

By: Hamilton

H.B. No. 4334

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of pain management clinics.

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

SECTION 1. Subtitle B, Title 3, Occupations Code, is amended by adding Chapter 167 to read as follows:

CHAPTER 167. REGULATION OF PAIN MANAGEMENT CLINICS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 167.001. DEFINITION. In this chapter, "pain management clinic" means a publicly or privately owned facility for which a majority of patients are issued a prescription for opioids, benzodiazepines, or barbiturates, including carisoprodol.

Sec. 167.002. EXEMPTIONS. This chapter does not apply to:

(1) a medical or dental school or an outpatient clinic associated with a medical or dental school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a hospice established under 40 T.A.C. Section 97.403 or defined by 42 C.F.R. Section 418.3;

(4) a facility maintained or operated by this state;

(5) a clinic maintained or operated by the United States; or

(6) a medical facility otherwise licensed and regulated by the board.

1 [Sections 167.003-167.050 reserved for expansion]

2 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

3 Sec. 167.051. ADOPTION OF RULES. (a) The board shall adopt  
4 rules necessary to implement this chapter, including rules to  
5 address, for a pain management clinic:

6 (1) the operation of the clinic;

7 (2) personnel requirements for the clinic, including  
8 requirements for a physician who practices at a clinic;

9 (3) standards to ensure quality of patient care;

10 (4) licensing application and renewal procedures and  
11 requirements;

12 (5) inspections and complaint investigations; and

13 (6) patient billing procedures.

14 (b) The board by rule shall prescribe fees under this  
15 chapter in amounts sufficient to administer the requirements of  
16 this chapter.

17 Sec. 167.052. INSPECTIONS. The board may inspect a pain  
18 management clinic, including the documents of a physician  
19 practicing at the clinic, at reasonable times as necessary to  
20 ensure compliance with this chapter.

21 Sec. 167.053. COMPLAINTS. The board shall investigate a  
22 complaint alleging a violation of this chapter or a rule adopted  
23 under this chapter by a pain management clinic licensed under this  
24 chapter or a physician who owns or operates a clinic in the same  
25 manner as other complaints under this subtitle.

26 [Sections 167.054-167.100 reserved for expansion]

27 SUBCHAPTER C. LICENSING OF CLINIC

1       Sec. 167.101. LICENSE REQUIRED. (a) A pain management  
2 clinic may not operate in this state unless the clinic is licensed  
3 under this chapter.

4       (b) A license issued under this chapter is not transferable  
5 or assignable.

6       Sec. 167.102. LICENSE APPLICATION AND ISSUANCE. (a) A  
7 physician who owns or operates a pain management clinic shall apply  
8 for a license for the clinic under this chapter. A pain management  
9 clinic must be owned and operated by a medical director who is a  
10 physician who practices in this state under an unrestricted  
11 license.

12       (b) An applicant for a license under this chapter must  
13 submit an application to the board on a form prescribed by the  
14 board.

15       (c) Each application must be accompanied by a nonrefundable  
16 license fee, not to exceed \$1,000, in an amount set by the board.

17       (d) The board shall issue a license if, after inspection and  
18 investigation, it finds that the clinic meets the requirements of  
19 this chapter and the standards adopted by the board under this  
20 chapter.

21       [Sections 167.103-167.150 reserved for expansion]

22                   SUBCHAPTER D. LICENSE RENEWAL

23       Sec. 167.151. EXPIRATION OF LICENSE. (a) A license issued  
24 under this chapter expires on the second anniversary of the date it  
25 is issued.

26       (b) The board shall grant a 180-day grace period from the  
27 expiration date of a license to renew the license.

1       (c) The owner or operator of a pain management clinic for  
2 which a license has expired may not continue to operate the clinic  
3 until the clinic's license is renewed.

4       Sec. 167.152. REQUIREMENTS FOR RENEWAL. (a) The owner or  
5 operator of a pain management clinic may apply to renew a license  
6 issued to the clinic under this chapter by:

7           (1) submitting a renewal application to the board on  
8 the form prescribed by the board before the expiration of the grace  
9 period under Section 167.151;

10          (2) paying the renewal fee, not to exceed \$1,000, set  
11 by the board;

12          (3) passing an inspection of the pain management  
13 clinic to ensure compliance with this chapter; and

14          (4) complying with any other requirements adopted by  
15 board rule.

16       (b) The board may waive the renewal fee for a clinic if no  
17 complaints against the clinic exist in the board's records.

18       (c) The board may waive a license renewal inspection for a  
19 clinic if no complaints against the clinic exist in the board's  
20 records.

21       (d) If a license is not renewed before the expiration of the  
22 grace period under Section 167.151, the clinic must reapply for an  
23 original license to operate the clinic.

24       Sec. 167.153. RENEWAL FEE FOR LATE RENEWAL. A pain  
25 management clinic with a license that has been expired for 90 days  
26 or less may renew the license by paying to the board a fee that is  
27 equal to 1-1/4 times the amount of the renewal fee for the license.

1 If a license has been expired for more than 90 days but less than 180  
2 days, the clinic may renew the license by paying to the board a fee  
3 that is equal to 1-1/2 times the amount of the renewal fee for the  
4 license.

5 [Sections 167.154-167.200 reserved for expansion]

6 SUBCHAPTER E. REGULATION OF CLINICS; ENFORCEMENT

7 Sec. 167.201. REGULATION OF PERSON AFFILIATED WITH CLINIC.

8 (a) The owner or operator of a pain management clinic, an employee  
9 of the clinic, or a person with whom a clinic contracts for services  
10 may not:

11 (1) have been denied, by any jurisdiction, a license  
12 under which the person may prescribe, dispense, administer, supply,  
13 or sell a controlled substance;

14 (2) have held a license issued by any jurisdiction,  
15 under which the person may prescribe, dispense, administer, supply,  
16 or sell a controlled substance, that has been restricted; or

17 (3) have been subject to disciplinary action by any  
18 licensing entity for conduct that was a result of dependency on  
19 drugs or alcohol.

20 (b) A clinic may not be owned wholly or partly by a person  
21 who has been convicted of or pled nolo contendere to:

22 (1) an offense that constitutes a felony; or

23 (2) an offense that constitutes a misdemeanor, the  
24 facts of which relate to the distribution of illegal prescription  
25 drugs or a controlled substance as defined by Section 551.003(11).

26 (c) The owner or operator of a pain management clinic shall:

27 (1) be on-site at the clinic at least 33 percent of the

1 clinic's total number of operating hours; and

2 (2) review at least 33 percent of the total number of  
3 patient files of the clinic, including the patient files of a clinic  
4 employee or contractor to whom authority for patient care has been  
5 delegated by the clinic.

6 Sec. 167.202. DISCIPLINARY ACTION. (a) A violation of this  
7 chapter or a rule adopted under this chapter is grounds for  
8 disciplinary action against a pain management clinic licensed under  
9 this chapter or an owner or operator of a clinic licensed under this  
10 chapter.

11 (b) A violation of this chapter may be enforced in the same  
12 manner as any other violation of this subtitle.

13 SECTION 2. (a) Not later than March 1, 2010, the Texas  
14 Medical Board shall adopt the rules required by Chapter 167,  
15 Occupations Code, as added by this Act.

16 (b) Notwithstanding Section 167.101, Occupations Code, as  
17 added by this Act, a pain management clinic must obtain a license  
18 required by that section not later than September 1, 2010.

19 SECTION 3. (a) Except as provided by Subsection (b) of this  
20 section, this Act takes effect September 1, 2009.

21 (b) Section 167.101, Occupations Code, as added by this Act,  
22 takes effect September 1, 2010.