

BILL ANALYSIS

Senate Research Center
82R1150 JAM-F

S.B. 190
By: Nelson
Health & Human Services
2/25/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Medical Board (TMB) is responsible for protecting the public's health, safety, and welfare through the regulation of the practice of medicine.

S.B. 190 improves the process by which TMB accepts and investigates complaints against physicians and makes other clarifying changes to the regulation of physicians, physician assistants, acupuncturists, and surgical assistants.

As proposed, S.B. 190 amends current law relating to the licensing and regulation of physicians, physician assistants, acupuncturists, and surgical assistants.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Physician Assistant Board in SECTION 2.03 (Section 204.155, Occupations Code) and SECTION 2.04 (Section 204.1551, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Physician Assistant Board is modified in SECTION 2.03 (Section 204.155, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Acupuncture Examiners in SECTION 3.02 (Section 205.208, Occupations Code) and SECTION 3.03 (Section 205.209, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. REGULATION OF PHYSICIANS

SECTION 1.01. Amends Section 153.051(d), Occupations Code, to delete existing text prohibiting the Texas Medical Board (TMB) from setting, charging, collecting, receiving, or depositing a fee in excess of \$700 for a reinstated license after cancellation for cause.

SECTION 1.02. Amends Section 154.051, Occupations Code, by adding Subsections (d) and (e), as follows:

(d) Prohibits TMB 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. Prohibits TMB, 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.

(e) Authorizes TMB, on receipt of a complaint, to consider a previously investigated complaint to determine whether there is a pattern of practice violating this subtitle.

SECTION 1.03. Amends Subchapter B, Occupations Code, by adding Section 154.0535, as follows:

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) Defines "anonymous complaint," "insurance agent," "insurer," and "third-party administrator" in this section.

(b) Prohibits TMB from accepting anonymous complaints.

(c) Requires that a complaint filed with TMB by an insurance agent, insurer, pharmaceutical company, or third-party administrator (party) against a physician, notwithstanding any confidentiality requirements under Chapter 552 (Public Information), Government Code, this subtitle, or rules adopted under this subtitle, include the name and address of the party filing the complaint. Requires TMB, not later than the 15th day after the date the complaint is filed with TMB, to notify the physician who is the subject of the complaint of the name and address of the party who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 1.04. Amends Section 154.057(b), Occupations Code, to require TMB to complete a preliminary investigation of the complaint not later than the 45th day, rather than 30th day, after the date of receiving the complaint.

SECTION 1.05. Amends Section 155.003(e), Occupations Code, as follows:

(e) Provides that an applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause under a disciplinary order or suspended for cause, rather than restricted for cause, canceled for cause, or suspended for cause, or held a medical license that was surrendered or canceled for cause or revoked by a state, another country, rather than a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation by another state or country or by a uniformed service of the United States; or

(3) a prosecution is pending against the applicant in any state or federal court or court in another country for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

Makes conforming and nonsubstantive changes.

SECTION 1.06. Amends Section 155.101(b), Occupations Code, to make conforming changes.

SECTION 1.07. Amends Section 155.104(b), Occupations Code, to prohibit a physician issued a faculty temporary license to practice medicine from having held 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 and to make conforming changes.

SECTION 1.08. Amends Section 164.003, Occupations Code, by amending Subsections (b) and (f) and by adding Subsection (i), as follows:

(b) Requires that the rules adopted under this section require, in addition to certain other criteria, that TMB give notice to the license holder of the time and place of the meeting not later than the 45th day, rather than 30th day, before the date the meeting is held.

(f) Requires a license holder to provide to TMB the license holder's rebuttal at least 15, rather than five, business days before the date of the meeting in order for the information to be considered at the meeting.

(i) Requires TMB, on request by a physician under review, to make a recording of the informal settlement conference proceeding. Provides that the recording is a part of the

investigative file and prohibits the recording from being released to a third party unless authorized under this subtitle. Authorizes TMB to charge the physician a fee to cover the cost of recording the hearing.

ARTICLE 2. REGULATION OF PHYSICIAN ASSISTANTS

SECTION 2.01. Amends Section 204.058, Occupations Code, as follows:

- (a) Creates this subsection from existing text and makes no further changes.
- (b) Authorizes the Texas Physician Assistant Board (PAB) to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires PAB to vote and to announce its decisions in open session. Provides that deliberations by PAB relating to license applications and disciplinary actions are exempt from Chapter 551 (Open Meetings), Government Code.

SECTION 2.02. Amends Sections 204.153(a) and (b), Occupations Code, as follows:

- (a) Requires an applicant, to be eligible for a license under this chapter, in addition to certain other criteria, to be of good professional, rather than moral, character.
- (b) Provides that, in addition to the requirements of Subsection (a), an applicant is not eligible for a license, rather than unless PAB takes the fact into consideration in determining whether to issue the license, if the applicant:
 - (1) has been issued a license, certificate, or registration as a physician assistant in this state or from a licensing authority in another state that is revoked or suspended; or
 - (2) is subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant.

SECTION 2.03. Amends Section 204.155, Occupations Code, as follows:

Sec. 204.155. TEMPORARY LICENSE. Deletes existing designation of Subsection (a). Authorizes PAB to adopt rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. Requires PAB by rule to set a time limit for the term of a temporary license. Deletes existing text authorizing PAB to issue a temporary license to an applicant who meets certain criteria. Deletes existing Subsection (b) authorizing a temporary license to be valid for not more than one year after the date issued as determined by PAB rule.

SECTION 2.04. Amends Subchapter D, Chapter 204, Occupations Code, by adding Section 204.1551, as follows:

- Sec. 204.1551. POSTGRADUATE TRAINING PERMIT. (a) Authorizes PAB by rule to issue a physician assistant postgraduate training permit (permit, except as provided in SECTION 3.03 of this bill) to a physician assistant not otherwise licensed by PAB who is participating in a graduate physician assistant education training program approved by PAB.
- (b) Provides that a 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.
 - (c) Provides that PAB 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. Requires that the permit, if an investigation is open when the permit expires, be executory and authorizes PAB to retain jurisdiction.

SECTION 2.05. Amends Section 204.156, Occupations Code, by adding Subsections (g) and (h), as follows:

(g) Provides that a person's license, if the person's license has been expired for one year or longer, is automatically canceled, unless an investigation is pending, and the person may not renew the license.

(h) 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. Authorizes PAB to issue a new license without examination to a person whose license is automatically canceled for less than two years.

ARTICLE 3. REGULATION OF ACUPUNCTURISTS

SECTION 3.01. Amends Section 205.060, Occupations Code, as follows:

Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. (a) Creates this subsection from existing text and makes no further changes.

(b) Authorizes the Texas State Board of Acupuncture Examiners (TBAE) to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires TBAE to vote and to announce its decisions in open sessions. Provides that the deliberations by TBAE relating to license applications and disciplinary actions are exempt from Chapter 551, Government Code.

SECTION 3.02. Amends Section 205.208, Occupations Code, as follows:

Sec. 205.208. TEMPORARY LICENSE. Authorizes TBAE to adopt rules and to recommend to TMB fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. Requires TBAE by rule to set a time limit for the term of a temporary license.

Deletes existing Subsection (a) authorizing TBAE, through the executive director of TMB, to issue a temporary license to practice acupuncture to an applicant who meets certain criteria. Deletes existing Subsection (b) providing that a temporary license is valid for 100 days after the date issued and may be extended only for another 30 days after the date the initial temporary license expires.

SECTION 3.03. Amends Subchapter E, Chapter 205, Occupations Code, by adding Section 205.209, as follows:

Sec. 205.209. POSTGRADUATE TRAINING PERMIT. (a) Authorizes TBAE by rule to issue an acupuncture postgraduate training permit (permit, except as provided in SECTION 2.04 of this bill) to an acupuncturist not otherwise licensed by TBAE who is participating in a graduate acupuncture education training program approved by TBAE.

(b) Provides that a permit does not authorize the performance of acupuncture by the permit holder unless the act is performed as a part of the graduate medical education training program and under the supervision of an acupuncturist.

(c) Provides that TBAE 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. Requires that the permit, if an investigation is open when the permit expires, be executory and authorizes TBAE to retain jurisdiction.

SECTION 3.04. Amends Section 205.3544, Occupations Code, as follows:

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. (a) Provides that each complaint, adverse report, investigation file, other investigation report, and other investigative information in possession of or received or gather by TBAE or a TMB employee or agent 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 TBAE or TMB employees or agents involved in discipline of a license holder.

(b) Provides that investigation records relating to an application for license and disciplinary action of license holder are exempt from Chapter 552, Government Code.

(c) Provides that investigative information, for purposes of this section, includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for TBAE.

Deletes existing text requiring TBAE to prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c) (relating to a confidential and privileged application for license).

ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

SECTION 4.01. Amends Subchapter B, Chapter 206, Occupations Code, by adding Section 206.059, as follows:

Sec. 206.059. MEDICAL BOARD MEETINGS; CONFIDENTIALITY. (a) Authorizes TMB to hear all evidence and arguments and to conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires TMB to vote and to announce its decisions in open session.

(b) Provides that deliberations and records relating to the professional character and fitness of applicants as well as related to disciplinary actions are exempt from Chapters 551 and 552, Government Code.

SECTION 4.02. Amends Section 206.203(a), Occupations Code, to require a person, except as provided by Section 206.206 (Temporary License), to be eligible for a license, in addition to certain other criteria, to be of good professional, rather than moral, character.

ARTICLE 5. TRANSITION PROVISIONS

SECTION 5.01. Makes application of Sections 153.051, 155.003, 155.101, 155.104, 204.153, 204.155, 205.208, and 206.203, Occupations Code, as amended by this Act, prospective.

SECTION 5.02. Makes application of Sections 154.051, 154.057, and 164.003, Occupations Code, as amended by this Act, and Section 154.0535, Occupations Code, as added by this Act, prospective.

SECTION 5.03. Makes application of Section 204.058, Occupations Code, as amended by this Act, and Sections 205.060(b) and 206.059, Occupations Code, as added by this Act, prospective.

SECTION 5.04. Makes application of Section 204.156, Occupations Code, as amended by this Act, prospective.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Effective date: September 1, 2011.