

By: Truitt, Fletcher

H.B. No. 2271

Substitute the following for H.B. No. 2271:

By: Laubenberg

C.S.H.B. No. 2271

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of certain chiropractic clinics;
3 providing administrative and criminal penalties.

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

5 SECTION 1. Subtitle G, Title 2, Health and Safety Code, is
6 amended by adding Chapter 147 to read as follows:

7 CHAPTER 147. NON-DOCTOR-OF-CHIROPRACTIC-OWNED CHIROPRACTIC
8 CLINICS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 147.001. DEFINITIONS. In this chapter:

11 (1) "Applicant" means a person or business seeking to
12 be licensed under this chapter or seeking the renewal of a license
13 under this chapter.

14 (2) "Board" means the Texas Board of Chiropractic
15 Examiners.

16 (3) "Contracting doctor of chiropractic" means a
17 person engaged in the practice of chiropractic as described by
18 Section 201.002, Occupations Code, who holds a current active
19 license to practice chiropractic and who has entered into a
20 contractual agreement with a licensed chiropractic clinic owner to
21 provide chiropractic care.

22 (4) "Controlling person" means:

23 (A) an officer or director of a corporation
24 seeking a license under this chapter, a shareholder holding 10

1 percent or more of the voting stock of a corporation seeking to own
2 or operate a non-doctor-of-chiropractic-owned chiropractic clinic,
3 or a partner of a partnership seeking to own or operate a
4 non-doctor-of-chiropractic-owned chiropractic clinic; or

5 (B) an individual who possesses, directly or
6 indirectly, the power to direct or cause the direction of the
7 management or policies of a company that owns and operates a
8 non-doctor-of-chiropractic-owned chiropractic clinic through the
9 ownership of voting securities, by contract or otherwise.

10 (5) "Doctor of chiropractic" means a person engaged in
11 the practice of chiropractic as described by Section 201.002,
12 Occupations Code.

13 (6) "License holder" means an individual or entity
14 licensed under this chapter who owns or operates a
15 non-doctor-of-chiropractic-owned chiropractic clinic.

16 (7) "Non-doctor-of-chiropractic-owned chiropractic
17 clinic" means a chiropractic facility licensed under this chapter
18 and registered under Section 201.312, Occupations Code.

19 Sec. 147.002. APPLICABILITY. (a) For the purposes of this
20 section, "physician" means:

21 (1) an individual licensed to practice medicine in
22 this state under Subtitle B, Title 3, Occupations Code;

23 (2) a professional association of physicians licensed
24 under Subtitle B, Title 3, Occupations Code, and organized under
25 the Texas Professional Association Act (Article 1528f, Vernon's
26 Texas Civil Statutes);

27 (3) an approved nonprofit health corporation

1 certified under Chapter 162, Occupations Code; or

2 (4) another person wholly owned by physicians and
3 engaged in the practice of medicine as permitted by Subtitle B,
4 Title 3, Occupations Code.

5 (b) This chapter does not apply to a physician.

6 [Sections 147.003-147.050 reserved for expansion]

7 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

8 Sec. 147.051. RULES. (a) The board shall adopt rules as
9 necessary to administer this chapter in accordance with Chapter
10 2001, Government Code.

11 (b) Each license holder is governed and controlled by this
12 chapter and the rules adopted by the board.

13 Sec. 147.052. INTERAGENCY COOPERATION. (a) Each state
14 agency that, in performing duties under other law, affects the
15 regulation of non-doctor-of-chiropractic-owned chiropractic
16 clinics shall cooperate with the board and other state agencies as
17 necessary to fully implement and enforce this chapter.

18 (b) The Texas Department of Insurance, the division of
19 workers' compensation of the Texas Department of Insurance, and the
20 attorney general's office shall assist in the implementation of
21 this chapter and shall provide information to the board on request.

22 Sec. 147.053. USE OF FEES. A fee collected by the board
23 under this chapter shall be used to implement and enforce this
24 chapter.

25 [Sections 147.054-147.100 reserved for expansion]

26 SUBCHAPTER C. LICENSING

27 Sec. 147.101. LICENSE REQUIRED. A

1 non-doctor-of-chiropractic-owned chiropractic clinic may not allow
2 a doctor of chiropractic to engage in or offer chiropractic
3 services or chiropractic care at the clinic unless each controlling
4 person for the clinic holds a license issued under this chapter.

5 Sec. 147.102. LICENSE APPLICATION. (a) Each controlling
6 person for a non-doctor-of-chiropractic-owned chiropractic clinic
7 that desires an original or renewal
8 non-doctor-of-chiropractic-owned chiropractic clinic license
9 shall file with the board a written application accompanied by the
10 application fee.

11 (b) The board may require an applicant for a license to
12 provide information and certifications necessary to determine that
13 the applicant meets the licensing requirements of this chapter.
14 The board may also require the applicant to provide information and
15 certifications necessary to determine whether individuals
16 affiliated with the applicant are qualified to serve as controlling
17 persons.

18 (c) An applicant, a license holder, the spouse of an
19 applicant or license holder, a partner of a limited liability
20 partnership, or any stockholder of a corporation is ineligible for
21 a license for two years after the date of a final board action on the
22 denial or revocation of a license applied for or issued under this
23 chapter. This restriction does not apply to a denial or revocation
24 of a license based on:

25 (1) an inadvertent error or omission in the
26 application if that error or omission is promptly corrected;

27 (2) the fact that the experience documented to the

1 board was insufficient at the time of the previous application; or

2 (3) the board being unable to complete the background
3 investigation required under Section 147.103 because of
4 insufficient information received from a local, state, or federal
5 law enforcement agency.

6 (d) An applicant, a license holder, the spouse of an
7 applicant or license holder, a partner of a limited liability
8 partnership, or any stockholder of a corporation is ineligible for
9 a license until the first anniversary of the date of a final board
10 action on the denial or revocation of a license applied for or
11 issued under this chapter if:

12 (1) the basis of the denial or revocation was that one
13 or more of the controlling persons affiliated with the applicant or
14 license holder was determined by the board to be unsuitable; or

15 (2) a controlling person who is determined to be
16 unsuitable under Subdivision (1) has in fact ceased to be a
17 controlling person of the applicant or license holder.

18 Sec. 147.103. LICENSE REQUIREMENTS. (a) In this section:

19 (1) "Assigned employee" means a full-time employee
20 whose normal work week is at least 25 hours per week and whose work
21 is performed in this state. The term does not include an employee
22 hired to support or supplement the client's workforce in special
23 work situations, such as employee absences.

24 (2) "Good moral character" means a personal history of
25 honesty, trustworthiness, fairness, a good reputation for fair
26 dealing, and respect for the rights of others and for the laws of
27 this state and nation.

1 (b) To be qualified to serve as a controlling person for a
2 non-doctor-of-chiropractic-owned chiropractic clinic under this
3 chapter, the person must be at least 18 years of age, be of good
4 moral character, and have educational, managerial, or business
5 experience relevant to:

6 (1) operation of a business entity offering
7 chiropractic care; or

8 (2) service as a controlling person of a chiropractic
9 care facility.

10 (c) The board shall conduct a thorough background
11 investigation of each applicant to determine whether the applicant
12 is qualified under this chapter. The board may deny an application
13 for the issuance or renewal of a license if it finds that the
14 applicant is not qualified to be a controlling person under this
15 chapter. The investigation must include:

16 (1) the submission of fingerprints for processing
17 through appropriate local, state, and federal law enforcement
18 agencies; and

19 (2) examination by the board of police or other law
20 enforcement records maintained by local, state, or federal law
21 enforcement agencies.

22 (d) Board background investigations are governed by this
23 chapter and by Chapter 53, Occupations Code, and Section 411.122,
24 Government Code. Conviction of a crime does not automatically
25 disqualify a controlling person, require the revocation of a
26 license, or require the denial of an application for an original or
27 renewal license. The board shall consider criminal convictions as

1 provided by Chapter 53, Occupations Code, and Section 411.122,
2 Government Code.

3 (e) Each license holder shall maintain a registered agent
4 for the service of process in this state.

5 (f) An applicant for an original or renewal license must
6 demonstrate that the clinic for which the person is applying as a
7 controlling person has a net worth as follows:

8 (1) \$50,000 if the clinic employs fewer than five
9 assigned employees;

10 (2) \$75,000 if the clinic employs at least five but not
11 more than eight assigned employees; or

12 (3) \$100,000 if the clinic employs more than eight
13 assigned employees.

14 (g) The applicant shall demonstrate the net worth of the
15 clinic to the board by providing the board with the applicant's
16 financial statement or a copy of the applicant's most recent
17 federal tax return. The net worth requirement may also be satisfied
18 through guarantees, letters of credit, or other security acceptable
19 to the board. A guaranty is not acceptable under this subsection
20 unless the applicant submits sufficient evidence to satisfy the
21 board that the guarantor has adequate resources to satisfy the
22 obligations of the guaranty.

23 (h) In calculating net worth, an applicant shall include
24 adequate reserves for all taxes and insurance, including reserves
25 for claims incurred but not paid and for claims incurred but not
26 reported under plans of self-insurance for health benefits. The
27 calculation of net worth by an applicant shall be made according to

1 Section 448, Internal Revenue Code of 1986.

2 (i) A document submitted to establish net worth must reflect
3 the net worth as of a date not earlier than six months before the
4 date on which the application is submitted. A document submitted to
5 establish net worth must be prepared or certified by an independent
6 certified public accountant. Information supplied regarding net
7 worth, including copies of federal tax returns, is proprietary and
8 confidential and is exempt from disclosure to third parties, other
9 than to other governmental agencies with a reasonable legitimate
10 purpose for obtaining the information.

11 Sec. 147.104. FEES. (a) Each applicant for an original or
12 renewal license shall pay to the board on the issuance or renewal of
13 the license a fee set by the board by rule in an amount not to exceed
14 \$3,000.

15 (b) The board may charge reasonable fees for license
16 applications and license renewals, investigations, inspections,
17 and any other administrative or enforcement responsibilities
18 created under this chapter.

19 Sec. 147.105. POSTING OF LICENSES. (a) The board by rule
20 shall determine the form and content of:

21 (1) licenses issued under this chapter; and

22 (2) notices required to be posted under this section.

23 (b) Each license issued under this chapter must be posted in
24 a conspicuous place in the principal place of business in this state
25 of the license holder. Each license holder shall display, in a
26 place that is clear and unobstructed to public view, a notice
27 stating that the business operated at the location is licensed and

1 regulated by the board and that any questions or complaints should
2 be directed to the board.

3 (c) Each license holder issued a
4 non-doctor-of-chiropractic-owned chiropractic clinic license
5 under this chapter shall provide a copy of the license to the board
6 and to each contracting doctor of chiropractic on receipt of the
7 initial license and annually on renewal.

8 Sec. 147.106. LICENSE NOT ASSIGNABLE; CHANGE OF NAME OR
9 LOCATION. (a) A license holder may not conduct business under any
10 name other than that specified in the license. A license issued
11 under this chapter is not assignable. A license holder may not
12 conduct business under any fictitious or assumed name without prior
13 written authorization from the board. The board may not authorize
14 the use of a name that is so similar to that of a public office or
15 agency or to that of another license holder that the public may be
16 confused or misled by its use. A license holder may not conduct
17 business under more than one name unless it has obtained a separate
18 license for each name.

19 (b) A license holder may change its licensed name at any
20 time by notifying the board and paying a fee for each change of
21 name. The board by rule shall set the fee for a name change in an
22 amount not to exceed \$50. A license holder may change its name on
23 renewal of the license without the payment of the name change fee.

24 (c) A license holder must notify the board in writing within
25 30 days of:

26 (1) any change in the location of its primary business
27 office;

1 (2) the addition of more business offices; or

2 (3) a change in the location of business records
3 maintained by the license holder.

4 Sec. 147.107. RECORDS. Records of patient care and
5 treatment are the sole property of the patient and must be
6 maintained and kept in the custody of the doctor of chiropractic who
7 treats the patient for a period prescribed by the board.

8 [Sections 147.108-147.150 reserved for expansion]

9 SUBCHAPTER D. ADMINISTRATIVE AND CRIMINAL PENALTIES

10 Sec. 147.151. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A
11 person may not:

12 (1) offer chiropractic services without holding a
13 license under this chapter as a non-doctor-of-chiropractic-owned
14 chiropractic clinic;

15 (2) use the name or title "chiropractic clinic" or
16 "chiropractic offices," or any derivation of the term
17 "chiropractic," or otherwise represent that the person is licensed
18 under this chapter unless the person holds a license issued under
19 this chapter;

20 (3) represent as the person's own the license of
21 another location or represent that a facility is licensed if the
22 person does not hold a license;

23 (4) give materially false or forged evidence to the
24 board in connection with obtaining or renewing a license or in
25 connection with disciplinary proceedings under this chapter; or

26 (5) use or attempt to use a license that has expired or
27 been revoked.

1 (b) A person that violates Subsection (a) commits an
2 offense. An offense under this subsection is a Class A misdemeanor.

3 (c) The board may notify the attorney general of a
4 violation, and the attorney general may apply to a district court in
5 Travis County for permission to file suit in the nature of quo
6 warranto or for injunctive relief, or both. The attorney general
7 may not be required to post a bond for injunctive relief.

8 Sec. 147.152. DISCIPLINARY ACTIONS. (a) For purposes of
9 this section, "conviction" includes a plea of nolo contendere or a
10 finding of guilt, regardless of adjudication.

11 (b) Disciplinary action may be taken against a license
12 holder by the board on any of the following grounds:

13 (1) the conviction of a license holder or any
14 controlling person affiliated with a license holder of bribery,
15 fraud, or intentional or material misrepresentation in obtaining,
16 attempting to obtain, or renewing a license;

17 (2) the conviction of a license holder or any
18 controlling person affiliated with a license holder of a crime that
19 relates to the operation of a non-doctor-of-chiropractic-owned
20 chiropractic clinic or the ability of the license holder or
21 controlling person to operate a non-doctor-of-chiropractic-owned
22 chiropractic clinic;

23 (3) the conviction of a license holder or any
24 controlling person affiliated with a license holder of a crime that
25 relates to the classification, misclassification, or
26 underreporting of employees under Subtitle A, Title 5, Labor Code;

27 (4) the conviction of a license holder or any

1 controlling person affiliated with a license holder of a crime that
2 relates to the establishment or maintenance of a self-insurance
3 program, whether health insurance, workers' compensation
4 insurance, or other insurance;

5 (5) the conviction of a license holder or any
6 controlling person affiliated with a license holder of a crime that
7 relates to fraud, deceit, or misconduct in the operation of a
8 non-doctor-of-chiropractic-owned chiropractic clinic;

9 (6) engaging in services of a
10 non-doctor-of-chiropractic-owned chiropractic clinic without a
11 license;

12 (7) transferring or attempting to transfer a license
13 issued under this chapter;

14 (8) violating this chapter or any order or rule issued
15 by the board under this chapter;

16 (9) failing to notify the board, in writing, of the
17 felony conviction of any controlling person not later than the 30th
18 day after the date on which that conviction is final;

19 (10) failing to cooperate with an investigation,
20 examination, or audit of the license holder's records conducted by
21 the license holder's insurance company or the insurance company's
22 designee, as allowed by the insurance contract or as authorized by
23 the board;

24 (11) failing to notify the board not later than the
25 30th day after the effective date of the change of any change in
26 ownership, principal business address, or the address of accounts
27 and records;

1 (12) failing to correct any tax filing or payment
2 deficiency within a reasonable time as determined by the board;

3 (13) refusing, after reasonable notice, to meet
4 reasonable health and safety requirements within the license
5 holder's control and made known to the license holder by a federal
6 or state agency;

7 (14) a delinquency in the payment of any taxes or debts
8 owed to this state other than a tax or debt subject to a legitimate
9 dispute;

10 (15) knowingly making a material misrepresentation to
11 an insurance company, the board, or any other governmental agency;
12 or

13 (16) failing to maintain the net worth requirements
14 required under Section 147.103.

15 (c) On a finding that a license holder or applicant has
16 violated one or more provisions of Subsection (b), the board may:

17 (1) deny an application for a license;

18 (2) revoke, restrict, or refuse to renew a license;

19 (3) impose an administrative penalty in an amount not
20 less than \$1,000 per violation, but not more than \$50,000;

21 (4) issue a reprimand; or

22 (5) place the license holder on probation for a period
23 and subject to conditions that the board specifies.

24 (d) On revocation of a license, the license holder shall
25 immediately return the revoked license to the board and notify all
26 employees, all patients, and the board that the clinic may no longer
27 provide chiropractic care and services.

1 (e) The board may take disciplinary action, deny a license
2 application or renewal, or revoke a license only on a determination
3 that a controlling person is unqualified, after notice to, and an
4 opportunity for a hearing by, the affected applicant, license
5 holder, or controlling person in accordance with Chapter 2001,
6 Government Code.

7 (f) If a license is revoked or renewal is denied, the
8 affected license holder may not request a reinstatement hearing
9 before the first anniversary of the date of revocation or denial.
10 The board may reinstate or renew the license only if the cause of
11 the revocation or denial has been corrected.

12 SECTION 2. Not later than November 1, 2009, the Texas Board
13 of Chiropractic Examiners shall adopt rules as required by Section
14 147.051, Health and Safety Code, as added by this Act.

15 SECTION 3. This Act takes effect September 1, 2009, except
16 that Section 147.101 and Subchapter D, Chapter 147, Health and
17 Safety Code, as added by this Act, take effect January 1, 2010.