

1-1 By: Nelson S.B. No. 190
1-2 (In the Senate - Filed November 9, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 7, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 March 7, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 190 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the licensing and regulation of physicians, physician
1-11 assistants, acupuncturists, and surgical assistants.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. REGULATION OF PHYSICIANS

1-14 SECTION 1.01. Subsection (d), Section 153.051, Occupations
1-15 Code, is amended to read as follows:

1-16 (d) The board may not set, charge, collect, receive, or
1-17 deposit any of the following fees in excess of:

- 1-18 (1) \$900 for a license;
- 1-19 (2) \$400 for a first registration permit;
- 1-20 (3) \$200 for a temporary license;
- 1-21 (4) \$400 for renewal of a registration permit;
- 1-22 (5) \$200 for a physician-in-training permit;
- 1-23 (6) \$600 for the processing of an application and the
1-24 issuance of a registration for anesthesia in an outpatient setting;
- 1-25 (7) \$200 for an endorsement to other state medical
1-26 boards;

- 1-27 (8) \$200 for a duplicate license; or
- 1-28 (9) ~~[\$700 for a reinstated license after cancellation~~
1-29 ~~for cause; or~~

1-30 ~~[(10)]~~ \$1,200 for an annual fee under Section
1-31 167.011(c) for a program participant in the Texas Physician Health
1-32 Program.

1-33 SECTION 1.02. Section 154.051, Occupations Code, is amended
1-34 by adding Subsections (d) and (e) to read as follows:

1-35 (d) The board may not consider or act on a complaint
1-36 involving care provided more than seven years before the date on
1-37 which the complaint is filed unless the care was provided to a
1-38 minor. If the care was provided to a minor, the board may not
1-39 consider or act on a complaint involving the care after the later
1-40 of:

- 1-41 (1) the date the minor is 21 years of age; or
- 1-42 (2) the seventh anniversary of the date of the care.

1-43 (e) On receipt of a complaint, the board may consider a
1-44 previously investigated complaint to determine whether there is a
1-45 pattern of practice violating this subtitle.

1-46 SECTION 1.03. Subchapter B, Chapter 154, Occupations Code,
1-47 is amended by adding Section 154.0535 to read as follows:

1-48 Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS.

1-49 (a) In this section:

1-50 (1) "Anonymous complaint" means a complaint that lacks
1-51 sufficient information to identify the source or the name of the
1-52 person who filed the complaint.

1-53 (2) "Insurance agent" means a person licensed under
1-54 Chapter 4054, Insurance Code.

1-55 (3) "Insurer" means an insurance company or other
1-56 entity authorized to engage in the business of insurance under
1-57 Subtitle C, Title 6, Insurance Code.

1-58 (4) "Third-party administrator" means a person
1-59 required to have a certificate of authority under Chapter 4151,
1-60 Insurance Code.

1-61 (b) The board may not accept anonymous complaints.

1-62 (c) Notwithstanding any confidentiality requirements under
1-63 Chapter 552, Government Code, this subtitle, or rules adopted under

2-1 this subtitle, a complaint filed with the board by an insurance
 2-2 agent, insurer, pharmaceutical company, or third-party
 2-3 administrator against a physician must include the name and address
 2-4 of the insurance agent, insurer, pharmaceutical company, or
 2-5 third-party administrator filing the complaint. Not later than the
 2-6 15th day after the date the complaint is filed with the board, the
 2-7 board shall notify the physician who is the subject of the complaint
 2-8 of the name and address of the insurance agent, insurer,
 2-9 pharmaceutical company, or third-party administrator who filed the
 2-10 complaint, unless the notice would jeopardize an investigation.

2-11 SECTION 1.04. Subsection (b), Section 154.057, Occupations
 2-12 Code, is amended to read as follows:

2-13 (b) The board shall complete a preliminary investigation of
 2-14 the complaint not later than the 45th [~~30th~~] day after the date of
 2-15 receiving the complaint. The board shall first determine whether
 2-16 the physician constitutes a continuing threat to the public
 2-17 welfare. On completion of the preliminary investigation, the board
 2-18 shall determine whether to officially proceed on the complaint. If
 2-19 the board fails to complete the preliminary investigation in the
 2-20 time required by this subsection, the board's official
 2-21 investigation of the complaint is considered to commence on that
 2-22 date.

2-23 SECTION 1.05. Subsection (e), Section 155.003, Occupations
 2-24 Code, is amended to read as follows:

2-25 (e) An applicant is not eligible for a license if:

2-26 (1) the applicant:

2-27 (A) holds a medical license that is currently
 2-28 restricted for cause under a disciplinary order or [~~canceled for~~
 2-29 ~~cause,~~] suspended for cause; [~~]~~ or

2-30 (B) held a medical license that was surrendered
 2-31 or canceled for cause or revoked by a state, another country [~~a~~
 2-32 ~~province of Canada,~~] or a uniformed service of the United States;

2-33 (2) an investigation or a proceeding is instituted
 2-34 against the applicant for the restriction, cancellation,
 2-35 suspension, or revocation by another [~~in a~~] state or country [~~a~~
 2-36 ~~province of Canada,~~] or by a uniformed service of the United States;
 2-37 or

2-38 (3) a prosecution is pending against the applicant in
 2-39 any state or [~~]~~ federal court [~~]~~ or [~~Canadian~~] court in another
 2-40 country for any offense that under the laws of this state is a
 2-41 felony or a misdemeanor that involves moral turpitude.

2-42 SECTION 1.06. Subsection (b), Section 155.101, Occupations
 2-43 Code, is amended to read as follows:

2-44 (b) The board may not grant a provisional license under this
 2-45 section to an applicant who:

2-46 (1) has had a medical license suspended or revoked by
 2-47 another state or country [~~a Canadian province~~]; or

2-48 (2) holds a medical license issued by another state or
 2-49 country [~~a Canadian province~~] that is subject to a restriction,
 2-50 disciplinary order, or probationary order.

2-51 SECTION 1.07. Subsection (b), Section 155.104, Occupations
 2-52 Code, is amended to read as follows:

2-53 (b) The board may issue a faculty temporary license to
 2-54 practice medicine to a physician as provided by this section. The
 2-55 physician:

2-56 (1) must hold a current medical license that is
 2-57 unrestricted and not subject to a disciplinary order or probation
 2-58 in another state or country [~~a Canadian province~~] or have completed
 2-59 at least three years of postgraduate residency;

2-60 (2) may not:

2-61 (A) hold a medical license in another state or
 2-62 country [~~a Canadian province~~] that has any restrictions,
 2-63 disciplinary orders, or probation; or

2-64 (B) have held a medical license that was
 2-65 surrendered or canceled for cause or revoked by another state or
 2-66 country or by a uniformed service of the United States;

2-67 (3) must pass the Texas medical jurisprudence
 2-68 examination; and

2-69 (4) must hold a salaried faculty position equivalent

3-1 to at least the level of assistant professor and be working
3-2 full-time at one of the following institutions:
3-3 (A) The University of Texas Medical Branch at
3-4 Galveston;
3-5 (B) The University of Texas Southwestern Medical
3-6 Center at Dallas;
3-7 (C) The University of Texas Health Science Center
3-8 at Houston;
3-9 (D) The University of Texas Health Science Center
3-10 at San Antonio;
3-11 (E) The University of Texas Health Center at
3-12 Tyler;
3-13 (F) The University of Texas M. D. Anderson Cancer
3-14 Center;
3-15 (G) Texas A&M University College of Medicine;
3-16 (H) the Schools of Medicine at Texas Tech
3-17 University Health Sciences Center;
3-18 (I) Baylor College of Medicine;
3-19 (J) the University of North Texas Health Science
3-20 Center at Fort Worth;
3-21 (K) an institutional sponsor of a graduate
3-22 medical education program accredited by the Accreditation Council
3-23 for Graduate Medical Education; or
3-24 (L) a nonprofit health corporation certified
3-25 under Section 162.001 and affiliated with a program described by
3-26 Paragraph (K).

3-27 SECTION 1.08. Section 164.003, Occupations Code, is amended
3-28 by amending Subsections (b) and (f) and adding Subsection (i) to
3-29 read as follows:
3-30 (b) Rules adopted under this section must require that:
3-31 (1) an informal meeting in compliance with Section
3-32 2001.054, Government Code, be scheduled not later than the 180th
3-33 day after the date the board's official investigation of the
3-34 complaint is commenced as provided by Section 154.057(b), unless
3-35 good cause is shown by the board for scheduling the informal meeting
3-36 after that date;
3-37 (2) the board give notice to the license holder of the
3-38 time and place of the meeting not later than the 45th [~~30th~~] day
3-39 before the date the meeting is held;
3-40 (3) the complainant and the license holder be provided
3-41 an opportunity to be heard;
3-42 (4) at least one of the board members or district
3-43 review committee members participating in the informal meeting as a
3-44 panelist be a member who represents the public;
3-45 (5) the board's legal counsel or a representative of
3-46 the attorney general be present to advise the board or the board's
3-47 staff; and
3-48 (6) a member of the board's staff be at the meeting to
3-49 present to the board's representative the facts the staff
3-50 reasonably believes it could prove by competent evidence or
3-51 qualified witnesses at a hearing.

3-52 (f) The notice required by Subsection (b)(2) must be
3-53 accompanied by a written statement of the nature of the allegations
3-54 and the information the board intends to use at the meeting. If the
3-55 board does not provide the statement or information at that time,
3-56 the license holder may use that failure as grounds for rescheduling
3-57 the informal meeting. If the complaint includes an allegation that
3-58 the license holder has violated the standard of care, the notice
3-59 must include a copy of the report by the expert physician reviewer.
3-60 The license holder must provide to the board the license holder's
3-61 rebuttal at least 15 [~~five~~] business days before the date of the
3-62 meeting in order for the information to be considered at the
3-63 meeting.

3-64 (i) On request by a physician under review, the board shall
3-65 make a recording of the informal settlement conference proceeding.
3-66 The recording is a part of the investigative file and may not be
3-67 released to a third party unless authorized under this subtitle.
3-68 The board may charge the physician a fee to cover the cost of
3-69 recording the hearing.

4-1 ARTICLE 2. REGULATION OF PHYSICIAN ASSISTANTS

4-2 SECTION 2.01. Section 204.058, Occupations Code, is amended
4-3 to read as follows:

4-4 Sec. 204.058. OPEN MEETINGS; ADMINISTRATIVE PROCEDURE LAW.

4-5 (a) Except as otherwise provided by this chapter, the physician
4-6 assistant board is subject to Chapters 551 and 2001, Government
4-7 Code.4-8 (b) The physician assistant board may hear all evidence and
4-9 arguments and conduct deliberations relating to license
4-10 applications and disciplinary actions under this chapter in
4-11 executive sessions. The board shall vote and announce its
4-12 decisions in open session. Deliberations by the board relating to
4-13 license applications and disciplinary actions are exempt from
4-14 Chapter 551, Government Code.4-15 SECTION 2.02. Subsections (a) and (b), Section 204.153,
4-16 Occupations Code, are amended to read as follows:4-17 (a) To be eligible for a license under this chapter, an
4-18 applicant must:4-19 (1) successfully complete an educational program for
4-20 physician assistants or surgeon assistants accredited by the
4-21 Committee on Allied Health Education and Accreditation or by that
4-22 committee's predecessor or successor entities;4-23 (2) pass the Physician Assistant National Certifying
4-24 Examination administered by the National Commission on
4-25 Certification of Physician Assistants;4-26 (3) hold a certificate issued by the National
4-27 Commission on Certification of Physician Assistants;4-28 (4) be of good professional ~~moral~~ character;4-29 (5) meet any other requirement established by board
4-30 rule; and4-31 (6) pass a jurisprudence examination approved by the
4-32 physician assistant board as provided by Subsection (a-1).4-33 (b) In addition to the requirements of Subsection (a), an
4-34 applicant is not eligible for a license ~~[, unless the physician~~
4-35 ~~assistant board takes the fact into consideration in determining~~
4-36 ~~whether to issue the license,]~~ if the applicant:4-37 (1) has been issued a license, certificate, or
4-38 registration as a physician assistant in this state or from a
4-39 licensing authority in another state that is revoked or suspended;
4-40 or4-41 (2) is subject to probation or other disciplinary
4-42 action for cause resulting from the applicant's acts as a physician
4-43 assistant.4-44 SECTION 2.03. Section 204.155, Occupations Code, is amended
4-45 to read as follows:4-46 Sec. 204.155. TEMPORARY LICENSE. ~~[(a)]~~ The physician
4-47 assistant board may adopt rules and set fees relating to granting
4-48 temporary licenses and extending the expiration dates of temporary
4-49 licenses. The board by rule shall set a time limit for the term of
4-50 [issue] a temporary license [to an applicant who:4-51 ~~[(1) meets all the qualifications for a license under~~
4-52 ~~this chapter but is waiting for the license to be issued at the next~~
4-53 ~~scheduled meeting of the board,~~4-54 ~~[(2) seeks to temporarily substitute for a licensed~~
4-55 ~~physician assistant during the license holder's absence, if the~~
4-56 ~~applicant:~~4-57 ~~[(A) is licensed or registered in good standing~~
4-58 ~~in another state,~~4-59 ~~[(B) submits an application on a form prescribed~~
4-60 ~~by the board, and~~4-61 ~~[(C) pays the appropriate fee prescribed by the~~
4-62 ~~board, or~~4-63 ~~[(3) has graduated from an educational program for~~
4-64 ~~physician assistants or surgeon assistants described by Section~~
4-65 ~~204.153(a)(1) not later than six months before applying for a~~
4-66 ~~temporary license and is waiting for examination results from the~~
4-67 ~~National Commission on Certification of Physician Assistants.~~4-68 ~~[(b) A temporary license may be valid for not more than one~~
4-69 ~~year after the date issued as determined by board rule].~~

5-1 SECTION 2.04. Subchapter D, Chapter 204, Occupations Code,
5-2 is amended by adding Section 204.1551 to read as follows:

5-3 Sec. 204.1551. POSTGRADUATE TRAINING PERMIT. (a) The
5-4 physician assistant board by rule may issue a physician assistant
5-5 postgraduate training permit to a physician assistant not otherwise
5-6 licensed by the board who is participating in a graduate physician
5-7 assistant education training program approved by the board.

5-8 (b) A physician assistant postgraduate training permit does
5-9 not authorize the performance of a physician assistant act by the
5-10 permit holder unless the act is performed:

5-11 (1) as a part of the graduate medical education
5-12 training program; and

5-13 (2) under the supervision of a physician and a
5-14 physician assistant.

5-15 (c) The physician assistant board has jurisdiction to
5-16 discipline a permit holder whose permit has expired if the
5-17 violation of the law occurred during the time the permit was valid.
5-18 If an investigation is open when the permit expires, the permit
5-19 shall be executory and the board may retain jurisdiction.

5-20 SECTION 2.05. Section 204.156, Occupations Code, is amended
5-21 by adding Subsections (g) and (h) to read as follows:

5-22 (g) If the person's license has been expired for one year or
5-23 longer, the person's license is automatically canceled, unless an
5-24 investigation is pending, and the person may not renew the license.

5-25 (h) A physician assistant whose license is automatically
5-26 canceled may obtain a new license by complying with the
5-27 requirements, fees, and procedures for obtaining a new license.
5-28 The physician assistant board may issue a new license without
5-29 examination to a person whose license is automatically canceled for
5-30 less than two years.

5-31 ARTICLE 3. REGULATION OF ACUPUNCTURISTS

5-32 SECTION 3.01. Section 205.060, Occupations Code, is amended
5-33 to read as follows:

5-34 Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS,
5-35 AND ADMINISTRATIVE PROCEDURE LAWS. (a) Except as provided by this
5-36 chapter, the acupuncture board is subject to Chapters 551, 552, and
5-37 2001, Government Code.

5-38 (b) The acupuncture board may hear all evidence and
5-39 arguments and conduct deliberations relating to license
5-40 applications and disciplinary actions under this chapter in
5-41 executive sessions. The board shall vote and announce its
5-42 decisions in open session. Deliberations by the board relating to
5-43 license applications and disciplinary actions are exempt from
5-44 Chapter 551, Government Code.

5-45 SECTION 3.02. Section 205.3544, Occupations Code, is
5-46 amended to read as follows:

5-47 Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES.
5-48 (a) Each complaint, adverse report, investigation file, other
5-49 investigation report, and other investigative information in the
5-50 possession of or received or gathered by the acupuncture board or a
5-51 medical board employee or agent relating to a license holder, an
5-52 application for license, or a criminal investigation or proceeding
5-53 is privileged and confidential and is not subject to discovery,
5-54 subpoena, or other means of legal compulsion for release to anyone
5-55 other than the acupuncture board or medical board employees or
5-56 agents involved in discipline of a license holder.

5-57 (b) Investigation records relating to an application for
5-58 license and disciplinary action of a license holder are exempt from
5-59 Chapter 552, Government Code.

5-60 (c) For purposes of this section, investigative information
5-61 includes information relating to the identity of, and a report made
5-62 by, a physician performing or supervising compliance monitoring for
5-63 the acupuncture board [The acupuncture board shall prohibit or
5-64 limit access to an investigation file relating to a license holder
5-65 in an informal proceeding in the manner provided by Section
5-66 164.007(e)].

5-67 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

5-68 SECTION 4.01. Subchapter B, Chapter 206, Occupations Code,
5-69 is amended by adding Section 206.059 to read as follows:

6-1 Sec. 206.059. MEDICAL BOARD MEETINGS; CONFIDENTIALITY.

6-2 (a) The medical board may hear all evidence and arguments and
6-3 conduct deliberations relating to license applications and
6-4 disciplinary actions under this chapter in executive sessions. The
6-5 medical board shall vote and announce its decisions in open
6-6 session.

6-7 (b) Deliberations and records relating to the professional
6-8 character and fitness of applicants as well as related to
6-9 disciplinary actions are exempt from Chapters 551 and 552,
6-10 Government Code.

6-11 SECTION 4.02. Subsection (a), Section 206.203, Occupations
6-12 Code, is amended to read as follows:

6-13 (a) Except as provided by Section 206.206, to be eligible
6-14 for a license, a person must:

6-15 (1) be of good professional [~~moral~~] character;

6-16 (2) have not been convicted of a felony or a crime
6-17 involving moral turpitude;

6-18 (3) not use drugs or alcohol to an extent that affects
6-19 the applicant's professional competency;

6-20 (4) not have had a license or certification revoked by
6-21 a licensing agency or by a certifying professional organization;
6-22 and

6-23 (5) not have engaged in fraud or deceit in applying for
6-24 a license under this chapter.

6-25 ARTICLE 5. TRANSITION PROVISIONS

6-26 SECTION 5.01. Sections 153.051, 155.003, 155.101, 155.104,
6-27 204.153, 204.155, and 206.203, Occupations Code, as amended by this
6-28 Act, apply only to an application for a license filed with the
6-29 applicable licensing authority on or after the effective date of
6-30 this Act. An application for a license filed before the effective
6-31 date of this Act is governed by the law in effect on the date the
6-32 application was filed, and that law is continued in effect for that
6-33 purpose.

6-34 SECTION 5.02. Sections 154.051, 154.057, and 164.003,
6-35 Occupations Code, as amended by this Act, and Section 154.0535,
6-36 Occupations Code, as added by this Act, apply only to the
6-37 investigation of a complaint filed on or after the effective date of
6-38 this Act. The investigation of a complaint filed before that date
6-39 is governed by the law in effect on the date the complaint was
6-40 filed, and that law is continued in effect for that purpose.

6-41 SECTION 5.03. Section 204.058, Occupations Code, as amended
6-42 by this Act, and Subsection (b), Section 205.060, and Section
6-43 206.059, Occupations Code, as added by this Act, apply only to a
6-44 contested case hearing conducted on or after the effective date of
6-45 this Act. A contested case filed before the effective date of this
6-46 Act is governed by the law in effect on the date the contested case
6-47 was filed, and that law is continued in effect for that purpose.

6-48 SECTION 5.04. Section 204.156, Occupations Code, as amended
6-49 by this Act, applies only to a license that expires on or after the
6-50 effective date of this Act. A license that expires before the
6-51 effective date of this Act is governed by the law in effect on the
6-52 date the license expires, and that law is continued in effect for
6-53 that purpose.

6-54 ARTICLE 6. EFFECTIVE DATE

6-55 SECTION 6.01. This Act takes effect September 1, 2011.

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