended by this Act, on or after January 1, 2004. A person who
10-6 files an application before that date is governed by the law in
10-7 effect on the date the application was filed, and the former law is
10-8 continued in effect for that purpose.

10-9 (b) The Texas State Board of Medical Examiners may adopt a
10-10 staggered registration system as provided by Section 156.003,
10-11 Occupations Code, as amended by this Act, on or after September 1,
10-12 2004.

10-13 (c) The Texas State Board of Medical Examiners shall adopt
10-14 the rules required by Chapter 156, Occupations Code, as amended by
10-15 this Act, not later than December 1, 2003.

10-16 SECTION 32. The change in law made by this Act by the
10-17 enactment of Section 153.0535, Occupations Code, applies to a
10-18 registration permit fee that becomes due on or after January 1,
10-19 2004. A registration permit fee that becomes due before that date
10-20 is governed by the law in effect on the date the fee became due, and
10-21 the former law is continued in effect for that purpose.

10-22 SECTION 33. The change in law made by this Act relating to
10-23 the investigation and disposition of a complaint and any proceeding
10-24 begun as a result of a complaint investigation applies only to a
10-25 complaint filed with the Texas State Board of Medical Examiners on
10-26 or after the effective date of this Act. A complaint filed before
10-27 the effective date of this Act is governed by the law in effect on
10-28 the date the complaint was made, and the former law is continued in
10-29 effect for that purpose.

10-30 * * * * *