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(Kolkhorst)

S.B. No. 190

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of physicians, physician assistants, acupuncturists, and surgical assistants.

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

ARTICLE 1. REGULATION OF PHYSICIANS

SECTION 1.01. Subsection (d), Section 153.051, Occupations Code, is amended to read as follows:

(d) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

- (1) \$900 for a license;
 - (2) \$400 for a first registration permit;
 - (3) \$200 for a temporary license;
 - (4) \$400 for renewal of a registration permit;
 - (5) \$200 for a physician-in-training permit;
 - (6) \$600 for the processing of an application and the issuance of a registration for anesthesia in an outpatient setting;
 - (7) \$200 for an endorsement to other state medical boards;
 - (8) \$200 for a duplicate license; or
 - (9) ~~[\$700 for a reinstated license after cancellation for cause; or~~
- ~~[-10-]~~ \$1,200 for an annual fee under Section 167.011(c) for a program participant in the Texas Physician Health Program.

1 SECTION 1.02. Section 154.051, Occupations Code, is amended
2 by adding Subsections (d) and (e) to read as follows:

3 (d) The board may not consider or act on a complaint
4 involving care provided more than seven years before the date on
5 which the complaint is filed unless the care was provided to a
6 minor. If the care was provided to a minor, the board may not
7 consider or act on a complaint involving the care after the later
8 of:

9 (1) the date the minor is 21 years of age; or

10 (2) the seventh anniversary of the date of the care.

11 (e) On receipt of a complaint, the board may consider a
12 previously investigated complaint to determine whether there is a
13 pattern of practice violating this subtitle.

14 SECTION 1.03. Subchapter B, Chapter 154, Occupations Code,
15 is amended by adding Section 154.0535 to read as follows:

16 Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS.

17 (a) In this section:

18 (1) "Anonymous complaint" means a complaint that lacks
19 sufficient information to identify the source or the name of the
20 person who filed the complaint.

21 (2) "Insurance agent" means a person licensed under
22 Chapter 4054, Insurance Code.

23 (3) "Insurer" means an insurance company or other
24 entity authorized to engage in the business of insurance under
25 Subtitle C, Title 6, Insurance Code.

26 (4) "Third-party administrator" means a person
27 required to have a certificate of authority under Chapter 4151,

1 Insurance Code.

2 (b) The board may not accept anonymous complaints.

3 (c) Notwithstanding any confidentiality requirements under
4 Chapter 552, Government Code, this subtitle, or rules adopted under
5 this subtitle, a complaint filed with the board by an insurance
6 agent, insurer, pharmaceutical company, or third-party
7 administrator against a physician must include the name and address
8 of the insurance agent, insurer, pharmaceutical company, or
9 third-party administrator filing the complaint. Not later than the
10 15th day after the date the complaint is filed with the board, the
11 board shall notify the physician who is the subject of the complaint
12 of the name and address of the insurance agent, insurer,
13 pharmaceutical company, or third-party administrator who filed the
14 complaint, unless the notice would jeopardize an investigation.

15 SECTION 1.04. Subsection (b), Section 154.057, Occupations
16 Code, is amended to read as follows:

17 (b) The board shall complete a preliminary investigation of
18 the complaint not later than the 45th [~~30th~~] day after the date of
19 receiving the complaint. The board shall first determine whether
20 the physician constitutes a continuing threat to the public
21 welfare. On completion of the preliminary investigation, the board
22 shall determine whether to officially proceed on the complaint. If
23 the board fails to complete the preliminary investigation in the
24 time required by this subsection, the board's official
25 investigation of the complaint is considered to commence on that
26 date.

27 SECTION 1.05. Subsection (e), Section 155.003, Occupations

1 Code, is amended to read as follows:

2 (e) An applicant is not eligible for a license if:

3 (1) the applicant:

4 (A) holds a medical license that is currently
5 restricted for cause under a disciplinary order or ~~[, canceled for~~
6 ~~cause,~~] suspended for cause; ~~[,~~] or

7 (B) held a medical license that was surrendered
8 or canceled for cause or revoked by a state, another country [~~a~~
9 ~~province of Canada,~~] or a uniformed service of the United States;

10 (2) an investigation or a proceeding is instituted
11 against the applicant for the restriction, cancellation,
12 suspension, or revocation by another [~~in a~~] state or country [~~, a~~
13 ~~province of Canada,~~] or by a uniformed service of the United States;
14 or

15 (3) a prosecution is pending against the applicant in
16 any state or ~~[,~~] federal court ~~[,~~] or [~~Canadian~~] court in another
17 country for any offense that under the laws of this state is a
18 felony or a misdemeanor that involves moral turpitude.

19 SECTION 1.06. Subsection (b), Section 155.101, Occupations
20 Code, is amended to read as follows:

21 (b) The board may not grant a provisional license under this
22 section to an applicant who:

23 (1) has had a medical license suspended or revoked by
24 another state or country [~~a Canadian province~~]; or

25 (2) holds a medical license issued by another state or
26 country [~~a Canadian province~~] that is subject to a restriction,
27 disciplinary order, or probationary order.

1 SECTION 1.07. Subsection (b), Section 155.104, Occupations
2 Code, is amended to read as follows:

3 (b) The board may issue a faculty temporary license to
4 practice medicine to a physician as provided by this section. The
5 physician:

6 (1) must hold a current medical license that is
7 unrestricted and not subject to a disciplinary order or probation
8 in another state or country [~~a Canadian province~~] or have completed
9 at least three years of postgraduate residency;

10 (2) may not:

11 (A) hold a medical license in another state or
12 country [~~a Canadian province~~] that has any restrictions,
13 disciplinary orders, or probation; or

14 (B) have held a medical license that was
15 surrendered or canceled for cause or revoked by another state or
16 country or by a uniformed service of the United States;

17 (3) must pass the Texas medical jurisprudence
18 examination; and

19 (4) must hold a salaried faculty position equivalent
20 to at least the level of assistant professor and be working
21 full-time at one of the following institutions:

22 (A) The University of Texas Medical Branch at
23 Galveston;

24 (B) The University of Texas Southwestern Medical
25 Center at Dallas;

26 (C) The University of Texas Health Science Center
27 at Houston;

1 (D) The University of Texas Health Science Center
2 at San Antonio;

3 (E) The University of Texas Health Center at
4 Tyler;

5 (F) The University of Texas M. D. Anderson Cancer
6 Center;

7 (G) Texas A&M University College of Medicine;

8 (H) the Schools of Medicine at Texas Tech
9 University Health Sciences Center;

10 (I) Baylor College of Medicine;

11 (J) the University of North Texas Health Science
12 Center at Fort Worth;

13 (K) an institutional sponsor of a graduate
14 medical education program accredited by the Accreditation Council
15 for Graduate Medical Education; or

16 (L) a nonprofit health corporation certified
17 under Section 162.001 and affiliated with a program described by
18 Paragraph (K).

19 SECTION 1.08. Section 164.003, Occupations Code, is amended
20 by amending Subsections (b) and (f) and adding Subsection (i) to
21 read as follows:

22 (b) Rules adopted under this section must require that:

23 (1) an informal meeting in compliance with Section
24 2001.054, Government Code, be scheduled not later than the 180th
25 day after the date the board's official investigation of the
26 complaint is commenced as provided by Section 154.057(b), unless
27 good cause is shown by the board for scheduling the informal meeting

1 after that date;

2 (2) the board give notice to the license holder of the
3 time and place of the meeting not later than the 45th [~~30th~~] day
4 before the date the meeting is held;

5 (3) the complainant and the license holder be provided
6 an opportunity to be heard;

7 (4) at least one of the board members or district
8 review committee members participating in the informal meeting as a
9 panelist be a member who represents the public;

10 (5) the board's legal counsel or a representative of
11 the attorney general be present to advise the board or the board's
12 staff; and

13 (6) a member of the board's staff be at the meeting to
14 present to the board's representative the facts the staff
15 reasonably believes it could prove by competent evidence or
16 qualified witnesses at a hearing.

17 (f) The notice required by Subsection (b)(2) must be
18 accompanied by a written statement of the nature of the allegations
19 and the information the board intends to use at the meeting. If the
20 board does not provide the statement or information at that time,
21 the license holder may use that failure as grounds for rescheduling
22 the informal meeting. If the complaint includes an allegation that
23 the license holder has violated the standard of care, the notice
24 must include a copy of the report by the expert physician reviewer.
25 The license holder must provide to the board the license holder's
26 rebuttal at least 15 [~~five~~] business days before the date of the
27 meeting in order for the information to be considered at the

1 meeting.

2 (i) On request by a physician under review, the board shall
3 make a recording of the informal settlement conference proceeding.
4 The recording is a part of the investigative file and may not be
5 released to a third party unless authorized under this subtitle.
6 The board may charge the physician a fee to cover the cost of
7 recording the hearing.

8 ARTICLE 2. REGULATION OF PHYSICIAN ASSISTANTS

9 SECTION 2.01. Section 204.058, Occupations Code, is amended
10 to read as follows:

11 Sec. 204.058. OPEN MEETINGS; ADMINISTRATIVE PROCEDURE LAW.

12 (a) Except as otherwise provided by this chapter, the physician
13 assistant board is subject to Chapters 551 and 2001, Government
14 Code.

15 (b) The physician assistant board may hear all evidence and
16 arguments and conduct deliberations relating to license
17 applications and disciplinary actions under this chapter in
18 executive sessions. The board shall vote and announce its
19 decisions in open session. Deliberations by the board relating to
20 license applications and disciplinary actions are exempt from
21 Chapter 551, Government Code.

22 SECTION 2.02. Subsections (a) and (b), Section 204.153,
23 Occupations Code, are amended to read as follows:

24 (a) To be eligible for a license under this chapter, an
25 applicant must:

26 (1) successfully complete an educational program for
27 physician assistants or surgeon assistants accredited by the

1 Committee on Allied Health Education and Accreditation or by that
2 committee's predecessor or successor entities;

3 (2) pass the Physician Assistant National Certifying
4 Examination administered by the National Commission on
5 Certification of Physician Assistants;

6 (3) hold a certificate issued by the National
7 Commission on Certification of Physician Assistants;

8 (4) be of good professional ~~[moral]~~ character;

9 (5) meet any other requirement established by board
10 rule; and

11 (6) pass a jurisprudence examination approved by the
12 physician assistant board as provided by Subsection (a-1).

13 (b) In addition to the requirements of Subsection (a), an
14 applicant is not eligible for a license~~[, unless the physician~~
15 ~~assistant board takes the fact into consideration in determining~~
16 ~~whether to issue the license,]~~ if the applicant:

17 (1) has been issued a license, certificate, or
18 registration as a physician assistant in this state or from a
19 licensing authority in another state that is revoked or suspended;
20 or

21 (2) is subject to probation or other disciplinary
22 action for cause resulting from the applicant's acts as a physician
23 assistant.

24 SECTION 2.03. Section 204.155, Occupations Code, is amended
25 to read as follows:

26 Sec. 204.155. TEMPORARY LICENSE. ~~[(a)]~~ The physician
27 assistant board may adopt rules and set fees relating to granting

1 temporary licenses and extending the expiration dates of temporary
2 licenses. The board by rule shall set a time limit for the term of
3 [issue] a temporary license [to an applicant who:

4 ~~[(1) meets all the qualifications for a license under~~
5 ~~this chapter but is waiting for the license to be issued at the next~~
6 ~~scheduled meeting of the board;~~

7 ~~[(2) seeks to temporarily substitute for a licensed~~
8 ~~physician assistant during the license holder's absence, if the~~
9 ~~applicant:~~

10 ~~[(A) is licensed or registered in good standing~~
11 ~~in another state;~~

12 ~~[(B) submits an application on a form prescribed~~
13 ~~by the board; and~~

14 ~~[(C) pays the appropriate fee prescribed by the~~
15 ~~board; or~~

16 ~~[(3) has graduated from an educational program for~~
17 ~~physician assistants or surgeon assistants described by Section~~
18 ~~204.153(a)(1) not later than six months before applying for a~~
19 ~~temporary license and is waiting for examination results from the~~
20 ~~National Commission on Certification of Physician Assistants.~~

21 ~~[(b) A temporary license may be valid for not more than one~~
22 ~~year after the date issued as determined by board rule].~~

23 SECTION 2.04. Subchapter D, Chapter 204, Occupations Code,
24 is amended by adding Section 204.1551 to read as follows:

25 Sec. 204.1551. POSTGRADUATE TRAINING PERMIT. (a) The
26 physician assistant board by rule may issue a physician assistant
27 postgraduate training permit to a physician assistant not otherwise

1 licensed by the board who is participating in a graduate physician
2 assistant education training program approved by the board.

3 (b) A physician assistant postgraduate training permit does
4 not authorize the performance of a physician assistant act by the
5 permit holder unless the act is performed:

6 (1) as a part of the graduate medical education
7 training program; and

8 (2) under the supervision of a physician and a
9 physician assistant.

10 (c) The physician assistant board has jurisdiction to
11 discipline a permit holder whose permit has expired if the
12 violation of the law occurred during the time the permit was valid.
13 If an investigation is open when the permit expires, the permit
14 shall be executory and the board may retain jurisdiction.

15 SECTION 2.05. Section 204.156, Occupations Code, is amended
16 by adding Subsections (g) and (h) to read as follows:

17 (g) If the person's license has been expired for one year or
18 longer, the person's license is automatically canceled, unless an
19 investigation is pending, and the person may not renew the license.

20 (h) A physician assistant whose license is automatically
21 canceled may obtain a new license by complying with the
22 requirements, fees, and procedures for obtaining a new license.
23 The physician assistant board may issue a new license without
24 examination to a person whose license is automatically canceled for
25 less than two years.

26 ARTICLE 3. REGULATION OF ACUPUNCTURISTS

27 SECTION 3.01. Section 205.060, Occupations Code, is amended

1 to read as follows:

2 Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS,
3 AND ADMINISTRATIVE PROCEDURE LAWS. (a) Except as provided by this
4 chapter, the acupuncture board is subject to Chapters 551, 552, and
5 2001, Government Code.

6 (b) The acupuncture board may hear all evidence and
7 arguments and conduct deliberations relating to license
8 applications and disciplinary actions under this chapter in
9 executive sessions. The board shall vote and announce its
10 decisions in open session. Deliberations by the board relating to
11 license applications and disciplinary actions are exempt from
12 Chapter 551, Government Code.

13 SECTION 3.02. Section 205.3544, Occupations Code, is
14 amended to read as follows:

15 Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES.
16 (a) Each complaint, adverse report, investigation file, other
17 investigation report, and other investigative information in the
18 possession of or received or gathered by the acupuncture board or a
19 medical board employee or agent relating to a license holder, an
20 application for license, or a criminal investigation or proceeding
21 is privileged and confidential and is not subject to discovery,
22 subpoena, or other means of legal compulsion for release to anyone
23 other than the acupuncture board or medical board employees or
24 agents involved in discipline of a license holder.

25 (b) Investigation records relating to an application for
26 license and disciplinary action of a license holder are exempt from
27 Chapter 552, Government Code.

1 (c) For purposes of this section, investigative information
2 includes information relating to the identity of, and a report made
3 by, a physician performing or supervising compliance monitoring for
4 the acupuncture board [~~The acupuncture board shall prohibit or~~
5 ~~limit access to an investigation file relating to a license holder~~
6 ~~in an informal proceeding in the manner provided by Section~~
7 ~~164.007(c)~~].

8 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

9 SECTION 4.01. Subchapter B, Chapter 206, Occupations Code,
10 is amended by adding Section 206.059 to read as follows:

11 Sec. 206.059. MEDICAL BOARD MEETINGS; CONFIDENTIALITY.

12 (a) The medical board may hear all evidence and arguments and
13 conduct deliberations relating to license applications and
14 disciplinary actions under this chapter in executive sessions. The
15 medical board shall vote and announce its decisions in open
16 session.

17 (b) Deliberations and records relating to the professional
18 character and fitness of applicants as well as related to
19 disciplinary actions are exempt from Chapters 551 and 552,
20 Government Code.

21 SECTION 4.02. Subsection (a), Section 206.203, Occupations
22 Code, is amended to read as follows:

23 (a) Except as provided by Section 206.206, to be eligible
24 for a license, a person must:

- 25 (1) be of good professional [~~moral~~] character;
- 26 (2) have not been convicted of a felony or a crime
27 involving moral turpitude;

1 (3) not use drugs or alcohol to an extent that affects
2 the applicant's professional competency;

3 (4) not have had a license or certification revoked by
4 a licensing agency or by a certifying professional organization;
5 and

6 (5) not have engaged in fraud or deceit in applying for
7 a license under this chapter.

8 ARTICLE 5. TRANSITION PROVISIONS

9 SECTION 5.01. Sections 153.051, 155.003, 155.101, 155.104,
10 204.153, 204.155, and 206.203, Occupations Code, as amended by this
11 Act, apply only to an application for a license filed with the
12 applicable licensing authority on or after the effective date of
13 this Act. An application for a license filed before the effective
14 date of this Act is governed by the law in effect on the date the
15 application was filed, and that law is continued in effect for that
16 purpose.

17 SECTION 5.02. Sections 154.051, 154.057, and 164.003,
18 Occupations Code, as amended by this Act, and Section 154.0535,
19 Occupations Code, as added by this Act, apply only to the
20 investigation of a complaint filed on or after the effective date of
21 this Act. The investigation of a complaint filed before that date
22 is governed by the law in effect on the date the complaint was
23 filed, and that law is continued in effect for that purpose.

24 SECTION 5.03. Section 204.058, Occupations Code, as amended
25 by this Act, and Subsection (b), Section 205.060, and Section
26 206.059, Occupations Code, as added by this Act, apply only to a
27 contested case hearing conducted on or after the effective date of

1 this Act. A contested case filed before the effective date of this
2 Act is governed by the law in effect on the date the contested case
3 was filed, and that law is continued in effect for that purpose.

4 SECTION 5.04. Section 204.156, Occupations Code, as amended
5 by this Act, applies only to a license that expires on or after the
6 effective date of this Act. A license that expires before the
7 effective date of this Act is governed by the law in effect on the
8 date the license expires, and that law is continued in effect for
9 that purpose.

10 ARTICLE 6. EFFECTIVE DATE

11 SECTION 6.01. This Act takes effect September 1, 2011.