

BILL ANALYSIS

S.B. 190
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that the process by which the Texas Medical Board accepts and investigates complaints against physicians needs improvement and that provisions relating to the regulation of physicians, physician assistants, acupuncturists, and surgical assistants require clarification. S.B. 190 seeks to amend current law to improve the process by which the Texas Medical Board accepts and investigates complaints against physicians and to make other clarifying changes to the regulation of physicians, physician assistants, acupuncturists, and surgical assistants.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Physician Assistant Board in SECTIONS 2.03 and 2.04 of this bill.

ANALYSIS

S.B. 190 amends the Occupations Code to remove a provision prohibiting the Texas Medical Board from setting, charging, collecting, receiving, or depositing a fee in excess of \$700 for a reinstated license to practice medicine after cancellation for a cause.

S.B. 190 prohibits the board from considering or acting on a complaint involving care provided more than seven years before the date on which the complaint is filed unless the care was provided to a minor. The bill prohibits the board, if the care was provided to a minor, from considering or acting on a complaint involving the care after the later of the date the minor is 21 years of age or the seventh anniversary of the date of the care. The bill authorizes the board, on receipt of a complaint, to consider a previously investigated complaint to determine whether there is a pattern of practice violating the Medical Practice Act.

S.B. 190 prohibits the board from accepting anonymous complaints and requires a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a physician to include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. The bill requires the board to notify the physician who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint not later than the 15th day after the date the complaint is filed with the board, unless the notice would jeopardize an investigation. The bill defines "anonymous complaint," "insurance agent," "insurer," and "third-party administrator" for purposes of the above provisions.

S.B. 190 changes the deadline by which the board is required to complete a preliminary investigation of a complaint from not later than the 30th day after the date of receiving the complaint to not later than the 45th day after the date of receiving the complaint.

S.B. 190 specifies that a provision of law making an applicant who holds a medical license that is currently restricted for cause ineligible for a license to practice medicine applies to an

applicant who holds a medical license that is currently restricted for cause under a disciplinary order. The bill includes in the applicants ineligible for a license to practice medicine an applicant who held a medical license that was surrendered under certain circumstances. The bill makes certain provisions of law establishing the conditions under which an applicant is not eligible for a license applicable to an applicant on whose license certain disciplinary actions have been taken or against whom certain investigations or proceedings are instituted by another country, rather than by a province of Canada, and an applicant against whom certain prosecutions are pending in a court in another country, rather than in a Canadian court.

S.B. 190 makes certain provisions of law establishing the conditions under which the board is prohibited from granting a provisional license to practice medicine applicable to an applicant who has a medical license suspended or revoked by another country, rather than by a Canadian province, and an applicant who holds a medical license that is subject to a restriction, disciplinary order, or probationary order and that was issued by another country, rather than by a province of Canada.

S.B. 190, in a provision of law establishing the conditions that must be met by a physician in order for the board to issue a faculty temporary license to practice medicine, specifies that a physician is required to hold a current medical license that is unrestricted and not subject to a disciplinary order or probation in another country, rather than a Canadian province. The bill, in that same provision of law, specifies that a physician is prohibited from holding a medical license in another country, rather than in a Canadian province, that has any restrictions, disciplinary orders, or probation and prohibits a physician from holding a medical license that was surrendered or canceled for cause or revoked by another state or country or by a uniformed service of the United States.

S.B. 190, in a provision of law requiring the rules adopted by the board regarding procedures governing certain informal proceedings to require that the board give notice to a license holder of the time and place of an informal meeting by a certain deadline, changes that deadline from not later than the 30th day before the date the meeting is held to not later than the 45th day before the date the meeting is held. The bill changes the deadline by which the license holder must provide to the board the license holder's rebuttal to a complaint that includes an allegation that the license holder has violated a standard of care from at least five business days before the date of the informal meeting to at least 15 business days before the date of the informal meeting in order for the information to be considered at the meeting. The bill requires the board to make a recording of the informal settlement conference proceeding on request by a physician under review. The bill provides that a recording is a part of the investigative file and prohibits the recording from being released to a third party unless authorized under the Medical Practice Act. The bill authorizes the board to charge the physician a fee to cover the cost of recording the hearing.

S.B. 190 authorizes the Texas Physician Assistant Board to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under the Physician Assistant Licensing Act in executive sessions. The bill requires the physician assistant board to vote and announce its decisions in open session and exempts deliberations by the physician assistant board relating to license applications and disciplinary actions from open meetings requirements.

S.B. 190 specifies, in provisions establishing the eligibility requirements for a physician assistant license, that the applicant be of good professional character, rather than of good moral character. The bill removes a provision creating an exception from provisions of law establishing the conditions under which an applicant is not eligible for a physician assistant license if the physician assistant board takes the condition into consideration in determining whether to issue the license.

S.B. 190 authorizes the physician assistant board to adopt rules and set fees relating to granting

temporary licenses and extending the expiration dates of temporary licenses. The bill requires the physician assistant board by rule to set a time limit for the term of a temporary license. The bill removes a provision establishing the conditions under which the physician assistant board is authorized to issue a temporary license and authorizing a temporary license to be valid for not more than one year after the date issued as determined by physician assistant board rule.

S.B. 190 authorizes the physician assistant board by rule to issue a physician assistant postgraduate training permit to a physician assistant not otherwise licensed by the board who is participating in a graduate physician assistant education training program approved by the board. The bill clarifies that a physician assistant postgraduate training permit does not authorize the performance of a physician assistant act by the permit holder unless the act is performed as a part of the graduate medical education training program and under the supervision of a physician and a physician assistant. The bill provides that the physician assistant board has jurisdiction to discipline a permit holder whose permit has expired if the violation of the law occurred during the time the permit was valid. The bill requires the permit, if an investigation is open when the permit expires, to be executory and authorizes the physician assistant board to retain jurisdiction.

S.B. 190 establishes that a person's physician assistant license is automatically canceled if the license has been expired for one year or longer, unless an investigation is pending, and prohibits the person from renewing the license. The bill authorizes a physician assistant whose license is automatically canceled to obtain a new license by complying with the requirements, fees, and procedures for obtaining a new license. The bill authorizes the physician assistant board to issue a new license without examination to a person whose license is automatically canceled for less than two years.

S.B. 190 authorizes the Texas State Board of Acupuncture Examiners to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under provisions of law relating to acupuncture in executive sessions. The bill requires the acupuncture board to vote and announce its decisions in open session and exempts deliberations by the acupuncture board relating to license applications and disciplinary actions from open meetings requirements.

S.B. 190 provides that each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the acupuncture board or an employee or agent of the Texas Medical Board relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the acupuncture board or employees or agents of the Texas Medical Board involved in discipline of a license holder. The bill exempts investigation records relating to an application for license and disciplinary action of a license holder from state public information laws. The bill establishes, for purposes of provisions limiting access to investigative files, that investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the acupuncture board. The bill removes a provision requiring the acupuncture board to prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in a certain manner.

S.B. 190 authorizes the Texas Medical Board to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under provisions of law relating to surgical assistants in executive sessions. The bill requires the board to vote and announce its decisions in open session. The bill exempts deliberations and records relating to the professional character and fitness of applicants as well as related to disciplinary actions from open meetings requirements and public information laws.

S.B. 190 specifies, in a provision of law establishing the eligibility requirements for a surgical assistant license, that the applicant be of good professional character, rather than of good moral character.

EFFECTIVE DATE

September 1, 2011.