

BILL ANALYSIS

S.B. 402
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The State has regulated podiatry since 1923 through different agency structures. Since 1995, the Texas State Board of Podiatric Medical Examiners has been responsible for ensuring that safe and quality podiatric services are provided to the citizens of Texas. The Board has three primary functions: license qualified individuals to practice podiatry in Texas; set standards relating to the practice of podiatry; and enforce the Podiatric Medical Act, including investigating and resolving complaints. The Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Podiatric Medical Examiners in SECTION 9, SECTION 17, SECTION 19, SECTION 20, and SECTION 21 of this bill. In addition, under the general rulemaking authority already granted to the policymaking body, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

The bill amends the Occupations Code relating to the administration and functions of the Texas State Board of Podiatric Medical Examiners. The bill also incorporates several standard across-the-board recommendations of the Sunset Commission.

Continuation of the Board

The bill continues the Texas State Board of Podiatric Medical Examiners until September 1, 2017.

Board Member Provisions

The bill authorizes Board members to receive reimbursement for travel expenses, including meals and lodging, instead of only receiving reimbursement for transportation expenses. The bill also prohibits Board members from serving as voting members on task forces or advisory committees that make recommendations to the Board. The bill further requires the Board to include a public Board member in informal settlement conferences.

Licensing Process

The bill changes the basis for delinquent license renewal fees from the exam fee to the Board's normally required renewal fee. For licenses expired for 90 days or less the renewal fee would be equal to 1.2 times the normal renewal fee, while for licenses expired for more than 90 days but less than one year the fee would be equal to twice the normal renewal fee. The bill also eliminates the requirement that active, out-of-state podiatrists must pass a clinical skills exam to become licensed in Texas if it was not also required of Texas licensees at the time the out-of-state podiatrist became licensed in their state. The bill further requires the Board to adopt rules that list the specific criminal convictions that would permit the Board to revoke, suspend, or deny a license.

Enforcement Authority

The bill authorizes the Board to order refunds as part of the settlement conference process, and prohibits the amount of a refund from exceeding the amount the consumer paid to the person for

a service regulated by the Podiatric Medical Act. The bill increases the Board's maximum administration penalty amount from \$2,500 to \$5,000 per violation, per day, and requires the Board to adopt an administrative penalty matrix in rule. The bill further authorizes the Board to issue cease-and-desist orders to stop unlicensed activity, after providing the unlicensed person with notice and opportunity for a hearing. Finally, the bill authorizes the Board to conduct inspections of podiatrists' premises in the course of an investigation, or to determine compliance with a Board order. The bill updates standard Sunset across-the-board language requiring the Board to maintain information on complaints, and to notify the parties about the status of complaints as well as requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

The bill requires the president of the Board to appoint a disciplinary panel that consists of three board members to determine whether a person's license should be temporarily suspended. A person whose practice constitutes a continuing threat to the public welfare. A license may be suspended by a disciplinary panel without notice or hearing if immediately provides notice of the suspension or a hearing is scheduled for the earliest possible date after the 10th day after the notice of hearing. The disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel is inconvenient for any member. If temporary suspension is upheld at informal compliance meeting the disciplinary procedure is to be initiated as soon as practicable, if the temporary suspension is not upheld, the facts used to suspend the license may not be the sole basis of another hearing to temporarily suspend a license, but may be the basis for obtaining new information for the temporary suspension of a license.

Conflict of Interest and Board Member Provisions

S.B. 402 updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill adds standard Sunset language authorizing the Governor to designate the Board's presiding officer. The bill updates standard Sunset language requiring members of the Board to complete training before assuming their duties, requiring the Board to separate its policymaking duties from the agency's management functions and updates language specifying the grounds for removing a Board member. Appointments to the Board shall now be made without regard to age.

Administrative Process

S.B. 402 adds standard Sunset across-the-board language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public.

EFFECTIVE DATE

September 1, 2005.